

**THE ROLE OF SHARIA COOPERATIVE AS A BODY LEGAL ENTITY
ALTERNATIVE FOR WATER COMMERCIAL OPERATION
IN INDONESIA**

THESIS

By:

Roikhan Arif Pambudi

12220165



ISLAMIC BUSINESS LAW

SHARIA FACULTY

ISLAMIC STATE UNIVERSITY OF MAULANA MALIK IBRAHIM

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STATEMENT OF THE AUNTENTICITY

In the name of Allah SWT,

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**“THE ROLE OF SHARIA COOPERATIVE AS A BODY LEGAL ENTITY
ALTERNATIVE FOR WATER OPERATION COMMERCIAL
IN INDONESIA”**

is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 08th Juny 2016

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APPROVAL SHEET


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THE ROLE OF SHARIA COOPERATIVE AS A BODY LEGAL ENTITY ALTERNATIVE FOR WATER COMMERCIAL IN INDONESIA

The supervisor states that this thesis has met scientific requirements to be proposed and to be tested by The Thesis Board of Examiners.

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LEGITIMATION SHEET

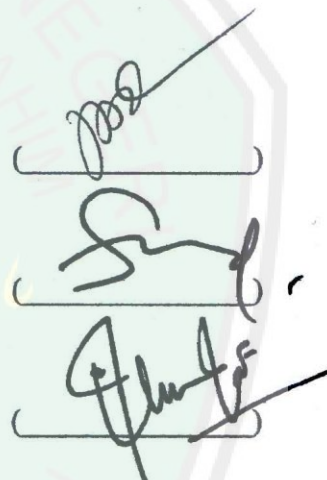
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THE ROLE OF SHARIA COOPERATIVE AS A BODY LEGAL ENTITY ALTERNATIVE FOR WATER COMMERCIAL OPERATION

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With the completion of the work of scientific research in the form of this thesis, the researcher realized that there are many errors and deficiencies that exist in it, therefore, suggestions, criticism and constructive feedback is needed in research of this scientific work, for the improvement and perfection of this thesis.

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Malang, 02th of April 2016

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TRANSLITERATION GUIDE

A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious' Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated 22 January 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

B. Consonants

ا = a	ض = dl
ب = b	ط = th
ت = t	ظ = dh
ث = ts	ع = ' (comma facing upwards)
ج = j	غ = gh
ح = h)	ف = f
خ = kh	ق = q
د = d	ك = k

ذ = dz

ل = l

ر = r

م = m

ز = z

ن = n

س = s

و = w

ش = sy

ه = h

ص = sh

ي = y

The hamzah (ء) which is usually represented by *alif*, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards ('), as oppose to a comma (,) which replaces the “ع”.

C. Long Vowel and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written as such:

Elongated (a) vowel = â example قال becomes *qâla*

Elongated (i) vowel = î example قيل becomes *qîla*

Elongated (u) vowel = û example دون becomes *dûna*

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represented by "i", unless it is written as "iy" so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after fathah it is written as "aw" da "ay". Study the following examples:

Diftong (aw) = example قول becomes *qawlun*

Diftong (ay) = example خير becomes *khayrun*

D. Ta' Marbûthah (ة)

Ta' marbûthah is transliterated as "t" if it is in the middle of word, but if it is *Ta' marbûthah* at the end, then it is transliterated as "h". For example: الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or if it happens to be in the middle of a phrase which constitutes *mudlaf and mudlafilayh*, then the transliteration will be using "t" which is enjoined with the previous word, for example فرحمة الله becomes *fi rahmatillah*.

E. Definite Article

Arabic has only one article, "al" (ال) and it written in small letters, unless at the beginning of a word, while "al" in the phrase of *lafadh jalalah* (speaking of God) which is in the middle of a sentence and supported by and (*idhafah*), then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. *Masyâ Allâhkânawamâ lam yasya' lam yakun.*
4. *Billâhi 'azzawajalla.*

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ABSTRAK

Roikhan Arif Pambudi, 12220165, 2016. *Koperasi Syariah sebagai Badan Alternatif Pengusahaan Air di Indonesia*. Skripsi Jurusan Hukum Bisnis Syariah Fakultas Syariah Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang. Pembimbing: Dra. Jundiani, SH., M.Hum

Kata Kunci: Peraturan tentang Air, Pengusahaan Air, Koperasi Syariah

Peraturan tata kelola air telah dikembalikan kepada UU Pengairan Tahun 1974 setelah dikeluarkannya keputusan Mahkamah Konstitusi yang telah membatalkan Undang-Undang Nomor 07 Tahun 2004 tentang Sumber Daya Air dikarenakan bertentangan dengan Undang-Undang Negara Republik Indonesia Tahun 1945. Pergeseran yuridis tersebut tentunya memberikan dampak terhadap pengusahaan tata kelola air di Indonesia. Oleh karena itu penelitian ini membahas tentang konsep solutif alternatif; koperasi syariah sebagai badan alternatif pengusahaan air di Indonesia. Fokus penelitian ini adalah terhadap persoalan yang timbul pasca putusan Mahkamah Konstitusi terhadap pengusahaan tata kelola air di Indonesia dan konsep koperasi syariah sebagai alternatif dalam pengusahaan air. Tujuan penelitian ini adalah untuk mengetahui urgensi dan relevansi konsep koperasi syariah sebagai badan alternative pengusahaan air di Indonesia.

Penelitian ini adalah penelitian hukum yuridis-normatif. Pendekatan yang digunakan adalah pendekatan perundang-undangan (*statute approach*), pendekatan konseptual (*conceptual approach*) dan pendekatan hukum Islam. Bahan hukum yang terdiri dari bahan hukum primer, skunder dan tersier. Metode pengumpulan bahan hukum dengan penentuan bahan hukum, pengkajian bahan hukum dan inventarisasi bahan hukum. Metode pengolahan bahan hukum dilakukan dengan teknik deduktif.

Akibat hukum putusan Mahkamah Konstitusi Nomor 85/PUU-XI/2013 terhadap perusahaan tata kelola air adalah, *pertama*, dengan landasan bahwa aktifitas perusahaan tata kelola air yang masih terus menerus memanfaatkan sumber daya air tanpa kekuatan hukum yang jelas atau secara illegal, bisa dikategorikan sebagai bentuk pencurian atau perampasan sumber daya air yang dapat menimbulkan kerugian Negara sebagaimana tercantum pada Pasal 15 Ayat (2) UU Pengairan. *Kedua*, UU Pengairan belum sepenuhnya menegaskan negara sebagai satu-satunya yang berhak untuk mengelola sumber daya air; ini menjadi pintu masuk perusahaan tata kelola air dari swasta bahkan multinasional. Maka, koperasi menjadi alternative pengusahaan tata kelola air yang mempunyai legal standing yang kuat, diantaranya UU nomor 25 Tahun 1992 begitu juga dengan koperasi syariah yang sudah di atur di Keputusan Menteri Koperasi RI No. 91/Kep/M.KUKM/IX/2004. Hal ini sejalan dengan amanat UUD 1945 pasal 33 yang menyerukan bahwasannya bumi, air dan kekayaan alam yang terkandung di dalamnya dikuasai penuh oleh negara dan dipergunakan sebesar-besarnya kemakmuran rakyat.

ABSTRAK

Roikhan Arif Pambudi, Student ID Number 12220165, 2016. *Sharia Cooperative As a Body Legal Entity Alternative For Water Commercial in Indonesia*. Thesis, Islamic Bussines Law Departement Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang. Supervisor: Dra. Jundiani, S.H., MHum.

Keywords: Regulation on Water, Water Commercial, Sharia Cooperative

Regulation of water governance has been returned to the Water Resources Act of 1974 after the issuance of the decision of the Constitutional Court which had canceled Law No. 07 of 2004 on Water Resources because contrary to the Constitution of the State Republic juridical Indonesia 1945 Year. The shift is certainly an impact on concession water governance in Indonesia. Therefore, this study discusses the concept of solution-based alternatives; sharia cooperatives as an alternative body of water utilization in Indonesia. The research focus is on the problems that arise after the Constitutional Court ruling against the exploitation of water governance in Indonesia and cooperative concept of sharia as an alternative in water utilization. The purpose of this study was to determine the urgency and relevance of the cooperative concept of sharia as an alternative body of water utilization in Indonesia.

This research is a juridical-normative legal research. The approach used is the approach of law (*statute approach*), the conceptual approach (*conceptual approach*) and the approach of Islamic law. Legal materials consisting of primary legal materials, secondary and tertiary. The method of collecting legal material to the determination of legal materials, assessment and inventory of legal materials law. Legal materials processing method performed by using deductive.

The legal consequences of the Constitutional Court Number 85/PUU-XI /2013 against the company's water management, first; on the grounds that the company's activities water governance which still continues to utilize the water resources without the power of a clear legal or illegal, can be categorized as form of theft or appropriation of water resources which can result in losses as stated pasda State Article 15 Paragraph (2) of the Act Watering. Second, the Water Act has not been fully affirmed the state as the only one who has the right to manage water resources; This is the entrance of companies from private water governance even multinational. Then, the cooperative as an alternative utilization of water governance has a strong legal standing, including Law No. 25 of 1992 as well as the cooperative sharia are already regulated in Decree of the Minister of Cooperatives No. 91 Kep /M.KUKM /IX / 2004. This is in line with Article 33 of the 1945 Constitution which calls earth, water and natural resources contained therein fully controlled by the state and used for prosperity of the people.

الملخص

ريحان عارف فامبودي، ١٢٢٢٠١٦٥، ٢٠١٦ التعاونية الشريعة كما كالة البدائل في إندونيسي المياه الامتياز. وزارة أطروحة في القانون التجاري بكلية الشريعة بالجامعة الإسلامية الدولة الإسلامية) يو آي (مولانا مالك إبراهيم مالانج. المشرف: ذراع . جندين، و. سهام . هوم

كلمات البحث: تنظيم المياه، الامتيازات المياه، التعاونيات الشريعة

وقد عاد تنظيم إدارة المياه لقانون الموارد المائية لعام ١٩٧٤ بعد صدور قرار من المحكمة الدستورية التي ألغت قانون رقم ٠٧ لسنة ٢٠٠٤ بشأن الموارد المائية بسبب مخالفة لدستور جمهورية إندونيسيا السنة ١٩٤٥. انحرافا قانونيا هو بالتأكيد لها تأثير على امتياز إدارة المياه في اندونيسيا . لذلك، تناقش هذه الدراسة مفهوم بدائل الحل القائم .التعاونيات الشريعة كهيئة بديلة لاستخدام المياه في اندونيسيا .محور البحث هو على المشاكل التي تنشأ بعد صدور حكم المحكمة الدستورية ضد استغلال إدارة المياه في اندونيسيا ومفهوم تعاوي الشريعة كبديل في استخدام المياه .وكان الغرض من هذه الدراسة هو تحديد إلحاح وأهمية مفهوم تعاوي الشريعة كهيئة بديلة لاستخدام المياه في اندونيسيا. هذا البحث هو قانون قضائي المعايير .النهج المتبع هو نهج القانون (نهج النظام الأساسي)، النهج المفاهيمي (النهج المفاهيمي) ونهج الشريعة الإسلامية .المواد القانونية التي تتكون من المواد القانونية الأولية والثانوية والثالثية .طريقة جمع المواد القانونية لتحديد المواد القانونية، وتقييم وحصر القانون المواد القانونية .القانوني طريقة تجهيز المواد أجريت باستخدام استنتاجي. العواقب القانونية لعدد المحكمة الدستورية ٨٥/فوق الحادية عشرة / ٢٠١٣ ضد إدارة المياه والشركة هي، أولا، على أساس أن نشاطات الشركة إدارة المياه التي لا تزال مستمرة للاستفادة من موارد المياه دون قوة واضحة قانونيا أو غير قانوني، يمكن تصنيفها على أنها شكل من أشكال السرقة أو الاستيلاء على موارد المياه التي يمكن أن تؤدي إلى خسائر كما جاء الدولة المادة ١٥ الفقرة (٢) من قانون الري .ثانيا، لم يتأكد قانون بالكامل الري الدولة الوحيدة التي لها الحق في إدارة الموارد المائية؛ هذا هو التدخل الشركات من إدارة المياه الخاص حتى متعددة الجنسيات .وهكذا، فإن التعاونية باعتبارها استخدام بديل للحكم الماء له صفة قانونية قوية، بما في ذلك القانون رقم ٢٥ لسنة ١٩٩٢ وكذلك الشريعة التعاونية تنظم بالفعل في قرار.



CHAPTER I

INTRODUCTION

A. Background of The Research

Indonesia has areas had the cross between two continents and two ocean, with tropical climate, weather and season that give natural conditions which is abundant, with the role of strategic high value as a the people and the indonesia people hosted the social life, national, and state in all aspect.¹ Therefore, Indonesia must be potential and its natural wealth, it can prosper its citizens.

Depart from the same, the natural is resourced abundant set a handle must be by the formation of a welfare. Where dependence the people of its natural into a basic needs to be fulfilled. The state of this will creates a pattern strategic will not be able to separated, pattern relation between of the needs against nature and

¹ Sodikin, *Penegakan Hukum Lingkungan*, (Jakarta: Djamban, 2003), h. 18.

sustainability the earth and human behavior, as the word of God on al Qur'an (Al-Baqarah article 22):

الَّذِي جَعَلَ لَكُمُ الْأَرْضَ فِرَاشًا وَالسَّمَاءَ بِنَاءً وَأَنْزَلَ مِنَ السَّمَاءِ مَاءً فَأَخْرَجَ بِهِ مِنَ

الشَّجَرَاتِ رِزْقًا لَّكُمْ فَلَا تَجْعَلُوا لِلَّهِ أَنْدَادًا وَأَنْتُمْ تَعْلَمُونَ ﴿٢٢﴾

It means: *who made the earth a bed for you with the sky a canopy, and he sends down water from the sky, and to produce fruits as provision for you ;*

Like that hadis for propeth Muhammad SAW:

عن أبي خديصة - وهذا لفظ علي - عن رجل من المهاجرين من أصحاب النبي - صلى الله عليه وسلم - قال غزوت مع النبي - صلى الله عليه وسلم - ثلاثاً أسمعُهُ يقولُ المسلمونُ شركاءُ في ثلاثٍ في الكَلإِ والماءِ والنَّارِ

From Abu Khidasy one of the Companions muhajirin, he said that he three times fought with the Prophet Sallallaahu 'alaihi wa sallam and he heard the Prophet say, "There are three things that belong together muslim: grass, water and fire ." (HR. Abu Daud, no. 3479; hadits sahih).

Jimly Asshidiqie thought, Indonesia is as one of the heart and lungs the world by nature wealth and a huge environment. This often was used as pioneer the engine of by the creation of sustainability environmental sustainability. Absolutely necessary an increase in culture aware with environment luminance

joints the social life, national, and state. So that all the act of and the policy taken will always interest in all aspects associated with environment.²

Indonesia as state of being sovereign, have an important role and obligations to protect and make safe its people in every aspect of social life as well as economic, such as should also puts forward insight environment. The constitution of the republic of indonesia 1945 years (constitution of 1945) is a cornerstone of the basis for an economic system that is basically to the well-being of the people, especially in article 33 paragraph (3) 1945 constitution which states that: *"The earth, water and natural resources which are contained in it are controlled by the state and used for the optimal welfare of the people;"* the clause dictates that form of mastery is dedicated to the state welfare of the people, who is also insightful with the environment and social purpose of creating equitable national. So, Indonesia base against the sovereignty of his country environment restricted in used to the welfare of the community those are seamless.

Related to environmental sovereignty, Sutardi more specifically thought out that water resources are part of the natural resource has properties very different from other natural resources. Water is a renewable resource, following the dynamic nature of the hydrologic cycle that naturally move, change shape and properties. No one can deny that water is a basic requirement for all life, whether humans, animals and plants, which can not be replaced by other substances.

² Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1975* (Jakarta: Rajawali Press, 2010) h. IX.

Therefore water ownership rights only in the country in order to guarantee life Indonesian people.³

If we look of the water resources in Indonesia, water reserves in Indonesia are estimated at 2.530 km³/year, including the one country that has the world.⁴ richest reserves of water. In others data, the availability of water in Indonesia reached 15,000 m³ in capita at one year. This figure is far above the average water availability in the world which is only 8,000 m³ in one year. But, Indonesia is still experiencing water scarcity⁵, and the availability of clean water wasn't scope evenly distributed throughout the territory of Indonesia.

Water is one of natural resources, of the basis of human need, which makes it a property to protect its existence. The existence of water resources, that is the constitutional right every citizen indonesia has become so important. The realities, water often time to be the interests of a party particular individual, no public interest that should be to public welfare as set out in the constitution. Water has the potential natural (their needs for life) now engineered in such a way as to commercial potential. This should not in the rich water resources. Water is entitled to should be each layer of indonesian, because it entitles the constitution konstitusionalisme security of 1945, it turn to the privatization business water resources. The constitution give our legitimacy the constitutional right water, where the country a sovereign supposed to protect sovereignty on various aspects, especially water that is sovereignty.

³ Sutardi, *Pengelolaan Sumberdaya Air yang Efektif*, Lokakarya (Bandung: Badan Perencanaan Daerah, 2002) h. 2.

⁴ Rohani Budi Prihatin, *Info Singkat: Air Bersih di Perkotaan*, (Jakarta: Sekretariat Jendral DPR RI: Pusat Pengkajian, Pengolahan Data dan Informasi, 2009) h. 9.

⁵ Budi Prihatin, *Info Singkat: Air Bersih di Perkotaan*, h. 9.

For example, in indonesia based on data association drinking water in packs indonesia (*aspadin*), who handle entrepreneurs drinking water in packaging (*amdk*), a member of aspadin to 193 industry, while the total number of industry amdk is 615 to more than 500 brands, among other: Aqua, Nestle, Club, Total, an Oasis, and Ades.⁶ The data prove chink large enough of governance water resources toward privatization water that occurred in indonesia, because the water that the is belonging to a country and given optimal benefits to the people, it be a goods commodities economic oriented profit oriented to a party certain.

The next question that arises is related to who and how resources are managed and developed life? Because it concerns live of many people. In fact, most state enterprises encourage public/private sector to manage natural resources and permits invitation strong oversight by state or government. Private enterprises are taxed by the state to finance the development and welfare of its people. This is slightly different from the weak state control, the private enterprises are working with trans-national business networks, strong grow beyond the ability of the countries concerned to control it. The sources is of that country's natural wealth looted by a crowd agencies trans-national business with a victim of its own people, which is coupled with severe damage to the natural environment.⁷

The reality is one based community classes and community organizations, one of them is like muhammadiyah, that is sensitive to environment in the sovereign territory of indonesia, to lodge judicial review UU number 7 of 2004

⁶ Roziqin, "Air Bersih Kian Sulit Dicari", *Harian Kompas*, Rabu, Tanggal 4 Maret 2015.

⁷ Masdar Farid Mas'udi, *Syarah UUD 1945 Perspektif Islam*, (Jakarta: PT Pustaka Alfabet, 2013) h. 263.

years on water resources (natural resources) to the constitutional court. It was done because they found the law was breaking the spirit of basic UU 1945, especially on article that assure the concept of optimization wealth living environment just to the people welfare; as article 33 paragraph (3) UUD 1945.

Irawan tjandra in the analysis said that the commercial use of water in UU number 7 of 2004 yeras of natural resources, appeared to have been implemented subordinate the use of water by showing governance natural resources that leads to economic system capitalist who individualistic. Even, in some places, due to the regulation on law of natural resources issued by the government , for example in government regulation. Numbers 42 of 2008 years on the management of natural resources and government regulation No. 69 in 2014 about use water rights, clearly visible natural resources management handed over to economic system that allows privatization liberal water.⁸

Based on this reality the above, the constitutional court in his ruling number 85/PUU-XI/2013 dated 17 september 2014 has canceled UU number 7 of 2004 years on water resources⁹, because considered only favors for the interests of some and denying against have community. This poses a milestone a basis for change governance the water in indonesia and be determined very progressive tengah-tengah neoliberal in the current increasingly gripping indonesian. On the other side, the decision mahakamah constitution this shows that there are several problems that contained in it.

⁸ Sonhaji, "Mengakhiri Liberalisme Pengelolaan Air," Harian Kompas, Rabu, Tanggal 4 Maret 2015 h. 14.

⁹ Sonhaji, "Mengakhiri Liberalisme Pengelolaan Air," h. 14

According to Bosman Batubara, these problems can be classified into: First, the lack of proper mapping of governance in the water sector the private sector (private) with a "public" or that the corpus of water governance is often also mean "state".¹⁰ Secondly, as a result of the above problems, the Constitutional Court's decision provides an opportunity that is too large for the governance of water by country/region, in this case the State Owned Enterprises/Regional (BUMN/D). Third, management of water resources are returned to the Act number 11 of 1974 yeras on Water.¹¹

Legislative bodies need to be more thoroughly in interpreting the decision, to make new rules on water management a more comprehensive and pro-social justice. Prior to the formation of a law on water resources are new, it takes a concept or new idea to want to respond to some of the problems arising from the decision of the Constitutional Court the above, in case if there is no quick and decisive action, will provide a legal loophole for the parties irresponsible to exploit the situation.

Referring to the above description, deconstruction needs to be done in terms of water management. Reconstruction is meant here is the improvement of the judicial reconstruction and completion of Law water management institutions. Reconstruction institutional context, the existence of cooperative shari has the potential to be one alternative. To know and answer the above problems, it is necessary to do legal research intensive and deep.

¹⁰ Bosman Batubara, *Menafsir Pasal 33: Analisis Terhadap Putusan MK Nomor 85/PUU-XI/2013 tentang Undang-Undang Nomor 7 Tahun 2004 tentang Sumber Daya Air*, Kertas Kerja, Front Nahdliyin untuk Kedaulatan Sumber Daya Alam (FNKSDA), (2015) h. 4.

¹¹ Bosman Batubara, *Menafsir Pasal 33*, h. 4

This research will offer a basic concept or a new idea about governance water, namely with the concept of the cooperative system syariah. The concept has ideals to restore governance concept of water in Indonesian that base to social justice and the realization of public welfare environment through sovereignty in the field of water.

It was contained in Law number 25 of 1992 years and regulation of the Minister of Cooperatives and *UKM* No. 91 of 2004 years, namely: Cooperative Building and developing the potential and ability of member economies in particular, and society in general to improve the economic and social welfare. Participate actively in efforts to enhance the quality of human life and society. Strengthening is the economy of the people as the basis of the strength and resilience of the national economy by the cooperative as saka teacher. Strive to realize and develop the national economy which is a joint effort based on the principle of kinship and economic democracy.

B. Formulation of The Problem

Base on background of the research above, some aspects become statement of the problem:

1. How setting water commercial operations according to act number 11 Of 1974 years on irrigation?
2. How the concept of sharia cooperative as a body legal entity an alternative water commercial operation in Indonesia?

C. Purpose of The Research

Base on statement of the research above, some aspects which becomes purposes of the research are:

1. Knowing about setting water commercial operations according to act number 11 of 1974 years about irrigation.
2. Understanding about the sharia cooperative as a body legal entity alternative for water commercial operation in Indonesia.

D. Advantage of The Research

There are some benefits to be given from the study, the theoretical benefits and benefits partial. Theoretically, writing is able to provide innovative idea of sovereignty environment in the field of water for governments, academics and practitioner. While, in practice a piece of writing is expected to be concrete contribution to the community to get social justice for the management of water resources in Indonesia.

E. Research Method

The research method is a step that must be done by the results of research in order to obtain valid and reliable results that research. Methods of research related to the type of research, the approach used, the law is the reference materials, techniques of collecting legal material and legal material processing techniques.

The explanation of the research method used is as follows.

1. Type of Research

As a consequence of the selection problems topic examined in the study whose object is legal (while the law is the rules or norms that exist in society), then this type of study is a normative juridical research, the research focused on

assessing the implementation of the rules or norms norm in positive law.¹²

Normative law research method is also called the doctrinal legal research. In this type of legal research, law yng conceptualized as what is written in the legislation (law in books) or the laws are drafted as a rule or norm that is the benchmark of human behavior is considered appropriate. This normative legal research to fully use materials primary law and secondary law.¹³

Type of writing used in this study is a normative legal research, the research focused on assessing the implementation of the rules or norms in the positive law.¹⁴ This type of literature is taken with the consideration that the starting point in this study is an analysis of the regulation of water governance and concept of sharia cooperative as a body legal entity for commercial operations in Indonesia.

2. The Approach of Research

The approach taken is the approach of law (statute approach) and the conceptual approach (conceptual approach). Approach legislation is done by examining all the laws and regulations relating to the legal issues that are being addressed.¹⁵ This is done to see is there consistency and compatibility between legislation on the management of water resources with the Constitution of 1945. The conceptual approach to move from the views and doctrines that developed in

¹² Johnny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2006), h. 391.

¹³ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Rajawali Pers, 2006), h. 118.

¹⁴ Johnny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2006), h. 391.

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2007), h. 93.

the jurisprudence.¹⁶ Such an approach is used to find the ideas that gave birth to the notion, concepts, and principles of law that are relevant to the issue at hand, in this case is the concept of sharia as a cooperative effort of reconstruction of water governance for the welfare of the citizens of Indonesia.

Researchers used the approach law (statute approach) is done by examining all the regulation or legislation related to the legal issues studied, namely the norms contained in Law number 07 of 2004 years on Water Resources Law Number 11 of 1974 years On Bodies, Law number 25 of 1992 years on Cooperative, the articles of the Commercial code relating to business entities and the decision of Constitutional Court No. 85/PUU-XI/2013 and other legislation related to water governance and sharia cooperative.

The conceptual approach to move from the views and doctrines that developed in the jurisprudence.¹⁷ At the conceptual approach (conceptual approach) investigators examined to understand the substance of the law and the principles found in a view or legal doctrine. Although not explicitly, concepts and principles can be found in the regulations/legislation.¹⁸

Such an approach is used to find the ideas that gave birth to the notion, concepts, and principles of law that are relevant to the issue at hand, in this case is a sharia cooperative.

3. Data Resource

Legal materials used in writing scientific papers are:

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, h. 95.

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, h. 95.

¹⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, h. 178.

- a. Primary legal materials ie materials binding law consists of rules of law related to this paper, which include: the Constitution of the Republic of Indonesia in 1945 years, Law number 11 of 1974 years on Water, Act number 7 of 2004 yeras on Water Resources, Government Regulations under Law number 7 of 2004 years, and the Constitutional Court decision No. 85/PUU-XI/2013 about the Law 7 of 2004 years, which were analyzed to see whether there is a pattern of abuse tendency governance of water resources in Indonesia.
- b. Secondary law is a law material obtained from books, journals, expert opinion, case law and materials related to the discussion of governance of water resources.
- c. Tertiary legal materials is legal materials memeberikan meaningful guidance or explanation to the primary and secondary legal materials, such as legal dictionaries, encyclopedias, and others.

4. Techniques Legal Materials Collection

How to collect the primary legal materials, secondary and tertiary, carried out by the method of library research (library research). The study was done by examining the documents that exist, namely by collecting data and information either in the form of books, scientific articles, legislation and other written materials, namely by way of searching, studying, and record and interpret things relating to the object of research,¹⁹ which is about the governance of water

¹⁹ Zainuddin Ali, *Metode Penelitian Hukum*. hlm. 211.

resources in Indonesia and cooperative concept of sharia in the water governance; this is:

a. Determination of legal materials

Having determined the focus of research on the study of the concept of law in the regulation. Researchers determine the legal materials relevant to the research conducted. Because this study uses the approach law (*statute approach*) and the conceptual approach (*conceptual approach*), the researchers conducted a search result of the discussion a regulation to examine factors and in accordance with the legal concept that research conducted on water governance in Indonesia.

b. Inventory of legal materials

After the collection of legal materials necessary inventory of law made by way of literature study is to find and collect a variety of primary legal materials and secondary legal or tertiary legal materials.

c. Assessment of Legal Materials

After doing an inventory of legal materials, dalah further assessment of the substance of the law itself. With an assessment of legal materials is the process of understanding and the rationalization of the theory and researchers have been analyzing it.

5. Techniques Legal Materials Analysis

In this study, after legal materials collected based on the legal materials dinalisis to obtain conclusions. How do legal materials processing deductively infer the problems of a general nature against the concrete problems

encountered.²⁰ Further material is still common law in this regard is Act Number 11 of 1974 years on Water Resources in the analysis of the concrete issues such as the implementation of the water governance.

Processing of legal materials made through the steps of checking the data (*editing*), classification (*classifying*), verification (*verifying*), analysis (*analyzing*) and manufacturing to conclusions (*concluding*).²¹

F. Previous Research

Elaborating previous research that are relevant to the research problem, is used to determine which problem has not been thoroughly studied by previous researchers. In addition, it is also as a comparison between the phenomenon to be studied with previous similar studies. From the results of previous studies obtained the following results:

1. Yusuf Sholekan

Yusuf Sholekan, Students of the Faculty of Law, University Muhammadiyah Surakarta. Wrote a thesis entitled *"Implementation of the Credit Agreement in the Islamic Financial Service Cooperative Khasanah, Sidoharjo Wonogiri (Studies in Islamic Financial Service Cooperative Khasanah Wonogiri)"*.²²

One way of achieving development as stated in the preamble of the Act of 1945, namely the achievement of a just and prosperous society both material and

²⁰ Zainuddin Ali, *Metode Penelitian Hukum*, hlm. 393.

²¹ Pedoman Penulisan Karya Ilmiah Fakultas Syariah UIN MALIKI Malang (Malang: 2013), h.23.

²² Yusuf Sholekan, *Pelaksanaan Perjanjian Kredit di Koperasi Jasa Keuangan Syariah Khasanah, Sidoharjo Wonogiri (Studi di Koperasi Jasa Keuangan Syariah Khasanah Wonogiri)*, Skripsi, (Surakarta: Universitas Muhammadiyah Surakarta, 2010)

spiritual are the cooperatives, with their cooperatives, the weak economic community can improve their living standards.

The notion of the cooperative has been described in the Law Number 25 of 1992 years on Cooperatives, as listed in Article 1 that the cooperative is a business entity consisting of natural persons or legal entities with the bases cooperative activities based on the principle of cooperation as well economic movement based on the principle of kindship.

Results from this study is the implementation of a credit agreement in the Islamic financial services cooperative repertoire, Sidoharjo wonogiri are in accordance with Islamic Shari'a and theory. However, there remain several barriers including: lack of understanding nasabah in the transaction; Thus it affects the credit transaction.

2. Suci Sri Wahyuni

Suci Sri Wahyu Anthropology in the Faculty of Social and Political Sciences, University of Andalas in 2011 has conducted research with the title *"The Role of Talent Cooperatives in Social Improvement Ekonomi Farmer Community (Case Study in Nagari Batubasa Kecamatan Tanah Datar)"*.²³

Farming is one of the largest in Indonesia jobs. Economic welfare of farmers get sharp focus by our government. Therefore, the government seeks to programs to improve the welfare of farmers, one of which is the presence of cooperatives. Cooperative is one entity that has an important role for the economy

²³ Suci Sri Wahyuni, *Peran Koperasi Bakat dalam Peningkatan Sosial Ekonomi Masyarakat Petani (Studi Kasus di Nagari Batubasa Kecamatan Tanah Datar)*, Skripsi, (Padang: Universitas Andalas, 2011)

of farmers. Because many farmers use the services of the Cooperative to improve the economy and the income of farmers.

