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Banyumas Local Government's Failure Regarding the Garbage Management Law and Social Change

Fracaso del gobierno local de Banyumas con respecto a la ley de gestión de basura y cambio social

WIMAN RIZKIDARAJAT

<https://orcid.org/0000-0003-1946-9565>
Wiman.rizkidarajat@unsoed.ac.id
Jenderal Soedirman University, Indonesia

ANKARLINA PANDU PRIMADATA

<https://orcid.org/0000-0003-2169-2045>
ankarlina@unsoed.ac.id
Jenderal Soedirman University, Indonesia

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ABSTRACT

By the end of 2016, Banyumas local government decided to shut down Tempat Pembuangan Akhir Gunung Tugel. The purpose of this paper is to show the failure of Banyumas local government to deal with the social change they made and to show legal and sociological excess caused by that failure. From a methodological standpoint, this paper operates both normative and socio-legal approaches. The results are, first, Banyumas local government unable to deal with the social change they made. Second, Banyumas local government needs a new Peraturan Daerah to substitute the prior Peraturan Daerah to improve garbage management.

Keywords: Banyumas, Local governance, garbage management, Peraturan Daerah (perda), social change.

RESUMEN

A finales de 2016, el gobierno local de Banyumas decidió cerrar Tempat Pembuangan Akhir Gunung Tugel. El propósito de este artículo es mostrar el fracaso del gobierno local de Banyumas para hacer frente al cambio social que hicieron y mostrar el exceso legal y sociológico causado por ese fracaso. Desde el punto de vista metodológico, este trabajo opera con un enfoque tanto normativo como socio-legal. El resultado es, primero, que el gobierno local de Banyumas no puede hacer frente al cambio social que hicieron. En segundo lugar, el gobierno local necesita un nuevo Peraturan Daerah para sustituir al Peraturan Daerah anterior para mejorar la gestión de basura.

Palabras clave: Banyumas, gobernanza local, manejo de basura, regulación regional (perda), cambio social.

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INTRODUCTION

Law is an instrument created to guarantee enforcement of rights and responsibilities properly. From all that expressions, the law must be understood from two perspectives, as a tool to create social change enforced by authorities, and also as a product that happened from social change. By the time law and social theory evolved, we were introduced to the concept of the rule of law. The concept was introduced in the so-called modern law system. Since the rule of law obliged everything enforced by authorities should be understood by the people and society, it must be presented on both forms: top-down and bottom-up.

The top-down concept is to make law something concrete. Even though the law is the abstract one on its pinnacle, it must be explained so that it becomes a concrete one on its bottom. This process needs the link of sustainability in purpose to reach law as a whole system when it forced into people and society.

The bottom-up concept is to make sure that law was formed from the value that lives in the society. By this method, the rule of law will be prevailing since it is not something detached from society. On the contrary, it is something live and unattached by society.

When it is about change and dynamics of the society and law on bottom level something so very broad happened, from how people must obey the authorities to how people must deal with the law that regulates daily basis. The example of change and dynamics of the society that will be stressed in this paper to prove the relation between law and society is about the garbage management in Banyumas.

What this paper tries to develop, serve, and offer are new approaches that are applied in a new location. Brief researches such as “Persinggungan Hukum dengan Masyarakat Dalam Kajian Sosiologi Hukum” discussed a very broad correlation between law and society, which is too theoretical (Mushafi & Marzuki: 2018, pp.50-58). “Government Policy in Domestic Waste Management” stressed the correlation between government policy on domestic waste and public health in Daerah Istimewa Yogyakarta (Mulasari: 2014, p. 97), again on “Analisis Situasi Permasalahan Sampah Kota Yogyakarta dan Permasalahannya” it stressed different themes; how government policy limited domestic waste productions in Kota Yogyakarta (Mulasari: 2014, p. 97). While Model “Inovasi Pengelolaan Sampah Rumah Tangga” only discussed how to manage domestic waste on local scope without even discussed the public policy requirement (Hayat & Zayadi: 2018, pp. 131-141). And the last one came from “The Opportunities to Strengthen the Role of Bank Sampah to Reduce Municipal Waste Case Study: Bank Sampah Malang” that predicted intensification of Bank Sampah could be the solution that solves domestic waste in Malang, once again, without discussed how the proper law instrument should be created and implemented (Pratama & Ihsan: 2017, pp. 112-119).

METHODOLOGY

This research operates both normative and socio-legal approaches in data collection (Yusuf: 2014, pp. 59-62). Data sources were collected from legal-form reading and conventional techniques. Legal-form reading based on two legal-form, Peraturan Daerah Kabupaten Banyumas Nomor 6 Tahun 2012 tentang Pengelolaan sampah and Surat Edaran Bupati Banyumas Nomor: 660.1/7776/2018 tentang Pengelolaan Sampah di Banyumas. This legal-form approach obtained to accessing conformity of the policy that been made by the Banyumas local government to the contemporary change and dynamics of society. The conventional technique to collect data in this paper was collected by interviews with local natives in Kelurahan Pabuwaran, Purwokerto Utara, Banyumas that have been directly exposed to garbage piles in their territory.

