

## Muhammadiyah Perspective Constitutional Jihad Paradigm

(Case Study of Muhammadiyah's Request Against Law Number 7 of 2004 Concerning Water Resources)

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### ABSTRACT

The Constitutional Court (MK) granted the petition for judicial review of Law Number 7 of 2004 concerning Water Resources (UU SDA) which was submitted by the Central Executive (PP) of Muhammadiyah. Testing the application for the Natural Resources Law is a strategy to fight for the weak (mustad'afin) according to the basic principles of Islam. Thus, this test argument is also based on the benefits of ecology and nature contained in Islamic law. The review of the Natural Resources Law can also be seen as an effort to examine the similarities between the principles of Islamic law and the 1945 Constitution. The research method uses a socio-legal judicial review approach, by reviewing the decision in the application for Law No. 7 of 2004 concerning Water Resources. against the 1945 Constitution of the Republic of Indonesia with Decision Number 85/PUU-XI/2013. This research is normative based on primary data, namely decision 85/PUU-XI/2013 with bibliographical data and uses a statute approach. This conclusion makes it very clear that Muhammadiyah has taken a Judicial Review step against the Natural Resources Law which is contrary to the 1945 Constitution. This shows that Muhammadiyah has built a constitutional jihad as a concrete ijthid in an effort to straighten environmental law enforcement which the state should do in accordance with Article 33 of the 1945 Constitution.

Keywords: Muhammadiyah, Judicial Review, Natural Resources Law

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## INTRODUCTION

Muhammadiyah Central Executive along with a number of community groups and also with several figures including, Marwan Batubara, Adhyaksa Dault, Amidhan, Laode Ida, Rachmawati Soekarnoputri, M. Hatta Taliwang, and Fahmi Idris, have made a request for re-examination of several articles contained in the Law on Water Resources. According to the Central Executive of Muhammadiyah and all those who are members of it, the application of these articles will only provide benefits to the private sector but will not benefit the people who are water users, because these articles are considered to open up the possibility for privatization and commercialization of private groups in the management of water resources. According to

the Muhammadiyah Central Executive, the Law on Water Resources (SDA) contained in Law Number 7 of 2004 is full of privatization content. So that in this way, the Act is contrary to Article 33 of the 1945 Constitution. The 1945 Constitution which is the constitution for the Republic of Indonesia, must become the basis, basis and reference for all applicable laws in Indonesia (Soediro, 2017).

Based on various considerations and based on the 1945 Constitution of the Republic of Indonesia, the Constitutional Court (MK) then handed down Putusan Nomor 85/PUU-XI/2013 Uji Materil Undang-Undang Nomor 7 Tahun 2004 Tentang Sumber Daya Air canceled or declared invalid. According to the Constitutional Court, this is contrary to the constitution of the 1945 Constitution of the Republic of Indonesia. With a decision issued by the Constitutional Court, the community has been able to re-access water resources that were previously controlled and monopolized by the private sector, this is also the answer to the demands made by the Central Executive of Muhammadiyah and all those who are members of it (Setiawan, 2015). Apart from being in line with the constitution of the Republic of Indonesia, this decision is also in line with what one of the nation's leaders as well as one of Indonesia's founding leaders, Muhammad Hatta, said that in line with the ideals embedded in Article 33 of the 1945 Constitution, namely the Government must be able to carry out or conduct all forms of production that have great value, this is aimed at the interests of the entire Indonesian people (Soediro, 2017).

The decision of the Constitutional Court which annulled Law Number 7 of 2004, again made the State of Indonesia as the holder of full control over water as a natural resource which will be directly managed by State-Owned Enterprises (BUMN) or Village-Owned Enterprises (BUMD) under the auspices of the Republic of Indonesia. Indonesia. Therefore, this will provide greater benefits to the community, because all profits and results received will go into state profits and what is the obligation of the state in terms of water services will be carried out optimally, such as distribution of water for household needs, water supply raw materials, distribution of water for agricultural land and distribution for industries (Hardjasoemantri, 2002).