This study aims to describe how the role of Cooperative Talent to improving the socio-economic life of farming communities and also describe the influence of cooperatives Talent on income levels of farmers and social relations culture. The research is described with the use of qualitative research methods and data collection through in-depth interviews and participatory observation.

The results of this study reveal Talent cooperative efforts to assist farming communities in increasing their revenues. Such efforts in the field of economic, social and cultural. In the economic field the efforts of cooperatives is to provide capital loans as well as all development efforts in cooperation with other cooperatives, while in the social field and also provide counseling to the public understanding of consciousness cooperatives. In addition to the effort, the study also describes the effect on the economy of farmers' cooperatives and also the social and cultural life of society. The talent and the role of cooperatives in increasing income and also its role in the social life of the community.

3. Endang Mintaria

Endang Mintaria Masters program in Environmental Sciences University of Diponegoro in 2013 has conducted research with the title *"Public Participation in the Management of Groundwater for Irrigation Pumps Rubber Nursery in the village Pangkul Kecamatan Cambai Prabumulih"*.²⁴

²⁴ Endang Mintaria, *Partisipasi Masyarakat dalam Pengelolaan Air Tanah untuk Irigasi Pompa Pembibitan Karet di Desa Pangkul Kecamatan Cambai Kota Prabumulih*, Skripsi, (Semarang:Universitas Diponegoro, 2013)

Water in particular is a major source of surface water for irrigation water supply. However, not all farms can be supported by technical irrigation water sourced from surface water. The increasing use of groundwater in turn will affect the balance of water bearing soil layer, while groundwater is the main source of water supply for agriculture in areas with a long dry season as in the village of the District Pangkul Cambai Prabumulih. The existence of groundwater is not limited by the administrative boundaries of a region, so that the management of groundwater resources should be implemented holistically and comprehensively. In this regard, the need for an increase in soil water conservation efforts to sustain farming rubber nursery in the village of the District Pangkul Cambai Prabumulih.

The purpose of this study was to analyze the level of public participation in the management functions of groundwater and *menemukembangkan* recommendation policy strategy in the management of ground water for irrigation rubber nursery in the village Pangkul Cambai Prabumulih District of South Sumatra province. Analysis of participation based management functions including planning, construction installation, implementation, utilization, monitoring and evaluation by Arnstein's participation ladder. Community participation in planning and development in the Village District of Cambai Pangkul Prabumulih including at the level of information, process implementation and utilization at the level of delegation of authority and the supervision of the evaluation activities at the level of therapy. Sustainability strategy is the most appropriate conservation-based institutional strengthening farmer village level water managers.

4. Agus Fakhрина, Maghfur dan Musoffa Basyir

Agus Fakhрина, Maghfur and Musoffa Bashir in 2012 has conducted research with the title "Developing Partnerships water resource in Hamlet Kembanglangit Kaliurang village district. Blado Batang City".²⁵

Management of sustainable natural resources are closely related between the economic, social and environmental. Inequality on one of the three factors will trigger a lack of continuity on the management of natural resources itself. Management of water resources in Hamlet Kaliurang conducted by the Regional Water Company (PDAM), Batang putting people rather than as a key stakeholder, but rather than as a mere object, so that the control of water resources is done would be a source of problems for local communities. This situation makes the fulfillment of the needs of public water is very less, so slowly if access and community control over water resources remains closed, do not close the possibility of becoming a serious conflict over water resources management in the region.

That study concluded that the management of water resources that do not involve members of the local community (community-based water operation) has given the socio-economic impacts are so great that it caused people around the area springs become less wealthy. Given that the problems facing the community is quite serious because it involves the lives and livelihood of the people, then the related things that there is no agreement, there should be a meeting at a higher level, and in attendance were the policy makers who can give a decision. So it will

²⁵Agus Fakhрина, Maghfur dan Musoffa Basyir, "Mengembangkan Kemitraan Pengelolaan Sumber Daya Air di Dukuh Kaliurang Desa Kembanglangit Kec. Blado Kab. Batang", *Jurnal Penelitian*, Vol. 09, No. 2 (November, 2012)

be realized that the management of water resources to ensure the sustainability of resources, ensuring the rights of local communities, and also the fulfillment of the needs of the wider society.

In this research, there are similarities and differences with the research conducted by researchers. The equation of this research that examines the issue of Water Resources and its management system. The difference is that the researcher discusses the normative about sharia cooperatives as an alternative body of water utilization in Indonesia, while Agus Fakhрина, Maghfur and Musoffa Bashir empirically assess the partnerships related to the management of Water Resources in Hamlet Kembanglangit Kaliurang village district. Blado Batang city.

Table 1 :Similarity and difference

No	Author/Years	Title	Object Formil	Object Materil
1	2	3	4	5
1	Yusuf/2013	Implementation of the credit agreement in the Islamic financial service cooperative Khasanah, Sidoharjo Wonogiri (Study at Islamic financial service Cooperative Khasanah Wonogiri)	Sharia Cooperatives	Implementatio n of the Credit Agreement in the Islamic Financial Service Cooperative Khasanah, Sidoharjo Wonogiri

2	Suci Sri Wahyuni/2011	Role of cooperative talent in economic social improvement farmer community (case study in Nagari Batubasa district Pariangan Tanah datar)	Cooperatives as Economic Social Improvement	Increased Role of Cooperatives in Social Talent Community Economic Farmers
3	Endang Mintaria/2013	Public participation in the management of groundwater for irrigation pumps rubber nursery in Pangkul district Cambai Prabumulih city	Water Operations	Public Participation in the Management of Groundwater for Irrigation Pump Rubber Nursery
4	Agus Fakhrina, Maghfur dan Musoffa Basyir/2012	Developing Partnerships Water Resources Management in Hamlet Kembanglangit Kaliurang village district. Blado Batang city	Water Resources Management	Water Resources Management with Development conducted by PDAM in Hamlet Kembanglangit Kaliurang village district. Blado Batang city

5	Roikhan Arif Pambudi/2016	Sharia Cooperatives As A Body Legal Entity Alternative For Water Commercial in Indonesia	Body Legal Entity Alternative For Water Commercial in Indonesia	Sharia Cooperatives As A Body Legal Entity Alternative For Water Commercial in Indonesia
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G. Structure of Discussion

To produce a systematic discussion, as well as the existence of a relationship between one opinion with another opinion, it is essential to the writer to make systematic writing. Systematics of writing in this study is divided into four chapters in which each chapter has several subchapters, including:

CHAPTER I: INTRODUCTION

In this chapter outlined the research background, problem identification, research scope, objectives and benefits of the research, research methodology and systematic discussion on research. In this chapter the researcher provides background about the reason the researchers chose the title as the Islamic Cooperation Agency for Alternative Water Concession in Indonesia. From this background drawn a problem that is answered by the formulation of the problem. The benefits of this research is divided into two kinds of benefits which include theoretical and practical benefits. Furthermore, researchers also outlines previous research as a comparison with penlitian done. Researchers also outlines the research methods used to

researchers, the final section outlines a systematic study investigators as a summary description of the results of research reports that are used to facilitate the reader to know the things that are written by the researchers in this study.

CHAPTER II: REVIEW OF RELATED LITERATURE

Review of Literature, consists of explanation of the concept of welfare for the people (welfare state), Environmental Sovereignty and Economic Democracy (Cooperative) as a body of water utilization in Indonesia. The description in the literature review is intended to be of a study carried out clear and detailed explanation of the title is taken. Besides a literature review in this study as well as the material being analyzed in the discussion.

CHAPTER III: FINDINGS AND DISCUSSION

This chapter is the core of this research. In this chapter presents the results of data processing conducted by researchers analytically integrated and conceptually based on comparative law, presenting in the form of juridical analysis of water governance. This chapter answers than the formulation of the problem that has been compiled. In this chapter the problems addressed by the theory and the legislation in force.

BAB IV: CONCLUSIONS AND SUGGESTIONS

This chapter is a cover that contains the conclusion of the exposure that has been described in previous chapters. This chapter contains the conclusion reached by researchers on research that has been conducted with

accompanying suggestions that can be taken into consideration as well as advice to practitioners, government and related parties. This chapter is intended to provide or indicate that the problem posed in this study can be explained comprehensively and concludes with suggestions for further development of the study.





CHAPTER II

REVIEW OF RELATED LITERATURE

In this chapter the researcher explains descriptively related to sharia cooperatives as a body legal entity alternative for water utilization in Indonesia. Researchers explain what sharia cooperative, but previously described vividly about the concept welfare state as an initial step that all Indonesian people deserve welfare. Researchers also explain the substance of the regulations governing the operation of the water such as: Law number 11 of 1974 years on water and a Constitutional Court decision No. 85/PUU-XII /2013. In addition, researchers explain economic terms democracy became the theoretical foundation management of water resources in Indonesian.

A. Welfare State

The concept of the welfare state not only includes a description of a way of organizing welfare (welfare) or social services (social services). But also a normative concept or system ideal approach which emphasizes that everyone should obtain social services as rights.

Simply put welfare can be interpreted to welfare, and state means a State or tools (agency) of the people who have the power to regulate human relationships in society and publishes the symptoms of power in society.²⁶

According to Spicker in E. Suharto books,²⁷ mentions that the welfare state is a social welfare system that can give a greater role to the State or government (to allocate a portion of public funds to ensure the basic needs of its citizens). In a state of law, the welfare state is a form of protection against the public, especially vulnerable groups such as the poor, the disabled, the unemployed, and so forth.

Jimly Asshiddiqie,²⁸ states that the concept of the welfare state, the State is required to broaden its responsibility to its social and economic problems are on legalization for the adherents of the interventionist state in the 20th century. The state is necessary, and even had to intervene in a variety of social and economic problems to ensure the realization of the common good in society.

Discussion on the other, the welfare state means a conception of a modern constitutional state which is a blend of the concept of state law and the welfare state. In this concept of state or government was not solely to maintain order or

²⁶ Ibnu Mas'ud, *Kamus Pintar Populer*, (Yogyakarta: Ananda, 1991), h. 275.

²⁷ E. Suharto, *Analisa Kebijakan Publik*, (Bandung: Alfabeta, 2006), h. 50.

²⁸ Jimly Asshiddiqie, *Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia*, (Jakarta: Penerbit PT. Ichtiar Baru Van Hoeve, 1994), h. 223.

public security, but also take responsibility in the realization of social justice, the common good and for the greatest prosperity of the people. Further said that the teachings of the welfare state is a concrete form of intermediate principles staatsonthouding, which limits the role of state and government to interfere in economic and social life of society, be staatsbemoeienis which requires state and government are actively involved in economic and social life of society, as a step for the welfare general.²⁹

The concept of social welfare in Indonesia embodied in Republic Act No. 6 of 1974 on social welfare which gives the definition of welfare siosial as an order of life and livelihood of the social, material and spiritual, overwhelmed by a sense of safety, decency and peace outwardly and inwardly, allowing for every citizen to convene an attempt to fulfill the needs of physically, spiritually and socially as well as possible for themselves, their families and communities to uphold the rights or obligations of human beings in accordance with Pancasila.

If linked to the sovereignty of the environment, the state with the concept of the welfare state must also consider the state of the natural environment in Indonesia is to achieve social welfare. This is as it has been mandated in Article 33 paragraph (3) of the 1945 Constitution which reads: Earth water and natural resources contained in it are controlled by the state and utilized for the welfare of the people. Water that is one of the abundant natural resources in Indonesia, it should contribute to the social welfare of its people, which became one of the great ideals of a social welfare state (*welfare state*).

²⁹ Ridwan HR, *Hukum Administrasi Negara*, (Yogyakarta: UII Press, 2003), h. 11.

Welfare state is also an idea that has long been born, pioneered by Prussia under Otto von Bismarck since the 1850s. In the Encyclopedia Americana states that the welfare state is "a form of government in the which the state assumes responsibility for minimum standards of living for every person" is a form of government in which the state is responsible to guarantee minimum living standards for every citizen.

This concept replaces the legal concept of night watchman state or country. People in these countries enjoy the services of the state in the field of health with the health insurance program, free school, to high school, even in Germany until the university, a decent living in terms of income and living standards, the transport system is cheap and efficient, and the unemployed dependents of the state.³⁰

All state services are in fact financed by the society which has become increasingly prosperous, through the insurance system and taxation, with the main orientation supporting human investment. Welfare is the fruit of the economic system that is independent, productive, and efficient with individual incomes that allow saving.

Welfare state or the welfare state is a state government ensuring the welfare of the people. In realizing the welfare of the people must be based on the five pillars of the state, namely:

1. Democracy.
2. Rule of Law.

³⁰ Ridwan HR. "*Hukum Administrasi Negara*". (Jakarta: PT. Raja Grafindo, 2006), h. 14.

3. Protection of Human Rights.
4. Social Justice.
5. Anti-Discrimination.

Welfare concept describes a system in which the state takes full responsibility for the welfare of society. For example the provision of protection, health insurance, retirement benefits, and access to health services. is a set of programs that aim to ensure the welfare for the possibility to be meet modernity, individualization, and industrialized society. Welfare State simply can not be separated with an active role for the state in managing and organizing the economy which include the state's responsibility to ensure the availability of basic welfare services in a certain level for its citizens.³¹ Welfare State does not deny the existence of the capitalist market economy system but believes that there are elements in a society that is more important (than market objectives) and can only be achieved by controlling and limiting the operation of the market mechanism.

In order to clarify whether a country can be classified as a Welfare State or not, can be observed through some certain common characters, among others:

1. More than half of the state expenditures devoted to social policy or responsibility for the provision of comprehensive and universal welfare for its citizens.
2. There is a long-term commitment made in which has a set of programs that aim to ensure the welfare for the possibility to be faced in modernity, individualization, and industrialized society.

³¹ <http://alisarjunip.blogspot.co.id/2014/07/pengertian-welfaer-state.html> accessed on 16 may 2016

3. States being a country without losing positions of its core responsibilities, able to combine the power of the various parties (social organization, the independent, voluntary) to provide protection for the public welfare.

Countries that can be called Welfare state characterized by the association of providers of social protection mutual aid, the amount of social insurance that covers medical costs and some social care, as well as the principle of Subsidiarity. The main characteristics of the welfare State is a guarantee of minimum standards including concerning minimum income, also lack of social protection in terms of insecurity, a service provider with a high level of quality. Social protection in France is based on the principle of solidarity.

Some of the characteristics mentioned above, we can see that the adoption of the welfare state is not always the same, but each country has the right to have a distinctive policy in the application of this concept of the welfare state. Hantaris in his "Welfare Policy" grouping concept of Welfare State into four, namely:³²

1. The Continental State, which is characterized by the presence of state policy to pay a range of social services for its citizens. Examples of countries that apply this form are Belgium, France, Germany, Luxembourg, and the Netherlands;
2. The Skandinavian Welfare, which is characterized by the adoption of the Swedish model that is committed to guaranteeing the right of citizens to obtain work, and the state is also responsible for arranging finance and

³² Suharto, Edi. "Kemiskinan & Perlindungan Sosial di Indonesia, Menggagas Model Jaminan Sosial Universal Bidang Kesehatan". (Bandung: Alfabeta, 2009), h. 26.

social services, for example, is a country of Sweden, Denmark and Finland;

3. The Anglo-Saxon Welfare, which emphasizes the protection of its citizens in every job, such as in the UK and Ireland;

Mediterranean Welfare, which emphasizes the polarization of social services to various parties which consequently lowers government authorities, for example in Italy, Spain, and Greece.