RESULTS

"Law seems to have a special status among social phenomena by reason of its forms, its rituals, its specialized language, its special rationality even, and its specific social effects. It is surprising that social philosophers and sociologists feel able to offer an explanation of Society, which does not assign a central place to law. It is surprising that legal philosophers and lawyers can speak about law as if legal phenomena were self-contained and capable of being isolated from social phenomena in general. But, on the other hand, the law is clearly embedded in the totality of social process, which is its cause, and on which it has a substantial determinative effect, not least in providing the continuing structure of society, its hardware program (Allott: 2002, p. 71)."

What Allot mentioned above is a very good starting point to explain the correlation between law and society and how both of them influenced each other. As a discipline which influenced to or by society, every study which took the effort to connect law and society to assessed law-making process excesses to the society imagined, even though inexplicitly, new perspective about law and society essence (Cotterrell: 1992, p.82).

Even though many believe that Law manifests itself in different forms and at different levels of social reality, it is no consensus; the others still believe that law is a system of rules (Banakar: 2015, pp. 241-264). It found that some rules are substantive while others are procedural, some regulate private transactions whereas others gave powers or impose duties, and so on (Galligan: 2006, p.26).

Law is often seen, experienced, and employed differently by different groups in society. Some see it as a source of justice, while others see it as oppression. Some use it to reform social conditions, whereas others employ it to promote personal interests (Banakar: 2010, pp. 18-23). Some regard it as a place where marginalized groups can struggle for their rights; as Tuitt (Tuitt: 2004) stated that while others perceive it as an ideology implicated in perpetuating racial, gender, and class violence. But, according to Stjernquist (Stjernquist: 2000), still, another group sees the law as an expression of the social organization aimed at facilitating interpersonal and inter-institutional interactions and exchanges (Banakar: 2003, p. 81).

These examples at least allured how law and society are considered as something separable. Law is a discipline that is based itself on the legal positivism method. This method shared itself on three fundamental assumptions: first, the law is a system of rules, norms, or principles. Second, it is a matter of "social fact," and its sources of authority and validity are empirically verifiable and third, there is no necessary link between law and morality (Orucu & Nelken: 2007, p.243).

This means that the validity of a legal rule is not derived from its content but from its source. Moreover, although legal positivism recognizes the social nature of the sources of law and employs a broadly conceived empirical approach to determine the validity thereof, it nevertheless pays little attention to the social constitution of this agency (Banakar: 2015, pp. 241-264).

According to legal positivism, studies of the law must begin by considering what constitutes "exact" law. From that explanation, it can be proceeding to relate the legal positivism as rule-based thinking of the authorities that impedes reflexivity by narrowing down the alternative ways of thinking about the law of acting legally and authorities behind it (Gardner: 2001, p. 203).

Law is deployed "imaginatively" or "strategically" by individuals and groups to serve their specific ends. Litigating strategically in order to develop the scope of the existing law can require a degree of reflexivity and the ability to think outside the law's existing normative structures. Strategic litigation does not belong to the routine or "normal" operations of the law but nevertheless demonstrates the possibility and the limits of acting reflexively inside the law (Bauman: 2001, p. 56).

Reflexivity is enhanced at the level of agency by social consequences. The legal implications of this development may be discussed in three ways (Banakar: 2010, pp. 18-23). First, it may argue that as the individual actors' reflexivity is enhanced face to face social structures, the law gains in normative importance. Once traditional institutions, such as family and the local community, lose their normative force and ability to

provide means of social integration, control, and identity, or where society is fragmented into a multiplicity of incompatible beliefs and value systems, then the legal system becomes perhaps the only institution capable of providing a coherent and independent set of guidelines for action and codes of conduct vital for upholding a degree of continuity and certainty in relationships.

Second, it may operate the opposite view and argue that law and legal through of its agents are badly out of tune with social developments. The question that should be asked is whether the search for continuity and the need for certainty, combined with the constraints of rule-based thinking, are not delimiting the legal imagination and distracting it from considering alternative forms of regulation (Casey and Scott: 2011, pp. 76-95). Third, the point that under late modern conditions, where societies are socio-culturally diversified, the state is undergoing transformation, and many sources of normativity and law-making process are moved outside its reach, and it necessarily has more than one system of valid law. Under these conditions, nationally-based laws cannot be applied to all equally, while alternatives to formal rules of the legal system proliferate (Eisenstadt: 2010, pp. 1-15).

Legal enforcement generally and applying the law to the facts of a case, in particular, might appear as rational, formal processes based on a mechanical method of decision-making. In practice, they are mediated through interpretive processes, where the same rule can be interpreted by various authorities and lawyers in different ways, thus reflecting an array of legal standpoints, legal contexts, interests, and social situations (Black: 2012, pp. 1037-1063).