## **RESEARCH METHOD**

This type of research is library research by focusing on the application of legal principles or norms in positive law. Legal research begins by tracing legal materials as a basis for making a legal decision (legal decision making) on concrete legal cases. This type of

research is normative legal research or doctrinal legal research, which is research that provides a systematic explanation of the rules governing a particular legal category by analyzing the relationship between the regulations that apply to this writing material. The approach used in legal research includes a statutory approach (case approach) which means examining several laws and regulations that are related to legal issues, namely Decision Number 85/PUU-XI/2013 and several decisions relating to natural resources.

## DISCUSSION

### *Consistency of Constitutional Jihad*

Law Number 7 of 2004 which seeks to hand over water management to the private sector or all sectors other than the state has had a negative impact as well as a negative impact on the community in terms of water services. Another impact of the existence of the law is to exacerbate the level of crisis and expand all conflicts related to water resources in the midst of society, such as conflicts in the struggle for these water resources (Assiddiqie, 2021). This problem often creates other open conflicts between the private sector and the community. If it is based on the 1945 Constitution which is the constitution of the Republic of Indonesia, “Earth and water and the natural resources contained therein are controlled by the state and used to the maximum extent possible for the prosperity of the people”, as stated in Article 33 paragraph (3) of the 1945 Constitution. Then as is known, every action, be it the actions of citizens who are citizens or every action of state administrators (government) must be based on law and not contradict the existing *ius constitutum* (positive law), this is a consequence because the Republic of Indonesia is a constitutional state, as stated in Article 1 Paragraph 3 of the 1945 Constitution (Fuady, 2009).

According to the Constitutional Court, through its decision it was explained that the word “controlled” is not synonymous with the word “owned”, in the conception of private law the word “controlled” has a higher meaning or a broader meaning than the word “ownership”, a legal concept that places the state as the highest organization (*heerschappij*) which thereby has sovereignty over something or over a certain area, especially the territory of the Republic of Indonesia, is reflected in the concept of “controlled by the state”, the meaning of “controlled by the state” means giving a mandate to the state to carry out policies (*beleid*) and authority to do:

1. Maintenance (*beheersdaad*)
2. Management (*bestuursdaad*)

3. Arrangement (*regelsdaad*)
4. Supervision (*toezichthoudensdaad*)

The cancellation of Law Number 7 of 2004 concerning Water Resources which was decided by the Constitutional Court contained in decision Number 85/PUU-XI/2013 is considered to be in line with the provisions of the laws and regulations in force in Indonesia. Therefore, when viewed from the point of view of the order of laws and regulations, the decision stipulated by the Constitutional Court is deemed appropriate. Nevertheless, the Constitutional Court also recognizes the role of the private sector and has obligated the government to fulfill the right to water as a basic requirement other than the right to use water, as stated in the Law on Water Resources and the Constitutional Court Decree No. 56 058-059-060-063/PUU-II/2004 and No. 008/PUU-III/2005.

Nevertheless, what was decided by the Constitutional Court did not go well, this can be seen from the normative deviation of the interpretation of the Constitutional Court which then influenced the implementation technique. This is evident from the existence of covert privatization efforts and the denial of the constitutional interpretation of the Constitutional Court regarding Article 1 number 9 PP Number 16 of 2005 concerning the Development of a Drinking Water Supply System (SPAM) which states that the organizers of the development are State-Owned Enterprises or Village-Owned Enterprises, cooperatives, private business entities and community groups. On the other hand, it is stated that Development of a Drinking Water Supply System is the responsibility of the central/regional government. It is not stated that cooperatives, private bodies or community groups are permitted as stated in Article 40 paragraph (2) of the Water Resources Law. This condition gives rise to a water management mindset that is always profit oriented with maximum profit for its shareholders. Thus it is clear that the articles of the privatization are contrary to Article 33 of the 1945 Constitution, so that the article must be declared null and void.