B. Sovereignty Environment

The concept of state sovereignty includes two contexts sense, ie internal and external sense. In the internal sense, the concept of sovereignty as the supreme power is known so far in the world of law and political philosophy include the doctrine of the Sovereignty of God (Theocracy), People's Sovereignty (Democracy), Sovereignty Law (Nomocracy), and Sovereignty of the King (Monarchy). In the perspective of state power internally even will be explained as well as to their teachings Environmental Sovereignty can we introduce the term 'Ecocracy'. While the external perspective, the concept of sovereignty it is commonly understood in the context of inter-state relations. In international relations, the usual talk about the status of a sovereign independent state outside and inside. Because, in the practice of inter-state relations absolutely necessary that the international recognition of the status of a country that is considered an

independent and sovereign. Without the recognition, a country that claims itself as a state unilaterally would be difficult to participate in the international area.³³

The concept of the supreme power is commonly called sovereignty is generally associated with the notions that developed in history, successive bergati each other. Sometimes with emerging new concept, people tend to forget the old concept. Sometimes the old concept reappears when a new concept already started to be considered not much benefit.³⁴

Environmental sovereignty is a concept of power of power by the environment and the ecosystem. The concept of the sovereignty of the environment can be associated with the term *Ekokarsi* or power ecology.³⁵ The idea of Sovereignty Environment (*Ekokrasi*) can be developed as a counterbalance democratic system developed by humanity everywhere today. Ekokrasi concept can be understood in the context of the balance of the relationship between God, Nature and Man. During this time, power relations were seen as human problems.

In a democracy, only the man who called the people alone who made a point of departure and the center of attention only. This view is known as anthropocentrisme that puts life focused only on human beings. Compared to the past, especially in the pre-modern era, a view that is 'anthropocentris' can certainly be considered more advanced and better. But nowadays, people should realize that

³³ Jimly As-Shidqy, "Gagasan Kedaulatan Lingkungan: Demokrasi Versus Ekokrasi," *Makalah*, h. 13

³⁴ Jimly As-Shidqy, *Green Constitution: Nuansa Hijau UUD1945*, (Jakarta: PT Raja Grafindo, 2010), h. 96.

³⁵ Jimly As-Shidqy, *Green Constitution*, h. 117.

democracy is not everything if the system is proved to be caused mankind to destroy ecosystems and resources life of its own.³⁶

Discourse sovereignty environment in Indonesia contained in the 1945 Constitution supreme power or sovereignty is in the hands of the people as reflected in the concept of human rights to the environment is good and healthy as intended by Article 28 H paragraph (1) of the 1945 Constitution, as well as also reflected the concept of democracy associated with the principles of sustainable development and environmental insight, as defined in Article 33 paragraph (4) of the 1945 Constitution which reads:

“The national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental friendliness, independence, and balancing economic progress and national unity”

Even with these provisions of Article 28 H paragraph (1), paradigms and environmental management activities remain berorientasi on benefit use of the environment (exploitation) of natural resources by making the article by making the article 33 paragraph (3) as justification and basis of constitutionality. The presence of Article 28 H paragraph (1), which emphasizes the close relationship between the management of the environment and natural resources to the fulfillment of the rights of every citizen on the environment is good and healthy, and in Article 33 paragraph (4) which stressed that the implementation of development within the framework of the national economy should be based on the principle of sustainable and environmentally sound, yet a policy framework together with Article 33 paragraph (3) of the 1945 Constitution in environmental

³⁶ Jimly As-Shidqy, *Green Constitution*, h. 117.

management and sustainable development in Indonesia.³⁷ Here, the role of sovereignty environment, ecosystem, mentioned in article 33 paragraph (3) as interpreted extensively and creatively by a variety of legislation in the environmental field, it must be managed for the benefit of development based on the principle of sustainability and environmental insight as specified by Article 33 paragraph (4) 1945.³⁸

At first the environmental issues which were based on the Stockholm Declaration of 1972, just at the center of international attention. Now, with the frequency of the advance of technology that crosses national borders. Environmental issues not only become an international problem, but also has become a national issue anyway. It is certain this is all due to the establishment of the company in the form of Multi-National Corporation (MNC), which not only provide a good incentive for the state to supplement foreign exchange, as an embryo creation of many field work, but it turns out the operational causes; the emergence of environmental damage.³⁹ Until a human being from recognized as a legal subject will be disturbed over the environmental damage.

Hence the term sovereignty environment eventually become inevitable to be formulated in a constitution. When the constitution is already a mutual recognition of the state legal system, from recognized in the world, both civil law and common law recognizes the constitution as the supreme norm. This means that if only the constitution already contains sovereign environment for the sake of humans split

³⁷ Deni Bram, *Politik Hukum Pengelolaan Lingkungan Hidup*, (Malang: Setara Press, 2014), h. 4.

³⁸ Deni Bram, *Politik Hukum Pengelolaan Lingkungan Hidup*, h. 94.

³⁹ Otong Rosadi. *Hukum, Ekologi, & Keadilan Sosial*, (Semarang: Thafa Media, 2012), h. 93.

from a single entity named individuals, by itself qualify means of coercion, in order that all the legislation that "colored" neighborhoods subject to the constitution that had maintained the environment as a sovereign again constitutional.⁴⁰

It seems environmental law within the meaning of sovereignty to meet the target. If some form of sovereignty doctrine born in the nuances of the philosophers constitutional history, environmental law can not be separated only such a way as to form of sovereignty. The sovereignty of God is born of the doctrine of sovereign theocracy. Royal sovereignty of the doctrine of monarchy. Sovereignty of the people steeped in democratic theory. Then the successive rule of the environment also have events / the same doctrine, namely *ekokrasi*.

So it is very appropriate **Clare Kendall** for *The Gardia Inggris* at 24 September say to the world, "*A new law nature equador next week votes on giving legal right to rives, forest and air. Is tihis the end of damaging development.*" That this is the first time the Constitution of a country gives legal rights to rivers, forests, air, which inevitably have to be taken into account in the traffic law.⁴¹

So along with the birth of the conception of environmental sovereignty, the constitution as the supreme norm as analogous to the state constitution that must

⁴⁰ Suparto Wijoyo. "*Konstitusionalitas Hak Atas Lingkungan*", (Surabaya: Airlangga University Press, 2009), h. 3.

⁴¹ Jimly As-Shidqy, *Green Constitution*, h. 95.

finded to the color of wilderness, lush mature trees. Everything concept as what is meant *green constitution*.

That the use of the phrase "green" is a semiotic understanding, signs and symbols that show the environment color "green". Is not the color of trees, forests and green foliage dominant trees are striking? So too with everything a regulation in the field of the environment to do reforestation, often hear the term "green".⁴² Fulfillment of environmental rights in asalinya relevant to the environment itself. Environmental termed the ecology. So if you like drawn within the meaning of sovereignty environment then he related to ecology.

In a study that is somewhat different, contemporary religious studies has also long been known word theocentric and anthropocentric, it is not an error if the ecology akin to the inner aspect of each of the "subject of law" is. Humans have long been recognized as a legal subject, as well as "God" in the writings of Jerome Frank "Law and the Modern Mind" also has same with the figure of "Father" in reduksional the judge who must protect a lot of interest.⁴³

At the level of philosophy can be applied to environmental policy as one of the basic rights which must be guaranteed in the constitution, as it proves that the environmental sovereignty essentially from recognized its existence. God, humans and the environment are in each structure to create harmony among the top three

⁴² Damang. "Benarkah Kedaulatan Lingkungan Ada? (Suatu Pendekatan Filsufis)". Gorontalo Post. 13 Januari 2012.

⁴³ Jerome Frank. "Hukum dan Pemikiran Modern". (Bandung: Nuansa media, 2013) h. 240.

subjects of the law, in order to realize "supreme justice" that always coveted.⁴⁴ Even the basic rights that spawned supernatural human rights, the relationship between the function of the natural/human environment is where the right for people to get a "healthy environment".

Before Indonesia adopts environmental sovereignty enshrined in its constitution as a right that must be unnoticed by the state. Long before some of the countries in the world had earlier poured "the right to a good environment and healthy for all its citizens". Among them: the United States, the Netherlands, and Japan.⁴⁵

United States of america write on **The National Enviromental Policy Act 1970, section 101 (c)** *"The congres recognizes that each person should enjoy a healthfull enviromen and that each person has responsibility to contribute to the preservation and anchancement of the environment."* Formulation this case there is also the state constitution **The Constitution of Illionois**: *"Each person has the right to a healthfull environment"*. On **The Constitution Of Rhode Island** also lists *"The right to use and enjoyment of the natural resources of the state with due regard for the preservation of their values. Until* **The Constitution of Pennsylvania** also list: *the people have a right to clean air, pure water and to the preservation of the natural, scenic, historic and aesthetic values of the environment.*

⁴⁴ Jimly As-Shidqy, *Green Constitution*, h. 31.

⁴⁵ Koesnadi hardjosoemantri. *"Hukum Tata Lingkungan"*, (Yogyakarta: Gaja Madha University Press, 2002), h. 93.

While the Dutch themselves that much to give “*legacy*” on our legal system, by far the day has also attributing the “right to a healthy environment” in its constitution, contained in **Art. 21 Grondwet** the revised at 17 February 1983; “*De zorg van de overhead is gericht op de bewoonbaarheid van het land en de bescheming en verbetering van het leefmilieu.*”

For East Asia, one of Japan also gave a great concern about the rights in the field of environment, namely through **The Basic Law For Environmental Protection**, contained in article: “*Environmental right. Every citizen has a right to secure and healthy environment. According to the provisions of the law, every citizen is entitled to exercise the environmental right against the state, its agent, public corporation, and other private persons.*”

In the preceding discussion has described one of the principles that was popular in the environmental law contained in Article 33 paragraph 4 of the Constitution NRI 1945, which stated that the environment at its core must be managed based on the principles of sustainable development and environmentally friendly. It does not mean that the legal principles applicable to the study of environmental law just on that point alone. There are still many other environmental legal principles, which were developed further by Act No. 32 of 2009 on the Protection and Environmental Management (UUPPLH), including:

(1) The principle of State responsibility, the right to environment is a basic human

right; (2) The principle of conservation; (3) The principle of relevance, sustainability, equity, security and environmental risks, education and communication environmentally sound; (4) The principle of international cooperation.⁴⁶

Therefore, environmental law is a field assessment of the multi-faceted and multi-disciplinary and oriented to conservation and environmental viability intact holistic approach (holistic), no doubt of every principle of environmental law is derived from the principles of international environmental law. As in international environmental law known some of the principles of environmental law, it is:⁴⁷

1. *Duty To Prevent Reduce And Control Environmental Harm:*

Internasional law requires every state to take the necessary measures to control and deal with a serious global pollution source or sources of the destruction of the existing cross-border within their jurisdiction. To model this legal principle is divided into several sections: (a) Due diligence and harm prevention: The principle of this due diligence to determine that any good government, should promote the provisions of administrative law governing the actions of public and private in order to protect other countries and the global environment. The advantage of this standard is its flexibility, and the state shall not be the sole guarantor for prevention of damage; (B) Absolute Obligation Of Prevention: This

⁴⁶ <http://zriefmaronie.blogspot.com/2014/04/pengantar-umum-sumber-prinsip-hukum.html> accessed on 16 may 2016

⁴⁷ <http://zriefmaronie.blogspot.com/2014/04/pengantar-umum-sumber-prinsip-hukum.html> accessed on 16 may 2016

provision requires each country to try everything to make the prevention of pollution, and that the state is responsible for environmental damage is unavoidable or unforeseen. However, this principle is considered too much to limit the freedom of the state in determining court about the environment on its own territory; (C) the foreseeability of the harm and the "precautinary principle": based on this principle, the state is required to calculate any policies relating to the environment. The state is obliged to prevent or prohibit acts that previously had to be expected to be able to cause environmental damage;

2. The second principle in environmental law is that every country should cooperate with other countries, in terms of cross-border pollution mitigation. This is consistent with the recognition that there are times when the country has a "Shared Natural Resources" which must be used together. This principle is stated in the Stockholm Declaration of 1972;
3. The "polluters Pays" Principle: This principle is more emphasis on the economic aspects of the terms of the law, as set on the wisdom of calculating the value of the damage and the assignment;
4. Equal Access And Non-Discrimination: the basic provisions of this principle is that foreigners can also use indemnity provisions contained in the national law of a country with respect to their transboundary pollution caused by the country concerned. This principle must be applied uniformly without any discriminatory actions. This principle ask for the

same treatment both to the subject of national law or foreign law subjects without any distinction.

In the history of our legal regulations, has three times the Environmental Law changes. First, Law No. 4 of 1982 on Basic Provisions of Environmental Management. Secondly, Act No. 23 of 1997 on Environmental Management. Third, the Act No. 32 of 2009 on the Protection and Environmental Management. One thing that contradictio intermenis of Environmental Law changes. In any updates always have also a change in name. Though much simpler and fits of naming the first law, namely the Main Principles of Environmental Management. Damang said in his writings⁴⁸, is more suitable, because in some of the assessment of environmental law that is multi-faceted, the Law on Environment still has a lot of sectoral laws such environments Water Resources Law, the Law on Mineral and Coal Law on the Protection of Agricultural Land Sustainable Food Law Spatial Planning, the Forestry Law, the Law on Conservation of Natural Resources, Oil Gas Law, Water Law and the Law of Industry.

C. Water Commercial in Indonesia

Understanding exploitation of water resources is an effort to utilize water resources to meet the needs of businesses.⁴⁹ While the term enterprise (beriif) meaning an economic sense contained in the Code of Commercial Law (Commercial code) HMN Purwosutjipto argued that the term company was born as a form of development that is happening in the business world which is then

⁴⁸ <http://www.negarahukum.com/hukum/kedaulatan-lingkungan.html>

⁴⁹ Pasal 1 ayat (9) PP Nomor. 121 Tahun 2015 tentang Pengusahaan Sumber Daya Air

accommodated in KUHD begins with the discovery of several shortcomings in KUHD. However, the term the company is not defined explicitly as what happens in terms of trade and trading actions.⁵⁰

As a form of greatness and acceptance of the terms the company can be considered in the formulation KUHD-chapters are as follows:⁵¹

Article 6, paragraph (1)

Any person who organizes the company obliged to make the notes according to the terms of his company on the state of his property and about anything related to his company, in such a manner that from the records were diverted it at any time can be seen all the rights and obligations.

Article 16

Firma is a company established to run a business by the name of joint

Article 36 paragraph (1) KUHD

Limited Liability Company does not have the firm, and is not named as or more than state-owned, but got amnya hany course of the company's goals

The term enterprise is a term that was born as a result of the renewal of the Commercial Law. Therefore, since some of the chapters in Book KUHD. Therefore, since some of the chapters in Book I KUHD revoked, then at the same terminology and understanding of traders and trading actions no longer worthy to represent the interests of the traders in particular and society in general are likely to have relationships, interests and or take part of the company.⁵²

The business entity is a juridical entity and economic or organizational unit consisting of production factors for-profit providers. NRI 1945 Constitution Article 33 of the split form of business entity. Business entity known in Indonesia

⁵⁰H,M.N.Purosutjipto, *Pengertian Pokok Hukum Dagang Indonesia 1*, (Jakarta: Djambatan, 1995). h. 5

⁵¹Kitab Undang-undang Hukum Dagang (KUHD)

⁵²Kurniawan, *Hukum Perusahaan*, (Yogyakarta: Genta Publishing, 2014). h. 4

there are three, namely, State-Owned Enterprises (BUMNs), Cooperatives and Private Owned Enterprises (BUMS).

In water governance, there are four concepts the company in the form of legal entity consisting of, private (private), a partnership between the private and the public (publicprivate patnership), public (public), and governance together (common goods) or by Endaryanta called with *collective goods*.³⁷ According to practice, the fourth water governance can be exemplified, first with governance held by the private sector such as that conducted by PT Aqua Danone. The second is the governance model by the government, such as those found in the 359 taps in Indonesia.⁵³ The third is a combination of governance, private-public patnership, such as taps Palyja in Jakarta. For the fourth division of shared governance in the context of water resources, such as Cooperative.

The presence of water utilization by the legislation in force. Both SDA Law, Water Law and Government Regulation No. 121 in 2015. In the law stipulates that:

Article 7 paragraph (1) of Law No. 7 of 2004

Water utilization right as referred to in Article 6 paragraph (4) in the form of water utilization and water exploitation rights,

Article 11 of Law Number 11 of 1974 years

The utilization of water and water resources or are intended to improve the usefulness to the welfare of the People's basically done by the Government, both central and regional level.

Legal, social agency or individual who get job for water or water sources, must obtain permission from government, with reference to the principle of

⁵³ BPPSPAM (Badan Pendukung Pembangunan Sistem Penyediaan Air Minum) Kementrian Pekerjaan Umum dan Perumahan Rakyat, 2014, *Kinerja PDAM 2014*, Kementrian Pekerjaan Umum dan Perumahan Rakyat, Jakarta, h. 10. Dalam, Bosman Batubara, *Menafsir Pasal 33: Analisis Terhadap Putusan MK Nomr 85/PUU-XI/2013 tentang Undang-undang Nomor 7 Tahun 2004 Tentang Sumber Daya Air*. Artikel,(Front Nahdliyin untuk Kedaulatan Sumber Daya Alam (FNKSDA), 2015). h,14.

joint venture and friendship,

Article 6, paragraph (2) of Law No. 121 2015

Exploitation of Water Resources can be done by the individual or business entity based license concession Groundwater Resources of the Central Government or Local Government in accordance with their authority.

Thus, water utilization is specifically stipulated in Government Regulation Number 121 Year 2015 concerning water utilization; which meaning its Government Regulation of Law Number 11 of 1974 years on Water Resources.

D. Economic Democracy (Cooperative)

Realizing the democratic ideals of the economy is not as easy as turning the palm of the hand. Therefore, economic democracy is an economy that gives a fair chance to every economic agent to achieve its objectives. The democratic system is described by Dochak Latif economy that economic democracy is the basis of construction and covering characteristics of positive and negative that should be avoided.⁵⁴ Guidelines for the economic development policy in the fields of Indonesia states that "economic development is based on economic democracy determines people to play an active role in development activities."⁵⁵

Speaking of Indonesia's economic system, the economic system of Pancasila Indonesia is an economic system that is synonymous with economic democracy.⁵⁶

Economic democracy in question is Pancasila democracy menurut Mubyarto has

⁵⁴ Dochak Latief. *"Perbandingan sistem ekonomi: islam, liberalisme, sosialisme"* (Yogyakarta: Yayasan penerbitan FKIS IKIP, 1987), h. 45.

⁵⁵ Suroso, *"Perekonomian Indonesia"*, (Jakarta: PT. Gramedia Pustaka Utama, 1994), h. 17-19

⁵⁶ Istiah sistem ekonomi Pancasila muncul diakhir masa Demokrasi terpimpin (1959-1965) lewat tulisan Emil Salim pada 1965. Istilah system ekonomi pancasila menjadi terkenal lewat gagasan propokatif dari Mubyarto pada tahun 1979. (Lihat dalam Dawam Rahardjo, *"Agenda Aksi Liberalisasi Ekonomi dan Politik di Indonesia"*, (Yogyakarta: Tiara Wacana, 1997)h. 245). Dalam, Syaugi Mubarak Seff, *"Demokrasi Ekonomi dalam Hukum Ekonomi Syariah"*, Jurnal, Vol:6, No. 2 (Fakultas Hukum Unmul: Risalah)h. 87

several characteristics. First, Pancasila economy driven by the stimulus of economic, social and most importantly is moral. Second, Pancasila economy has to do with the Almighty God so that the Pancasila there is social solidarity. Third, Pancasila economy with regard to the unity of Indonesia, which means nasionalisme animates economic policy. Fourth, the economic system of Pancasila firm and clear balance between plan central (national) with an emphasis on decentralization in the implementation of economic.⁵⁷

The idea of economic democracy is listed explicitly in the constitution as supreme law in our country. *NKRI 1945 Constitution* does contain the idea of political democracy and economic democracy as well. That is, in the highest authority in our country is the people, both in the field of economic law polity. The entire political and economic resources controlled by the sovereign people. In a democratic system that is built is certainly not all directly controlled by the people. Some parts are subject to the state represented by the management is, in this respect to (i) MPR, DPR, DPD, and the President in matters of bow-bow preparation and formulation of official policies state, and (ii) to the President and CEO institutions other government in the affairs of the bow-bow and implement the policies of the country, as well as indirectly to the judiciary in matters of prosecuting violations of the bow and the policies of the country.⁵⁸ Also reflected in the concept of democracy associated with the principles of sustainable

⁵⁷Mubyarto, "*Sistem dan Moral Ekonomi Indonesia*", (Jakarta : LP3ES),h. 45

⁵⁸Jimly Asyidiqie, "*Demokrasi Ekonomi*", Makalah

development and environmental insight,⁵⁹ as defined in Article 33 paragraph (4) of the 1945 Constitution which reads:

“The national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability and environmental insight, independence and by keeping a balance between progress and unity of national economy”

The element of democratic economy or an economic democracy, the third I think it needs to be underlined. For the third element of populist economics that underlie the need for participation of all community members in co-own capital or factors of national production. Keep in mind, the definition of capital in this case is not only limited to capital in the form of material (material capital), but also includes intellectual capital (intellectual capital) and institutional capital (institutional capital). As a logical consequence of the third element of community economy, the state obliged to continuously seek the improvement of the three types of capital ownership was relatively evenly in the middle of the community. In connection with the material capital, for example, the state is not only obliged to recognize and protect the right of ownership of each member of society. Countries are also obliged to ensure that all members of the community take ownership of material capital. If any member of the public who did not have a material capital, already mired in the sense of becoming destitute or abandoned children, the state is required to maintain them.⁶⁰ Article 33 Paragraph (4) of

⁵⁹ Jimly As-Shidqy, *“Green Constitution: Nuansa Hijau UUD1945”*, (Jakarta: PT Raja Grafindo, 2011), h. 8

⁶⁰ Revisond Baswir, *“Ekonomi Kerakyatan Ekonomi Rakyat dan Koperasi Sebagai Soko guru Perekonomian Nasional”*, Artikel.

Article 33 Paragraph (4) Constitution NRI 1945 is the constitutional foundation. Article 33 Paragraph (4) of the 1945 Constitution NRI economic democracy acquire its justification, the interests of the community.

Heru Juwono provide traits - traits of economic democracy:⁶¹

1. Which dominate the life of many people is the state / government. Hajad example of the many people that like water, fuel oil / fuel, mining / crops, and others.
2. The state's role is important but not dominant, and so does the role of the private sector whose position is important but does not dominate. So there is no condition of liberal economic system and a command economy. Both the government and private parties to live hand in hand, side by side in peace and mutual support.
3. The Community is an important part where the production activities carried out by all for all and is led and supervised by members of the public.
4. Capital or any workers do not dominate the economy because it is based on the principle of kinship among humans. According to the San Afri Awang Head of the Center for Economic Democracy UGM, the main purpose of the implementation of economic democracy is essentially to achieve social justice for all Indonesian people through increasing the community's ability to control the economic cycle. If the main purpose of

⁶¹ Sudarsono, Juwono. *"Globalisasi Ekonomi dan Demokrasi Indonesia"*, (Yogyakarta: Prisma, 1990) h. 27

people's economy was further elaborated, the main targets of populist economics in outline includes the following five points:

1. The availability of job opportunities and a decent living for all members of society.
2. The implementation of the social security system for community members in need, especially the poor and abandoned children.
3. distribution for capital ownership of the material is relatively evenly distributed among members of the public.
4. The implementation of national education free of charge for every member of society.
5. Ensuring the independence of each member of the community to establish and become members of unions economy.

In order to keep abreast of the times, the cooperative should be able to contribute significantly to the economic empowerment of the people. If this is not done then the cooperative is expected to become the cornerstone of the national economy will not be able to compete with other economic actors both public and private.

E. Sharia Cooperative

Cooperative derived from the cooperation (English), simply cooperative means of cooperation. By Language cooperative is defined as a container associations (associations) a group of people for the purpose of cooperation in mutually beneficial business between members of the association.⁶² Meanwhile,

⁶² Janwari, Yadi. Dzajuli, H. A, "*Lembaga-lembaga Perekonomian Umat Sebuah Kenalan*", (Jakarta: PT Raja Grafindo Persada, 2002), h. 7

according to the definition of the Cooperative Law Number 25 of 1992 years is a business entity consisting of people or a collection of some of the cooperatives which is the arrangement of the economy as a joint venture based on the principle of the family. Shari'ah cooperatives also have the same understanding with business activities in the field of finance, investment, and savings corresponding pattern of results (sharia), or better known as the Islamic financial services cooperative.

Therefore broadly cooperative syari'ah have the same rules with general cooperative, but the difference is that there are products in general cooperative replaceable and customized names and systems with guidance and the teachings of Islam. For example, buying and selling products in general cooperative renamed by the term *murabahah*, savings and loan products in general cooperative renamed with *mudharaba*. Not just a name change, the operating system used also changed, from conventional systems (regular) to a system of Shariah in accordance with Islamic rules.

There are three cornerstone of the cooperative Shari'ah ie: cooperative Shari'ah based on Pancasila and the Constitution of 1945, based on the principle of Shariah cooperative family, co-operatives based on Islamic Shari'a Shari'ah ie the Qur'an and Sunnah with each other helping each other and mutually reinforcing⁶³

Government as part of a cooperative ministry of UKM view the quickness rules to support the sharia cooperative in the country's predominantly Muslim.

⁶³ Sihono, Teguh, "*Pengantar Ekonomi Koperasi*", (Yogyakarta: FPIPS IKIP, 1999), h. 13

The government felt the need to issue regulations regarding cooperatives islamic sharia that cooperatives have a clear legalization so that it can become the basis for the implementation practices of cooperatives, which is based on Islamic principles.

There are various definitions of the cooperative and if examined carefully, it appears that the definition was evolved in court with the changing times. Definition initial generally emphasize that the cooperative was a forum for the economically weak, which states that the cooperative is a union with the approval strive together consisting of those who are weak and cultivated always in the spirit of selfless such a way that each one capable of running obligations as a member and has been rewarded in proportion to their use for the organization.⁶⁴

There are two basic principles of the cooperative Shari'ah, namely:⁶⁵

1. Cooperative enforce shari'a Islamic economic principles, as follows:
 - a. Wealth is a trust of Allah SWT that can not be owned by anyone absolutely;
 - b. Man was given freedom in mu'amalah do not violate the provisions of Shari'ah;
 - c. Humans are God's representative on earth and walfare;
 - d. Upholding justice and reject any form of usury and economic convergence funding sources on a handful of people or group of people alone.

⁶⁴ M. Firdaus dan Agus Edhi Susanto, "*Perkoperasian: Sejarah, Teori dan Praktek*", (Jakarta: Ghalia Indonesia, 2002), h. 38-39.

⁶⁵ Janwari, Yadi. Dzajuli, H. A, "*Lembaga-lembaga Perekonomian Umat Sebuah Kenalan*", h. 15-16

2. Cooperative of sharia in carrying out its activities based on the principles of Islamic Shari'a as follows:

- a. Membership is voluntary and open;
- b. Decisions are set by consensus and implemented consistently and consistently;
- c. Management is done transparently and professionally;
- d. Distribution of net income conducted fairly, in accordance with the amount of business services each member;
- e. Giving the remuneration of capital is limited and professionally in accordance with the sharing system;
- f. Honest, trustworthy, and independent;
- g. Develop human resources, economic resources and information resources optimally;
- h. Establish and strengthen collaboration among members, between cooperatives and other institutions.

One important factor to realize a good cooperative performance is the role of the Government in the form of legislation that regulated and issued such that the system can run well. Some of the legislation governing co-operatives are as follows:⁶⁶

1. Law No. 25 of 1992 on Cooperatives.
2. Government Regulation (PP) No. 4 of 1994 on Institutional Cooperation.

⁶⁶ M. Firdaus dan Agus Edhi Susanto, "*Perkoperasian: Sejarah, Teori dan Praktek*", h. 39

3. Government Regulation (PP) 9 1995 on the Development of Small and Medium Enterprises and Cooperatives.
4. Presidential Instruction (Instruction) No.18 of 1998 on The collection Institutional Cooperation.
5. Decree of the Minister of Cooperatives and Small and Medium Enterprises No. 91/Kep/M.KUKM/IX/2004 Implementation Guidelines neighbor Cooperative Business Financial Services Sharia.
6. Minister of Cooperatives and Small and Medium Enterprises No. 35.2/Per/M.KUKM/X/2007 on Standard Operating Guidelines for Management of Financial Service Sharia cooperative and Islamic Financial Services Unit Cooperatives.
7. Regulation of the Minister of Cooperatives and Small and Medium Enterprises No. 39/Per/M.KUKM/XII/2007 on Guidelines for Supervision of Financial Service Sharia cooperative and Islamic Financial Services Unit.

As legally, sharia cooperative in Indonesia have no legal provisions that regulate the particulars of sharia cooperatives in Indonesia in the form of legislation. Law No. 25 of 1992 concerning Cooperatives absolutely no set up or mentioned about the existence of sharia cooperative. However, in practice, based on the rules that appear and subordinate legislation, namely the Decree of the Minister of Cooperatives and Small and Medium Enterprises No.91/Kep/UMMKM /IX/2004 on Guidelines for the Implementation of Islamic

Financial Services Cooperative Business , sharia cooperative many are up and running properly grounded cooperative institutions but with islamic principles.

In addition, the sharia cooperative also regulated in Decree of the Minister of Cooperatives No. 91/Kep/M.KUKM/IX/2004 on Business Activities Implementation Guidelines for Financial Service Sharia cooperative. Regulation or a ministerial decree on cooperatives sharia is only operational regulations, while the legal umbrella itself in the form of legislation does not exist. Based on the foregoing, it can be seen that in the legislation there is nothing specifically regulate the existence of sharia cooperative in Indonesia, and today has emerged discourse to include arrangements of cooperatives sharia law changes cooperatives are still in the process of change. However, with the Law No. 25 of 1992 that became the legal foundation of cooperatives and supported by the legislation and ministerial decrees regulating the operations manual sharia cooperative, of course, this is already a legal foundation that is strong enough for the existence of sharia cooperative in Indonesia, because the regulations or the minister's decision is also a derivation of the law and is part of legislation that have binding force in the national scope.



CHAPTER III

FINDINGS AND DISCUSSION

In this chapter the researcher to answer the problems that have been formulated in the formulation of the problem. The researchers explained in a descriptive-analytic relating to the cases examined in this study. In this chapter the researcher more detailed answer sharia cooperatives as an alternative body of water utilization in Indonesia.

A. Regulation of Commercial Water in Indonesia

1. Constitution Number 11 Years 1974 about Water

Have understood that our nation blessed by God Almighty with a variety of natural resources available in the State of Indonesia's earth. One of them is the well water sources such as rivers, lakes, reservoirs, swamps, springs, layers of water in the soil that is absolutely needed by humans of all times, either directly or

indirectly. Therefore, earth and water and natural resources therein shall be controlled by the State and used for the greatest prosperity of the people in a fair and equitable.

To that end, the use of water and its sources should be devoted to the interests and well-being of people in all fields, whether economic, social, cultural and national defense and security, which while creating growth, social justice and the ability to stand on its own strength towards a just society and prosper based on Pancasila.

Governance of water resources should actually be based on Article 33, paragraph (2) and (3) of the 1945 Constitution, which reads: (2) branches of production that are important for the state and dominate the life of the people controlled by the state; (3) Earth's water and natural resources contained in it are controlled by the state and utilized for the welfare of the people.

Therefore, the water and its sources are to be protected and maintained. In order for this purpose can be achieved as well as possible, the Government should take measures and actions as necessary. Thus according to the nature of the Republic of Indonesia as a State law, must be extended to businesses and the actions of those given a legal basis unequivocal, clear, complete and comprehensive to ensure legal certainty for the benefit of the People and the State, and is one step forward to towards creating legal unification in the field of irrigation.