In its review, the Constitutional Court found that water, a factor that regulates the lives of many people, is under the control of the state based on Article 33 (2) and (3). Therefore, to maintain the continuity of life and the availability of water, it is necessary to strictly limit the use of water. This is because the Constitutional Court has approved five restrictions on water management. First, water companies must not interfere with or deny community rights. Because apart from government control, water is for the greatest wealth of the people. Second, the state must fulfill its people's right to water as one of its human rights, which is the responsibility of the government according to Article 28 I (4) of the Constitution. Third, Water Management

Constitutional Court must also consider ecological sustainability. Fourth, as an important production sector that supports the livelihood of many people, water must be under absolute national control and control in accordance with Article 33 paragraph (2) of the 1945 Constitution. Fifth, water management rights absolutely belong to the state, so that the highest priority for water utilization is State-Owned Enterprises or Village-Owned Enterprises.

In addition, Constitutional Court Decision Number 002/PUUI/2003 concerning judicial review of 2001 Law Number 22 concerning oil and natural gas, Constitutional Court Decision Number 11/PUUV/2007/concerning Judicial Review of Articles 10 (3) and (4) and The elucidation of Law Number 56 of 1960 concerning testing paragraph (4) and determining the area of agricultural land as well as the decision of the Constitutional Court case number 21-22/PUUV/2007 concerning investment based on Paragraph 2 (2) of the UUPA is also explained regarding the term controlled by the state, that is.

- a. Controlling and managing the allotment, use, supply and maintenance of earth, water and space.
- b. Establishing and regulating the legal relations between humans and the earth, water and space.
- c. Establish and regulate legal relations between people and legal actions related to Earth, water and space (Noyes, 2012).

Application for review of Law No. 7 of 2004 is only devoted to: First, Article 5; Second, Article 6; Third, Article 7; Fourth, Article 8; Fifth, Article 9; Sixth, Article 10; Seventh, Article 26; Eighth, Article 29 paragraph (2) and paragraph (5); Ninth, Article 45; Tenth, Article 46; Eleventh, Article 48 paragraph (1); Twelfth, Article 49 paragraph (1); Thirteenth, Article 80; Fourteenth, Article 91; and Fifteenth, Article 92 paragraph (1), paragraph (2) and paragraph (3). However, at the preliminary hearing, the panel of judges advised PP Muhammadiyah as the Petitioner to revoke or annul all provisions of Law No. 7 of 2004, and the Muhammadiyah Central Executive in revising their petition, one of which was the abolition of Law No. 7 of 2004.

As an important element that meets the needs of the general public, this is the reason in the consideration of the Constitutional Court which later stated that, based on Article 33 paragraph (2) and paragraph (3), water is required to be controlled by the state. So that in this way, all those who try to make water as a field for personal or group gain must be given very strict restrictions, therefore the sustainability and availability of clean water can be maintained for the benefit of people's lives. The restrictions emphasized by the Constitutional Court

contained at least five points of restriction. *First*, any person or group trying to make water a business is not allowed to interfere with and eliminate people's rights. As it is known that besides being controlled by the state, water is intended for the prosperity and welfare of all people. *Second*, the State is obliged to fulfill the people's right to water, which is one of the inherent rights of humans or human rights, which is based on Article 28I paragraph 4 of the Constitution, must be the obligation of the government. Third, control in the sense of managing water must also think about and care for environmental sustainability. *Fourth*, the management or control of water must be in absolute control and supervision of the state, this is because water is a very central source of production and fulfills the needs of many people's lives based on Article paragraph (2) of the 1945 Constitution. *Fifth*, the main priority given in managing and controlling water are State-Owned Enterprises or Village-Owned Enterprises, because in essence the absolute water management belongs to the state (Soediro, 2017).