Legal rules that exist on the issue of water and water resources or felt is no longer appropriate to the circumstances in the present and does not fulfill the ideals that we expect in accordance with Pancasila and the Constitution of 1945. Algemeen Waterreglement 1936 which is the basis rather than legislation on setting water issues focuses on activities to control and manage one of the areas of water use but which do not provide a solid foundation for efforts to develop the use / utilization of water and or water resources in order to improve People live and are valid only in some parts of Indonesia, especially in Java and Madura.⁶⁷

Watering is a construction area on water and water resources, including natural resources is not the animal contained in it, whether natural or which has been cultivated by humans. Watering within the meaning of this Act is not merely an attempt to provide water for agricultural purposes only (irrigation), but broader than it is to use and regulation of water and water sources that include, among others:

- a. irrigation, namely the provision and regulation of water to support agriculture, both surface water and groundwater;
- b. development of swampy areas, namely the development of land areas for agriculture swamp, among others;
- c. command and control of floods and efforts for the improvement of rivers, reservoirs and so forth;

⁶⁷ Pembukaan Penjelasan UU No. 11 Tahun 1974 tentang Perairan

d. setting drinking water supply, municipal water, industrial water, and prevention of contamination or fouling the water and so on.

The law on this Watering must have the following characteristics:⁶⁸

- a. Simple, but sufficient to cover the prospect of the distant future, according to the state according to time and place.
- b. Contains policies to base its implementing regulations further;
- c. Covering all aspects in the field of irrigation, so that really can be used as the basis for regulations for each facet, the regulation of which more will be regulated separately.

Law Number 11 of 1974 years on Water Resources in the first chapter contains some understanding of the terms commonly used in the field of irrigation stipulated in this Law with a view to avoid differences in interpretation, because until this time in the field is still widely used term that has not gotten unity understanding.

As has been mentioned above that in view of the water and its sources are natural resources absolutely necessary to the lives of humans, then in this Act stated that water and its sources are controlled by the state and the exercise of powers of mastery delegated to the Government, both central and regional level.

In addition, this Act can delegate certain powers of the Government that the Legal Entities particular, the terms of which are governed by the government, with respect for the rights of the community-owned local customary law, is the

⁶⁸ Pembukaan Penjelasan UU No. 11 Tahun 1974 tentang Perairan

society that had a system of life based on indigenous , customs and religion, including the institutions of society that are social religious throughout these rights according to the reality actually still exists and its implementation should be such that it does not interfere with achievement of the objectives set forth in this Law and its implementing regulations and not contrary to the national interest.

**2. The Decision of the Constitutional Court No. 85/PUU.XI/2013
about the Cancellation of Law no. 7 of 2004 on Water Resources**

The constitutional court ruling attempts to restore water governance to be relevant to the existing constitution. Thus, management of water resources are returned to the Law Number 11 of 1974 years on the grounds Irrigation Law No. 7 of 2004 on SDA is already unconstitutional practices related to problematic management of water resources both in terms of tenure and water use rights.

Reality reveals that there is still a lot of private parties who participate in water management, with the aforementioned facts, will open a legal loophole for the party to remain on the privatization of water, because there is no clear legal umbrella after the decision of the Court. It collided with the mandate of the Constitutional Court calling for the abolition of the privatization of water in this Inodnesia. Based on some of the provisions of the Water Resources Utilization according to MPR Decree No. IX 2001. The principles of natural resource management (including water) asserted in Article 4 of the MPR Decree No. IX of 2001, that:

Agrarian reform and natural resource management must apply in accordance with the following principles:

- a. preserve and maintain the integrity of the Unitary THE REPUBLIC;*
- b. respecting and upholding human rights;*
- c. respect for the rule of law to accommodate diversity in the legal unification;*
- d. welfare of the people, mainly through improving the quality of human resources in Indonesia;*
- e. develop democracy, legal compliance, transparency and optimization of popular participation;*
- f. justice including gender equality in the control, ownership, use, utilization, and maintenance of agrarian resources / natural resources;*
- g. sustaining that can provide optimal benefits, for present generation and future generations, with chek capacity and carrying capacity;*
- h. carry out a social function, preservation, and ecological functions in accordance with condition local culture;*
- i. improving integration and coordination among sectors and inter-regional development in the implementation of agrarian reform and natural resource management;*
- j. recognize, respect and protect the rights of indigenous people over the nation's cultural and any agrarian resources / natural resources;*
- k. seek balance of rights and obligations of the state, the government (central, provincial, district / city, and village or the equivalent), to people's individual;*
- l. decentralizing the form of the division of authority in national, provincial, district / city, and village or the equivalent, with regard to resource allocation and management of agricultural / natural resources.*

The Judgment also working to restore water governance to be relevant to the above constitution. Some points to be considered in the decision of the Court that by Bosman Coal in its analysis said that there are four issues in the decision of the Court. First, the lack of proper mapping of the sector of water management between public and private meanings. Second, too provide a large portion terhadap water governance by country / region. Third, management of water resources are returned to the Law Number 11 of 1974 years on Water Resources. Fourth, less provide a portion of the water as an integral part of the overall ecosystem.⁶⁹

⁶⁹ Bosman Batubara, hlm. 2

Researchers in the subsequent discussion will focus on the points of unity (1) and third (3) above in order to solve the problem of water governance realities of the post-decision of the Court, relating to the right to cultivate and water use rights, without intending to exclude other problems.

In response to the first problem of mapping of public and private, Bosman see that the assumptions made during the trial reposition water governance to the public in this case is the state through the State-Owned Enterprises / Regional (BUMN/D), while the private is assumed by the private sector, cooperatives and institutions outside the state-owned entity.⁷⁰ Bosman interpret that the applicants equate cooperation with the private sector, and also seemed to agree with the Court to grant the entire request without any critical discussion about the conceptual differences on the governance of this.

In fact, in water governance, there are four concepts that consists of: private (private), a partnership between the private and the public (public-private partnership), public (public), and governance together (common goods) or by Endaryanta called with *collective goods*.⁷¹ According to practice, the fourth water governance can be exemplified, first with governance held by the private sector such as that conducted by PT Aqua Danone. The second is the governance model by the government, such as those found in the 359 taps in Indonesia.⁷² The third is a combination of governance, private-public patnership, such as taps Palyja in

⁷⁰ Bosman Batubara, hlm. 3.

⁷¹ Bosman Batubara, hlm 3.

⁷² BPPSPAM (Badan Pendukung Pembangunan Sistem Penyediaan Air Minum) Kementrian Pekerjaan Umum dan Perumahan Rakyat, 2014, *Kinerja PDAM 2014*, Kementrian Pekerjaan Umum dan Perumahan Rakyat, Jakarta, hlm. 10. dalam Bosman Batubara, hlm. 14.

Jakarta. For the fourth division of shared governance in the context of water resources, in Indonesia in practice has not been found clearly.

Governance with, in this case refers to the notion that local communities run their own rules that they make and the responsibility to ensure continuous availability of related resources, and resources are shared.⁷³ Researchers assume that if a conceptual understanding is disregarded, in the sense of shared governance such as cooperatives still equated with the private sector, will have an impact on the implementation of the decision of the Court.

On the other hand, control of public governance that is interpreted by the state (BUMN/D), MK constantly trying mendefinisakan Article 33 (3) of the 1945 Constitution were intensively discussed in the trial with two phrases that exist, namely: 1) controlled by the state; and 2) utilized for the welfare of the people. If rests on the decision of the Constitutional Court Number 001-021-022/PUU/2003, dated December 15, 2004, the Constitutional Court further found state control over water activities include:

1. Formulate policies (*beleid*), is to formulate policies related to water resources management.
2. Perform acts of management (*besturrsdaad*). This function is performed by the state government with the authority to issue and revoke permissions facilities (*wergunning*), licenses (*licentie*) and concessions (*Consessie*).

⁷³ L. Engel, 2006, *Piped Drem Drinking Water for the Urban Poor: The Management of a common-pool resource in Yogyakarta*, Master Thesis, Leiden University, hlm. 6, dalam Bosman Batubara, hlm. 15.

3. Make arrangements (*regelendaad*). The regulating of the country is done through legislative authority by Parliament and the Government, and regulation by the government (executive).

4. Perform management (*beheersdaad*). Management functions carried out through ownership of shares (share-holding) and / or through direct involvement in the management of State-Owned Enterprises or State Owned Legal Entity as institutional instrument through which the state c.q. Seen government leverage on the resources were to be used for the greatest prosperity of the people.

5. Supervise (*toezichthoudendaad*). See functions carried out by the government as representatives of the activities of utilization of water resources.⁷⁴

While the phrase "utilized for the welfare of the people" is determined by the four benchmarks: natural resources for the benefit of the people, equalization, level of popular participation and respect for the rights of the people are falling down in exploiting natural resources.⁷⁵

To phrase controlled by the state with some benchmarks above may already comply with the return of water governance entirely to BUMN/D, but for the phrase utilized for the welfare of the people, if it is returned to the benchmarks

⁷⁴ Putusan Mahkamah Konstitusi Nomor 001-021-022/PUU/2003, vide Putusan Mahkamah Konstitusi No. 85/PUU.XI/2013 tentang pembatalan UU No. 7 Tahun 2004 tentang Sumber Daya Air, hlm. 141.

⁷⁵ Putusan Mahkamah Konstitusi Nomor 3/PUU-VII/2010, hlm. 161.

above is less precise, in the absence of the role of participation from folk to water governance, also from the tribute to exploit it.

Match between cooperatives and private according to researchers is one of the causes mistakes, because if mastery of water governance in the private sector will likely occur privatization. Indra Bastian believes privatization could be interpreted as a change of ownership of state enterprises into private property.⁷⁶ The situation is clearly contrary to the ideals of the Constitution regarding water governance.

The second problem is too make room for BUMN / D to manage water. This issue follow up on the first problem. The phrase "controlled by the state", in this context interpreted "that BUMN/D should be dominant".⁷⁷ This interpretation marginalizing other points in Article 33 UUD 1945 on "utilized for the welfare of the people", which as described earlier.

The substance appears to be justified by the Court with a new interpretation on the "Opinion of the Court"⁷⁸, where the country ranked first in managing water, it is equated with governance of oil and gas are the results submitted to the state budget and its benefits are distributed profusely to the people.

⁷⁶ Indra Bastian, 2002, *Privatisasi di Indonesia; Teori dan Implementasi*, Salemba Empat (PT Salemba Emban Patria), Jakarta, hlm. 20.

⁷⁷ Seperti dalam keterangan saksi ahli pemohon Prof. Dr. Absori, S.HLM., M. HLM. Dalam putusan MK Nomor 85/PUU-XI/2013, hlm. 43: "...cabang-cabang produksi yang penting bagi negara dan menguasai hajat hidup orang banyak harus dikuasai oleh negara dan menguasai hajat hidup orang banyak harus dikuasai negara. Maknanya adalah bahwa BUMN maupun BUMND harus dominan..."

⁷⁸ Pendapat Mahkamah, hlm. 131: "Mahkamah memberikan penafsiran baru terhadap 'hak menguasai negara' dengan meletakkan peringkat pertama pada pengelolaan sendiri oleh negara atas sumber daya alam, dalam hal ini minyak dan gas bumi, supaya perolehan pendapatannya lebih banyak, yang akan meningkatkan APBN dan selanjutnya akan meningkatkan usaha ke arah sebesar-besarnya kemakmuran rakyat"

According to Bosman, there are two major implications of these readings, the first equation between water resources with the oil and gas resources. Second, granting entitlement to the dominant state in the sense of BUMN/D.⁷⁹ For the first impact, researchers can analyze the thinking Bosman using the following table:

Opinions investigators slightly different view of the Bosman, in terms of water use must be prioritized, because the function of the water can not be taken with other natural resources. In contrast to oil and gas, they can be substituted with another, such as wind, solar, and even its own water source. In contrast to the location of reserves, for oil and gas has become a common thing, if rare, because the energy is not renewable. According to researchers it is almost the same as the state of the water with oil and gas. Clean water is now a scarce material. Central Statistics Agency (BPS) showed that the level of access to clean water services has only reached 39 percent of the urban population.⁸⁰ For operation process itself is almost the same point between water and oil and gas. Although to get the water does not need refining, but because of the exploitation of water governance, to get the water itself may be almost equal to the effort to get oil and gas.

As an example only in Jakarta, to get clean water for drinking and cooking, people have to spend an average of Rp. 450,000 - Rp. 600,000. That is because the condition of groundwater colored, dirty and smelling caused by industries

⁷⁹ Seperti dalam keterangan saksi ahli pemohon Prof. Dr. Absori, S.HLM., M. HLM. Dalam putusan MK Nomor 85/PUU-XI/2013, hlm. 43: "...cabang-cabang produksi yang penting bagi negara dan menguasai hajat hidup orang banyak harus dikuasai oleh negara dan menguasai hajat hidup orang banyak harus dikuasai negara. Maknanya adalah bahwa BUMN maupun BUMND harus dominan..."

⁸⁰ *Permasalahan Air Bersih tak Kunjung Henti*, internet, <http://blog.sandal-akasaka.com/permasalahan-air-bersih-tak-kunjung-henti>, accessed on 7 Maret 2015.

around them.⁸¹ Researchers concluded that for mastery of the water is supposed to be given to the management of BUMNs that can be controlled in an objective, but in terms of its management likely to be given space to other than state-owned enterprises.

Following up on the second impact, about control of water to the dominant state-owned enterprises, according to the researchers of this policy should be examined again. Because the reality of BUMN / D which has been managing the water, according to a report BPPSAM, of 359 taps in Indonesia in 2014 only 51% (182) are in the healthy category; while less healthy as much as 29% (103); and the rest (74) are in a state hospital.⁸² Meanwhile, in the same year identified as many as 22 taps in Indonesia involved in corruption.⁸³

There are many causes of unhealthy and sick PDAMS in Indonesia. Bosman through Perpamsi (2010)⁸⁴ identify three structural problems: management, finance, and engineering. Management performance issues such as recruitment and employee directors are not accountable. Financial issues such as the lack of commitment of local government and Parliament to progress the public service, so that the taps do not get their budget allocation/equity adequate. While in technical terms, there is no longer a source of water that can be explored in the area of

⁸¹ Harian Kompas, *Kebutuhan Dasar Air Bersih Kian Sulit Dicari*, 5 Maret 2015.

⁸² Seperti dalam keterangan saksi ahli pemohon Prof. Dr. Absori, S.HLM., M. HLM. Dalam putusan MK Nomor 85/PUU-XI/2013, hlm. 43: "...cabang-cabang produksi yang penting bagi negara dan menguasai hajat hidup orang banyak harus dikuasai oleh negara dan menguasai hajat hidup orang banyak harus dikuasai negara. Maknanya adalah bahwa BUMN maupun BUMND harus dominan...". hlm. i

⁸³ M. Kautsar dan N.P. Aria, 2014, *Sengketa Pelayanan Air dan Korupsi PDAM*, internet, <http://literasi.co/Sengketa.Pelayanan.Air.dan.Korupsi.PDAM>; diakses pada 27 Februari 2015. Lihat juga di Bosman, Kertas Kerja FNKSDA_2015, hlm. 10.

⁸⁴ Perpamsi (Persatuan Perusahaan Air Minum Seluruh Indonesia), 2015, *Peta Masalah PDAM*, News Letter, dalam Bosman Batubara, Kertas Kerja 4 FKNSDA_2015, hlm. 10.

administration; conflicts between regions in the utilization of raw water across the region; conflicts with other users of natural resources. The points of weakness is not at all explored by the decision of the Court, either from the applicant or of the Court itself. In fact, both of them agreed to provide substantial amounts of BUMN/D in water governance in Indonesia. These circumstances prove use BUMN as a business entity that is given power by the Court to manage water, are still not fully prepared to be given that authority. The need for re-construction in the system of governance in BUMNs / D, especially in water governance.

The third issue, concerning the re-enactment of Law Number 11 of 1974 years concerning Irrigation. Setback, or void, causing uncertainty in the governance of the water sector itself. It becomes a fundamentals issue because it is precisely this moment could be exploited by certain parties to derail the agenda that is written in the petition of the applicant when applying ratings of Law No. 7 of 2004 before the constitution of the 1945 Constitution As the statement of Minister of Public Works and Public Housing (PUPR) Basuki Hadimuljono to the media Compass:

I respect the decision of the Court to return to Law Number 11 of 1974 years. The law, it's great because there are regulating the water company. That the water must be owned by the State based on the principle of joint and populist. But nothing should be regulated through government regulation. It was mandated by law. Now they

*(the water company) has a contract but do not have an umbrella law.*⁸⁵

Currently some of the water company has had contracts, but do not have legal protection, because PP 16 Year 2005 concerning the Development of Water Supply System automatically be excluded as a result of the ruling of the Constitutional Court, which mandates the abolition of privatization. This has become one of the confuse that problem with the return of natural resources management arrangements to Law Number 11 of 1974 years on the waterworks, where the Act does not have the technical regulations related problems. So this is where it happens legal court.

Reality reveals that there is still a lot of private parties who participate in water management, with the aforementioned facts, will open a legal loophole for the party to remain on the privatization of water, because there is no clear legal umbrella after the decision of the Court. It collided with the mandate of the Constitutional Court calling for the abolition of the privatization of water in this Indonesian.

As a state based on law, the state can intervene in the utilization of its resources, including natural resources such as water resources. Utilization or rather is the management of water resources has been regulated in Article 33 UUD 1945.⁸⁶ The passage of the dynamics of the state of life must be based on the

⁸⁵ Kompas, 2015, *Terbitkan Pengelolaan Air Kemasan, Pemerintah Susun UU SDA Baru*, internet, http://properti.kompas.com/read/2015/02/23/193000821/Terbitkan.Pengelolaan.Air.Kemasan.Pemerintahlm.Susun.UU.SDA.Baru?utm_source=WP&utm_medium=box&utm_campaign=Kknwp; diakses pada 27 Februari 2015, lihat juga Bosman, hlm. 11.

⁸⁶ Suteki, *Dimensi Hukum di Ruang Sosial*, h 246

grand norm. All forms of legislation (Act) has hierarchically according to the 1945 Constitution if the middle of the passage of a legislation (Law) found a discrepancy, then through a lawsuit filed to the Constitutional Court authorized the Testing Act NRI against the Constitution in 1945.

B. The concept of Sharia Cooperation for Water commercial in Indonesia

1. Urgency and Relevance The Concept of Sharia Cooperation As A Body Legal Entity for Water Commercial in Indonesia

The water is all water that are on, above, or below ground, including in this sense the surface water, ground water, rain water, sea water and on land.⁸⁷ However, after the Court Konstitusi its ruling No. 85PUU-XI / 2013 normative-juridical sense to shift water. Water is all the water contained in or derived from sources of water, both located above or below ground, are not included in this definition contained in sea water.⁸⁸

Sustainable water management system that emerged from the idea that water is a common good (*res communes*) that are passed from generation to generation. Outpouring of power in conservation and community development into the most important investment in the natural resource. In the absence of capital, people who work collectively provide the main input or "investment" in water projects.⁸⁹

⁸⁷ Pasal 1 Ayat (2) Undang-Undang Nomor 07 Tahun 2004 Tentang Sumber Daya Air

⁸⁸ Pasal 1 Ayat (3) Undang-Undang Nomor 11 Tahun 1974 Tentang Pengairan

⁸⁹ Suteki, *Dimensi Hukum di Ruang Sosial*, h. 263

Table : Type of Water Rights Under Law Water Resources⁹⁰

Type of Rights	How to Obtain	For Who	For What	What Requirements
Water Rights	Without Permission Article 8 Paragraph (1)	Individual	Basic Daily Needs	Does not change the condition of water resources
		Individual or group	Agricultural people in existing irrigation	
Water Rights to Us	With Permission Article 8 Paragraph (2)	Individual	Basic daily needs	Changing water conditions
		Individual or Group	Agriculture beyond the existing irrigation network	
		Group	Daily basic needs and social needs	
Water Rights to trade	With Permission (Article 9)	Individual/Group/Legal Entity	To meet the needs of business	Changing or not the condition of water resources

In the leasehold on the water individual/group/entity (private). Private parties with the permission of the competent government has the right to manage water as an economic commodity. The fact is certainly not in accordance with the

⁹⁰Imam Anshori, "Konsepsi Pengelolaan Sumber Daya Air Menurut UU No. 7 Tahun 2004, Makalah (Departemen Kimpraswil, 2004) Dalam, Suteki

ideals of the constitution which stipulates that the earth, water and other natural resources are used profusely to the prosperity of the people. Of their petition, it appears that the applicant assesses the water has been turned into a commodity:⁹¹

“Some of the issues that arise in Law No. 7 of 2004 on Water Resources with regard to private involvement in the management process. It is not independent of the previous shift in meaning water is a public good turned into a commodity that is more concerned with the economic aspects that ultimately oriented for profit. The shift is seen in the meaning of the regulation concerning the rights of exploitation of water that can be given to the private sector appears in Article 9 paragraph (1), Article 11 (3) and Article 14”.

After the decision of the Constitutional Court Number 85/PUU-XI/2013, which cancels the Act SDA leasehold Air: As mentioned above does not apply automatically. Segala forms of regulation on water governance restored to Law Number 11 Year 1974 About Irrigation. Rights to work water turned into exploitation which affirmed in Article 11 of Law Number 11 Year 1974 About Irrigation, that:

Article 11

⁹¹Alasan Pokok Permohonan dalam Putusan Mahkamah Konstitusi Nomor 85/PUU-XI/2013. H. 16

(1) The utilization of water and water resources or are intended to improve the usefulness to the welfare of the People's basically done by the Government, both central and regional level.

(2) Legal, social agency or individual. do water operation and or water resources, must obtain permission from the Government, with get to the principle of joint ventures and kinship.

(3) The implementation of this Article shall be regulated further by a government regulation.

The article provided the basis for concession right on the water. All forms of exploitation of standing water should base the laws that apply it. Water use rights not expressly stipulated in the Law on Water Resources. Relating to leasehold, in the Law on Water Rights to be set as the above article, in which the right to cultivate is a concession on the water. The practice of privatization and / or exploitation referred grown extensively for their public demand for water has increased so encourages the strengthening of the economic value of water is comparable values and its social function. On the other hand, the management of water resources rely more on economic value will tend to favor the owners of capital as well as ignoring the social function of water resources.

Of course, shifting normative-juridical regulation of the governance implications for enterprise-exploitation of water that stands today. The clear implication is the implication of regulation, who would not want any company that makes the water as an economic commodity to be obedient and submissive to the implications of the regulation. In this case the need for a new breakthrough in

terms of water utilization in accordance with the objectives and expectations of the constitution.

Based on the situation in the conflict on Water Resources and ketercabutan regulation of Water Resources, the political direction of legislation on Water Resources Law reap various debates. Constitutional Court decision gives the confirmation of the cancellation of the overall applicability of the Act SDA because it did not meet the six basic principles of water resources management restrictions.

Governance of water resources should actually be based on Article 33, paragraph (2) and (3) of the 1945 Constitution, that: Section 2) production branches which are important for the country and dominate the life of the people controlled by the State.

Article (3) Earth's water and natural resources contained in it are controlled by the state and utilized for the welfare of the people. Constitutional Court Decision No. 85/PUU.XI/2013, which cancels Law 7 of 2004 on SDA is an attempt to restore water governance to be relevant to the existing constitution. Clear legal consequences of the Constitutional Court decision is a return to regulation of water governance to Act Number 11 of 1974 years Watering neighbor as Law No. 07 of 2004 on Water Resources has no binding legal force after the Constitutional Court ruling. Applicability of the Act Watering certainly have an impact on water management in Indonesia, especially the exploitation of the water at this time.

In this study, researchers revealed that water concession rules, after the researcher to conclude that the form of the concept of the ideal water utilization in Indonesia such as the sharia cooperatives based on community and used entirely for the prosperity of the people.

Because obviously, the Constitutional Court considers SDA Act contrary to the 1945 Act SDA has opened the gates of privatization or mastery profusely on water governance in Indonesia. Whereas Article 33 Paragraph (3) of the 1945 Constitution has mandated that the Earth, Water and riches contained there in controlled by the State and used for the greatest prosperity of the people. Also related to the economic system in Indonesia at dasarnya economic system based on democracy, the one that fell into this category are cooperative. 1945 has been mandated to steer the economy in Indonesia towards the economic system that support the welfare of the people. The national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental friendliness, independence, and balancing economic progress and national unity. Privatization of water resources that makes the water as an economic commodity that is profit-oriented to a particular group as described above gives the sense that the economy in Indonesia is not necessarily the direction as mandated by the constitution.

The core economic issues in the perspective of conventional economics (capitalist or socialist) is a matter of human needs are unlimited while the means of satisfying the needs of limited or scarce (scarcity). In that regard the conventional economy puts desires (wants) and needs (needs) as a form of parallel

and bound because it wants and needs come from the same place, namely the instinct of human desires.⁹²

Islam rejects the notion that human needs are virtually unlimited. but specific needs such as eating and drinking when the stomach is feeling full so he was satisfied because the needs have been met. So the conclusion that human needs are limited as described in the draft law of diminishing marginal utility that the more goods consumed, at a certain point it will cause additional satisfaction of any additional quantity consumed will wane.⁹³ The urgency and relevance of the sharia cooperative concession lies in the water management process, human needs above the water and must be objectives of Islamic law.

From the description above can be concluded that the relevant sharia cooperative with regulations governing the operation of the water in Indonesia. Urgency sharia cooperative as the body of water exploitation in Indonesia used to answer a case or problem that continues to grow with the development demands of human life, so this is already contained in the law to be decided definitively on the issue of water utilization in Indonesia.

2. Concept of Sharia Cooperatives as a Body Legal Entity Alternative for Water Commercial in Indonesia

The right to water is a right to obtain and use and to manage water for various purposes. Not loose, water is public property or the lives of many people

⁹² Muslimn Kara, "Pemikiran Al-Syatibi Tentang *Maslahah* dan Implementasinya dalam Pengembangan Ekonomi Syariah" *Jurnal Assets*, Vo.2, No.2 (2012), h. 179

⁹³ Muslimn Kara, "Pemikiran Al-Syatibi Tentang *Maslahah* dan Implementasinya dalam Pengembangan Ekonomi Syariah"

then put the water on the most important position ntuk public interest. State in charge of public interest (maslahih al-ammah) must ensure that the earth, water, sky and fire can be accessed by all citizens start to their needs. To all means and efforts to monopolize the sources of life for many people just to satisfy the interests of a group of people should be prevented by the State.

Basically, as-Syatibi individual. But, recognize the ownership rights, he refused to individual ownership of any resources that can dominate the life of many. He asserted that the water is not the object of ownership and use can not be owned by anyone. In this case, he distinguishes two kinds of water: water that can not be made the object of ownership, such as river water and oases; and water that can be used as an object of ownership, such as water purchased or included as part of a plot of land owned by individuals. Furthermore, he stated that no property rights that can be claimed against the river due to the construction of dams.⁹⁴ Islam as a religion of revelation also regulates the ownership and management of natural resources consist of (i) an individual ownership (milkiyah fardhiyah); (ii) common ownership (milkiyah 'ammah) and (iii) the ownership of the State (milkiyah dauliyyah).

In the leasehold on the water individual/group/entity (private). Private parties with the permission of the competent government has the right to manage water as an economic commodity, and sharia cooperative comes as an answer to the problem. The concept is controlled by state with five benchmarks include the

⁹⁴Muhammad Khalid Mas'ud, *Filsafat Hukum Islam: Studi tentang Hidup dan Pemikiran Al-Syatibi* (Bandung: Penerbit Pustaka, 1996). h, 136

state tenure policies (beleid), maintenance (bestuursdaad), setting (regelendaad), management (beheersdaad), and control (toezichthoudensdaad). State's right to control over water that can be said to exist when the State, which by 1945 deberi mandate to make policy (beleid), maintenance (bestuursdaad), setting (regelendaad), management (beheersdaad), and control (toezichthoudensdaad).

If the transformed values of Islam in the contemporary context of the day sources of water, the State's role is so important for the management and control of water resources. None other than this is for the welfare of the people as it has been diamanahkandalam constitution. Context tenure have values in common to the existence of an object (in this case water resources). If the concept of ownership and control are integrated and then generate a new understanding of the control of the State over the water concession.

The nature of water resources which essentially belong together (ress commune) in the view of Islam means common ownership (milkiyah 'ammah). Mine general is something that the rights of ownership of use was determined to communities with the provisions of eraser members of the public are entitled to use the name of a part of that community. Along with the proliferation of water utilization both managed state or private ownership of water slightly shifted to the ownership of individuals or groups with the conception of the State privatitation. So, important to realize the benefit of the ownership position of these water resources is true for the prosperity of the people. Based on Article 33 Paragraph (3) State is the first party of the waters that are used for the greatest prosperity of

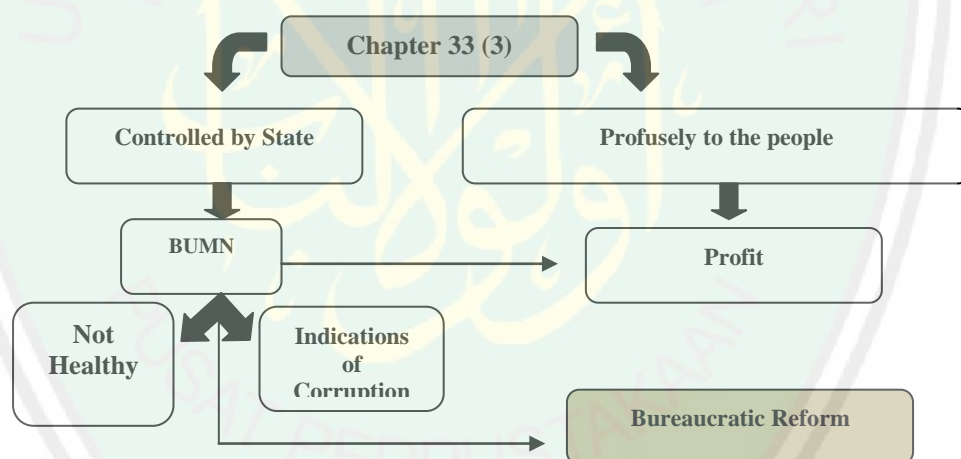
the people. From this state, the state share in the presence of water as a ruler over the water as their control described above.

Proposed ash-Syatibi in al-Muwâfaqât fiUshûl al-Ahkam foud is *maslahah* the new cases that are not designated specific by *nash* but it contains a boxed-lahatan the line (al-munâsib) with action Personality. Then the state becomes an element or instrument in bringing kemasahatan as Urgency Al-Maslahah Al-mursalah in the aftermath of the law of the Constitutional Court against the exploitation of water in Indonesia. Urgency Al-Maslahah Al-Mursalah used to answer a case or problem that continues to grow with the development demands of human life, but yet there are laws to be decided definitively on the issue of water governance in Indonesia.

Sharia Cooperative is a concept of water governance to restore the rule of water based on social justice. To make it happen, it takes a fast pace, firm and precise in its implementation. Reality water governance after the Constitutional Court decision No. 85 / PUU-XI / 2013, which has some crucial issues such as the management of natural resources granted profusely to BUMN/D, but the fact is the agency in unsanitary conditions and indications of corruption, and the regulation of governance of water resources are returned to the Act Watering in 1974, however there is a legal confiuse, because the act is not suited to the conditions in the era of modernization at present, requires an appropriate action by goverment in implentasi Court decision. Cooperative concept of sharia is a system offered by the researchers to respond to these problems.