In the petition the Central Executive of Muhammadiyah considers that there are fifteen articles contrary to Article 33 paragraphs (2) and (3) of the 1945 Constitution. Because as referred to the articles that have been reviewed, these articles provide the maximum authority for all business actors other than the state such as the private sector (individual and individual business entities) in managing and using water resources for their own interests. The granting of authority to the private sector in managing water resources is contained in the said Cultivation Right to Exploit. Permits in the name of Cultivation Rights are a new point that determines rights in the management of existing water sources. This is contrary to the Article which says "The branch of production which is central to the state and which fulfills the needs of many people (Indonesian people) must be controlled and managed by the Republic of Indonesia. Earth and water and all the wealth contained therein are controlled by the state and are intended for the prosperity and welfare of the people universally"(Wartini, 2018).

Apart from that, gaps in efforts to privatize water have also been found in several articles in Law number 7 of 2004. Such as gaps for privatization in Article 26 paragraph 7, Article 80 paragraph 1 and paragraph 3, which states that all parties using water may be charged for the services of water supply. Therefore, it means that all people, especially those who use water for their daily primary needs and intended for agriculture, obtained from the distribution channel provided by the private sector, will still ask for payment, in the name of service fees. Given this loophole, the design of Law Number 7 of 2004 has given rise to a mindset that water management is always profit-oriented, which fundamentally builds a value for water that becomes a public good (common good). profit land or economic commodity (commercial good)

which can also be controlled or controlled by various parties outside the state. This is a betrayal of the existence of Article 33 of the 1945 Constitution, which has given absolute authority to the state in managing water resources, including water, in order to provide prosperity for the people of Indonesia.

One of the main principles of the Muhammadiyah movement which is also the Geneology of Jihad of the Muhammadiyah Constitution is *amar makruf* and *nahi munkar* which is based on Surah Ali Imran verse 104: “And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful.” Based on this argument, Muhammadiyah chose the path of *amar ma’ruf nahi munkar*. The Constitutional Jihad carried out by the Central Executive of Muhammadiyah is to correct state policies and regulations that are contrary to the constitution (Kudzaifah Dimiyati, 2020). Organizing requests and formulating all demands for reviewing the law is clear evidence of Muhammadiyah’s significant role in carrying out Constitutional Jihad. Apart from organizing, the Muhammadiyah Central Executive which is directly commanded by Din Syamsudin is also active in undergoing trials at the Constitutional Court. In addition, the Muhammadiyah Central Executive also tries to reconstruct discourses through media related to the review of the Water Resources Law. The researcher conducted a more in-depth study regarding this constitutional jihad with a political economy perspective and from the perspective of Muhammadiyah religiosity.

Based on Muhammad Chirzin’s theory, *jihad* struggle must be carried out in the three domains included in it, namely: the struggle in the economic, political and legal fields. The constitutional jihad fought for by Muhammadiyah since the lawsuit of law. No. 22 of 2001 concerning Oil and Gas in 2012 not only a struggle in three areas such as the theory of Muhammad Chirzin but is an integrative-fundamentalist jihad which means a comprehensive struggle not only in the economic, political and legal fields but it is also very concerned with the ecological and social fields and this struggle has a fundamental impact on the life of the Indonesian people because the law is a guideline in the administration of state life if the law-authorized law falls it will make direct changes in the administration of the state.

However, since the emergence of Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Increasingly clarifying the government's alignments on investment because President Joko Widodo in his speech said that investment would later become the national economy. According to data from the Investment Coordinating Board (BKPM) (2019), the

realization of domestic investment and foreign investment of Rp. 200.5 trillion with a composition of foreign investment (PMA) of 104, 9 trillion (52.3 %) and domestic investment (PMDN) 95, 6 trillion (47.7) percent in the second quarter of 2019. Being an attraction for PMA is electricity, gas and water with an investment value of USD 1,350.5 million. The Law on Job Creation is a super-structural force to attract as many investors as possible to invest in Indonesia, therefore the Government will continue to strive for the acceleration of development and economic growth, supported by a system for accelerating and increasing business investment, business permits issued by ministries/agencies and Regional Governments to start, regulation in accordance with the demands of the business world, technological developments, and global competition (Arifin, 2021).