The concept is based on the sharia cooperative two main phrase in Article 33 paragraph (3) of the 1945 Constitution, namely: first controlled by the state, both the maximum benefit of the people. Both of these phrases can be applied to both the previous issue, the mapping of public and private is less precise, which equated to private cooperatives, and public area are interpreted to be dominant to the BUMN / D, which in turn can be called with the second issue. In the concept can be seen in the chart below:

Chart 1: patterns of power over state-owned enterprises in the governance (BUMN) of water



Source: The results of our analysis

The chart shows the concept of initial water governance in accordance with the interpretation of the Constitutional Court, where the phrase "controlled by the state" is given to the government, which are authorized to BUMNs, and to the phrase "the overall prosperity of the people" can be obtained from the profits or results of BUMNs could allocated to the state budget. The fact that there BUMNs now in poor health, in terms of management, financial, and technical management

of BUMNs, and also indicated the presence of corruption. Therefore, the need for a new attempt to reconstruct the situation. Reform of the bureaucracy is an offer from the researchers.

As an affirmation reformasi bureaucracy, then the utilization of state apparatus, the implementation of policies and programs should continue to always support the establishment of good governance, it is according to Faisal Tamim can be described as follows:

1. Restructuring state institutions and apparatuses;
2. eradication of all forms of bribery, corruption, collusion and nepotism, as well as combating smuggling firmly and thoroughly;
3. The creation of organizing and managing the business of good and clean from the national level down to the regional level;
4. Build a bureaucratic culture that is transparent, accountable, clean and responsible and be a public servant and the servant of the state;
5. Fix the government bureaucracy, either directly or indirectly related to the implementation of the economic recovery program in order to increase supervision of bureaucracy.⁹⁵

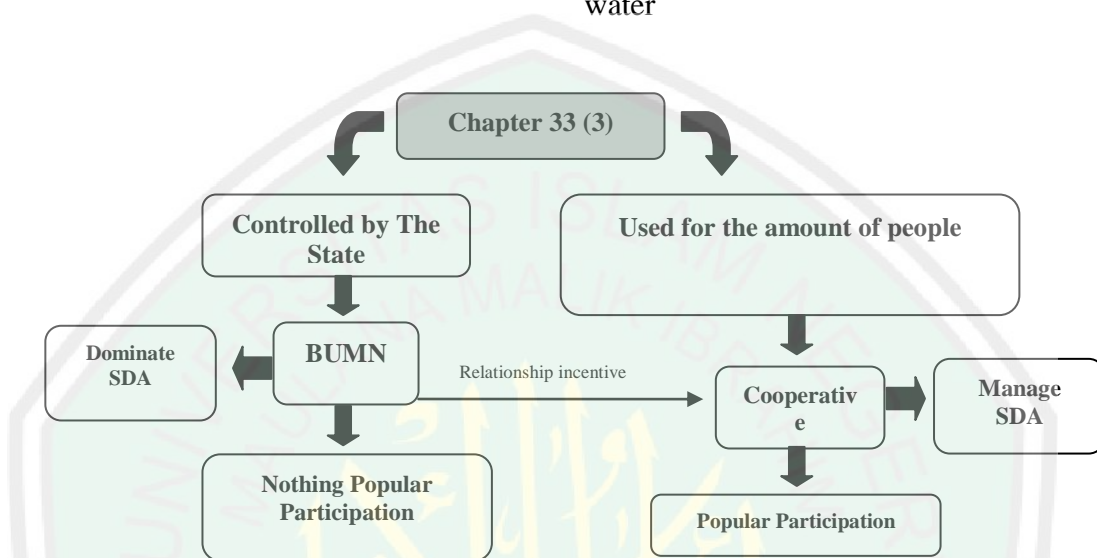
The fifth recommendation is a picture that needs to be implemented into the construction of water governance program conducted BUMN/D. The need for direct application is expected to be a reference to the decision of the Constitutional Court which provides a large enough space terhadap BUMN/D to control and manage water resources.

⁹⁵ Feisal Tamim, 2004, *Reformasi Birokrasi; Analisis Pendayagunaan Aparatur Negara*, Belantika, Jakarta Selatan, hlm. 26.

For the next step, after the reform of the bureaucracy on the performance of BUMNs / D, the need for a system that restores the function of the public in response to the phrase "utilized for the welfare of the people". The concept of a foundation required to meet water governance in accordance with these phrases are cooperative. Why is that? Because the cooperative system is a democratic economic system, which became one of the substances of the welfare state theory described earlier. This thinking is in line with that conceived by coal, where the key role of the people to be full because it acts as well as consumers and members of the cooperative owners. Automatically water governance in the form of cooperatives will bring a few steps forward. First, practice what is written in Article 33 paragraph (1) 1945. Second, it provides a bigger key role for the people. Third, create a space more political education of the people. Fourth, keep the privatization efforts of the public sector.

The concept is in line with the phrase "utilized for the welfare of the people". The first commentary Court stated above is the use of the phrase, equal to, participation by, and respect for the rights of the people in the governance of natural resources. Exactly which put these ideas together as a cooperative governance becomes very important, because it provides the greatest key role to the people.

Chart 2: bumh and cooperative patterns of power in the governance of water



Sources: The result of our analysis

According to the chart above, it can be seen that the system can be applied in water governance is the system of division of labor between state enterprises and cooperatives. BUMN as a body appointed by the Court to rule governance of water into something that must be applied, but in practice there is no popular participation. For the implementation of the application "is used for the greatest prosperity for the people", use cooperative role that public participation or people can be realized. In short it can be described with the role of BUMN / D is still given the right to control water resources, while cooperatives are given space to manage water resources.

The role of government in the implementation of a system of division of labor between state / D with the cooperative could be coaching and guidance to cooperatives through wisdom, arrange coaching, guidance, facilitation, protection

and supervision of all activities of the cooperative, without prejudice to the rights and obligations of cooperatives to organize themselves own.⁹⁶ So that the government can still keep an eye on the cooperative to comply with the mandate of the Constitutional Court's decision, and people still get their right to participate in the governance of water.

The concept will lead to a lot of positive things with the realization of the system.

- 1. The benefits will be enjoyed directly by the members, in this case is the people or the surrounding communities who are empowered.*
- 2. Equal distribution of water resources throughout the archipelago will be easily achieved, because the cooperative we are empowering people around the water resources, without the need for excessive experts from the private sector.*
- 3. The potential of community resources will be channeled.*
- 4. Confidence in the processes of governance of water will increase, because the community itself is involved in the process of water governance.*

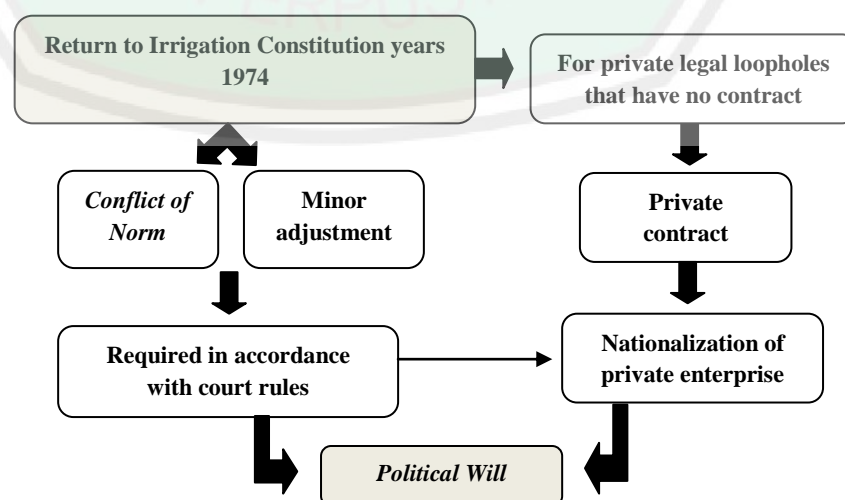
Next step is to re-examine the impacts arising from the decision of the Court which returns to the SDA UU Water Act of 1974, and a discussion of minor MK for placement of water resources as the unity of the whole ecosystem there. Departing from some of these issues, it is necessary to have a hot idea or innovation to address the above problems. Efforts are offered the researcher is to be the new regulation.

⁹⁶ Seperti yang tertuang dalam penjelasan Pasal 60 Undang-Undang Republik Indonesia Nomor 25 Tahun 1992 tentang Perkoperasian.

Regulation is a step to provide legal protection and rules binding so that water resource management journey remains on the rails of the constitution, in the sense remains obedient to the rules applicable. It is intended that water governance for the better after the decision of the Court. Regulation is needed in this matter is the Presidential Decree as the technical implementation of the laws in force. It could be a government regulation; PP about control of natural resources and the PP on legal protection of the SDA.

Furthermore, of the re-negotiation should be no attempt nationalization of private parties in accordance with the mandate ptusan Court. While the implications of the regulation governing the protection of water resources can not be separated by other resources in an ecosystem is a conservative effort to protect the sustainability of water resources are endangered due to the influence of the management of other resources. These efforts provide technical implementing rules on the applicable law in this case is Law Number 11 of 1974 years on irrigation. Such thinking can be depicted by grooves in the chart below:

chart 2: *Paterns of Water Governance post constitutional court*



Source: Researchers analysis results

Concepts that have been described above researchers will go well with the political will of the executive who has the task of doing something that has defined the law. More especially the technical implementation of the Act SDA is currently in effect. Can also go through the Presidential Decree on the control and management of water in accordance with the mandate of the Constitutional Court decision. Without the political will, the mandate contained in the Constitutional Court's decision will be limited only wishful thinking without any real implementation, the end-ujungnya is the people who bear the uncertainty of the law.

Political Will in the manufacture of new regulations on SDA necessary because Law SDA used today have not been able to overshadow issue-issue water governance in the present, and the legislation that complies with the mandate of the Court has not come out and it still takes considerable time long. On the other hand, Islamic law as a guideline for life manusia required to be able to accommodate all forms of social condition and problems posed society without losing its basic principles, so that Islamic law can function and feel required for it.⁹⁷ Because, if swordfish, Islamic law would lose its actualization, even Islamic law would likely infertility function, or borrow a phrase Abdurrahman Wahid, fisiolisasi interests of the people.⁹⁸

In order to actualize the Islamic law in the context of the public interest necessary to the re-interpretation of the teachings of Islam in accordance with the

⁹⁷Ahmad Mubaligh, "Dinamika Hukum Islam Dalam Kontek Perubahan Sosial", *Jurnal El-Harakah*, Vol. 63, No.01, (Januri-April, 2006),h. 53

⁹⁸Ahmad Rofiq, *Pembaharuan Hukum Islam di Indonesia*, (Yogyakarta: Gama Media, 2001) h. 99

context of space and time around it⁹⁹ to realize that the present laws and legal consequences. Persoalan Law Constitutional Court ruling that canceled the Act SDA a community issue, not necessarily. The ideals of the decision to minimize the privatization of water resources. However, the other side still mushrooming private companies that exploit water resources.

The legal consequences terhadap water utilization First, on the grounds that the activity exploitation of water which still continues to utilize the water resources without the power of a clear legal or illegal, can be categorized as a form of theft or appropriation of water resources which can result in losses by the State as stated pasda Article Paragraph 15 (2) of the Act Watering. Second, the dominant control of the BUMN/D gives the sense that the control of water resources is given entirely to the State. Watering Act has not been fully confirmed the country the only one who has the right to manage water resources. Legal, social agency or individual conducting or water utilization and water sources, must obtain permission from the government, with reference to the principle of joint ventures and kinship.

From the description above, the researchers analyzed the chances of cooperatives sharia as the body alternative for water utilization in Indonesia, it is getting a result the relevance and urgency of the concept of cooperatives Sharia based constitution (two phrases in Article 33) that the participation of people with supervision and full control by the state , Sharia cooperative as a way of better

⁹⁹Ahmad Mubaligh, "Dinamika Hukum Islam Dalam Kontek Perubahan Sosial", *Jurnal El-Harakah*, Vol. 63, No.01, (Januri-April, 2006),h. 54

water utilization tenure or use rights. In the constitution of cooperatives also have a clear legal framework both Law No. 25 of 1992 and detailed in the technical implementation is contained in the Decree of the Minister of Cooperatives No. 91 /Kep/M.KUKM/IX/2004 on Business Activities Implementation Guidelines for Financial Service Sharia cooperative. It will answer for this confused in a natural, because the laws governing water resources has suffered a setback, then there is need for a swift attitude in dealing with problems its.

As mentioned previously the Cooperative simply cooperative means of cooperation. By Language cooperative is defined as a container associations (associations) a group of people for the purpose of cooperation in mutually beneficial business between member associations.¹⁰⁰ Meanwhile, according to the definition of the Cooperative Law Number 25 of 1992 years is a business entity consisting of people or a collection of some of the cooperatives which is the arrangement of the economy as a joint venture based on the principle of the family. Shari'ah cooperatives also have the same understanding with business activities in the field of finance, investment, and savings corresponding pattern of results (sharia), or better known as the Islamic financial services cooperative. Water resources is one of the things that need to be managed well with community participation because it avoids the water mastery individually (privatization) or agency/government agencies suspected of corruption so that the prosperity of the people who become the spirit of the constitution must be disregarded.

¹⁰⁰ Janwari, Yadi. Dzajuli, H. A, "*Lembaga-lembaga Perekonomian Umat Sebuah Kenalan*", (Jakarta: PT Raja Grafindo Persada, 2002), h. 7



CHAPTER IV

CONCLUSION AND SUGGESTION

A. Conclusion

Reality water governance after the Constitutional Court decision that happens is the management of natural resources granted profusely to BUMN/D, but the fact is the agency in unsanitary conditions and indications of corruption, and the regulation of governance of water resources are returned to the Act Watering 1974 but there is a legal dilemma, because the Act is not suited to the conditions in the current era of modernization.

The concept of cooperative efforts to revitalize ekokrasi sharia as the water towards Indonesia's sovereignty in the field of social justice can be described with: Reform of the bureaucracy against companies that manage water resources. Of water resources to BUMN and governance given the space to cooperatives.

Renegotiate existing private contracts and the nationalization of private parties. Making the regulation on technical regulations on the governance of water in accordance with the mandate of the Constitutional Court decision.

The cooperative also has a strong legal standing, including Law No. 25 of 1992 as well as the sharia cooperative are already regulated in Decree of the Minister of Cooperatives No. 91 /Kep/M.KUKM/IX/2004. This is in line with Article 33 of the 1945 Constitution which call earth, water and natural resources contained therein fully controlled by the state and used for prosperity of the people.

B. Suggestion

From the results of research and discussion that has researchers describe the researchers gave suggestions as follows: The role of the government to quickly reconstruct water governance in Indonesia by issuing new regulations in accordance with the decision of the Constitutional Court Number 85/PUU-X/2013. The concept of sharia cooperative must be implemented to the legislature to make the Act is new about water resources in accordance with the needs of the existing law, but before the formation of the new law would require political will on the part of the executive by issuing a Presidential Decree, because it is the obligation of governments to regulate water governance that need action quickly, decisively and appropriately, considering the manufacture of the Act requires a long time.

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Educational Background:

1. TK Mardi Utama Bakalanrayung, Kudu Kabupaten Jombang (1998-2000)
2. SDN Bakalanrayung II, Kudu Kabupaten Jombang (2000-2006)
3. MTsN Tambakberas Jombang (2006-2009)
4. MA WH Bahrul Ulum Tambakberas Jombang (2009-2012)
5. S1 Islamic Business Law Departement, Sharia Faculty State Islamic University of Maulana Malik Ibrahim Malang (2012-2016)

Organization:

1. Chairman Student Assosiation from Jombang of UIN Maliki and Malang Raya (2013-2015)
2. Journalist of PMII Radikal Al-Faruq (2013-2014)
3. Coordinator Research at Student Executive of Sharia Faculty (2013-2015)
4. Student Legislative at Sharia Faculty (2014-2015)
5. Coordinator Organization at Research and Development Studies Institute (2014-2015)