Departing from the reality of massive exploitation above, many laws that contradict the Constitution of the Republic of Indonesia, the indecisiveness of the country's elite when our natural resources are taken by foreign parties, even though this nation's elite should protect the nation's assets so that the nation's price and dignity are not humiliated by foreign parties, the character of our elite should be strong and resilient to achieve the ideals of the constitution but unfortunately that strong character and long-term vision are still far from the expectations of the nation's people. So, according to the message from the *tanwir* in Lampung 2009 and the one-century congress (*Muktamar*), Muhammadiyah in Yogyakarta is *amar makruf nahi munkar* movement that will bring about changes that will have broad and fundamental effects on the life of the nation and state. So, Constitutional Jihad is a strategic agenda of Muhammadiyah not one that comes suddenly but has been planned from the start, Muhammadiyah builds the vision and character of the nation to achieve the aspirations of the founding fathers of this country. Among the laws that have been carried out Judicial Review by Muhammadiyah namely; Law Number 7 of 2004 concerning Water Resources, Article 33 of the 1945 Constitution, Number 22 of 2001 concerning Oil and Gas (UU Migas), Law Number 17 of 2013 concerning Community Organizations (UU Ormas).

## CONCLUSION

From the description above, it is found that the conclusion is the Constitutional Court Decision contained in Decision Number 85/PUU-XI/2013 Concerning the Cancellation of Law No. 7 of 2004 concerning natural resources is considered appropriate. This is because there is a discrepancy between Law Number 7 of 2004 and the constitution of the Republic of Indonesia. When referring to the principle theory, it is appropriate for all forms of law to comply with the 1945 Constitution. If there is a discrepancy or conflict between the law and the constitution, the



law must be reviewed or even canceled, including with regard to the work copyright law. The cancellation that the Constitutional Court decided on Law Number 7 of 2004 was because the law contained indications that it was unfriendly to the Indonesian people, or in another sense it did not defend the interests of the people, but the law was more in favor of private parties which would then be detrimental many people. Therefore this is very contrary to the 1945 Constitution which says that all forms related to the necessities of life of many people (public) must be managed by the state and may not be managed by the private sector which only seeks group profits and will harm many people, in order to fill legal vacuum, then Law no. 11 of 1974 concerning Irrigation was re-enforced and even more recently Law Number 17 of 2019 concerning Natural Resources was even strengthened by Presidential Regulation of the Republic of Indonesia Number 53 of 2022 concerning the National Water Resources Council.

In one of the rules of *Ushul Fiqh* it is known as *Darul mafasid Muqoddamun ala Jalbil masholih*, (avoiding destruction rather than prioritizing things that are still problematic myopic (going backwards alias not moving forward which of course is not right), Muhammadiyah needs to maximize its organizational energy so that it can expand its work to contain and stop the pace of liberalization through supervision of legal products, as an Islamic mass organization that has a large number of educational charity efforts, to present cadres with high capacity and strengthen Muhammadiyah's energy should be very easy to do. So that Muhammadiyah will be able to expand its work as a judicial review movement in Indonesia, especially for vital matters related to the needs and daily needs of its citizens. Water, which is essentially not a commodity, is turned into a commodity or commercial product.

The commodification of water conservation in the environment will of course affect the functioning of the social system because it reduces its value from common property to mere merchandise that must be obtained by "buying". The shift in the context underlying the use of water from shared use to buying and selling has consequences for unequal access to water. Who has excess power resources, they are the ones who benefit. Therefore, water needs to be re-embedded into people's lives (reembedded) to be preserved in shared life.

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