Based on that fact, legal rules may be regarded as standards of action or as one among many resources operated to negotiating the line between law and society. The interpretive and contextual nature of legal rules indicating that law consists not only of the rules themselves but also communicative processes through which the interpretation and application of rules are realized in various social and legal contexts (Baumgartner: 2001, pp. 99-113). From a sociological point of view, the rule-based approach exhibits law's attempt to rationalize the chaos of social life by internally redefining events and ideas outside the legal system in its limited vocabulary and by confining complex social processes to the conceptual boundaries of legal rules and standards (Giddens: 1999, p. 89).

A brief explanation will proceed this paper to the next discussion on how society became the central place on the law-making process. It is not strange to directly conclude that society is the central place in the law-making process. Baumgartner (Baumgartner: 2001, pp. 99-113), who is influenced by Black's (Black: 2012, pp. 1037-1063) positivistic approach, defines the sociology of law as 'the scientific study of legal behavior,' a study which deals only with what is 'observable and measurable' while pointing toward to 'predict and explain legal variations of every kind.' Sutton (Sutton: 2001) describes the law as a group activity and the sociology of law as the study of the legal behavior of human groups.' Sutton's (Sutton: 2001) definition appears to be the broadest in terms of the theoretical and methodological constraints to which it subscribes (Banakar: 2010, pp. 18-23).

Both theories have their own point of interest. Baumgartner (Baumgartner: 2001, pp. 99-113) adopts a strictly positivistic approach, which methodologically recognizes only what is "observable and measurable" as its proper subject matter, and theoretically equates law with positive law. Sutton (Sutton: 2001), on the other hand, avoids specifying how sociological studies of law should proceed methodologically, but he also avoids subscribing to any concept of law. At least in principle, Sutton (Sutton: 2001) allows the possibility of a form of "legal behavior" which exists independently of positive law and thus of the state (Banakar: 2010, pp. 18-23).

The intermediate level of these studies is referred to as Law and society studies. Many believe that these studies expand the correlation between law and society. It purposed to gain better relationship for each discipline, law and society studies, to prepare better preparations to face the changes and dynamics on society. The best example to point it out is the idea that Law and Society have brought about changes in legal education, judicial administration, and political discussion of law (Simon: 1999, p. 143).

Banyumas Local Government as The Agent of Social Change

From the discussion above, this paper will proceed to a specific discussion on the relation between law on society. This discussion will be applied to the case that happened in Banyumas. But, before proceeding, it needs to be explained why this paper suddenly discusses the case in Banyumas. This will give a clearer perspective to the subject reflect the authority that authorized to enforced social change by law-making process and how in fact, their role as an agent of social change utterly failed.

As a government, Banyumas local government is the authorized agent that can enforce the law-making process regarded on every matter that happened in society. Garbage management is one of society's problems. To rule the garbage management, Banyumas local government legislate Peraturan Daerah Kabupaten Banyumas Nomor 6 Tahun 2012 tentang Pengelolaan Sampah.

The Peraturan Daerah (Perda) seems to be fit to taking care of all problems that ever happened is happening, and will happens in the garbage management process in Banyumas. This session of discussion will point out the part of the Perda that "seems to be fit" to take care of all the problems.

In Chapter II Article 2, general requirements, it clearly explained that the garbage could be managed with this Perda are domestic garbage, and something seems like domestic garbage. This garbage means the garbage produces from commercial areas, industrial areas, specific areas, social facilities, public facilities, and/or another facility.

In Chapter IV, Duties and Requirements, Article 5-7 mentioned the duties of local government are to developing people's awareness on managing the garbage and relation between residence government and the government below it. The most important requirement of the local government mentioned in article 8 is to provide a complete process for garbage management facilities.

Chapter V, Rights and Responsibilities, mentioned in Article 9 that all people in Banyumas have their domestic garbage to be served by the local government. As the responsibilities, the people of Banyumas should involve themselves in their garbage management.

In Chapter VII, Garbage Management, mentioned in Article 15, mentioned general guide on garbage management consisting of garbage decreasing and management. Article 16 mentioned particularly garbage decreasing. Article 17 mentioned garbage management particularly. Article 18 mentioned the separation of the garbage process. Article 19 mentioned the garbage collecting process. Article 20 mentioned transporting garbage. Article 21 mentioned garbage processing. Article 22 mentioned the final garbage procession. Article 23 mentioned the provision of Tempat Pembuangan Akhir (TPA). Article 24 mentioned the provision of facilities on TPA. Article 25 mentioned possibilities that can provide by Banyumas local government on this management process. Article 26 mentioned the garbage that cannot have processed could be dumped on TPA. Article 27 mentioned the retribution of this process. This chapter showed a complete process that involving both government and people on Banyumas from top to bottom of the management process. A whole and integrated process.

The last one need to be mentioned, Chapter X, Role of People and Society is mentioned on Article 31 people can actively give suggestion to the government so that the process creating strong relation and synergy between them.

Reading all of the chapter and article mentioned above as a bare legal-form, it is almost impossible to find the crack on its implementation. But in fact, the place that been prepared as Tempat Pembuangan Akhir (TPA) Gunung Tugel shut down at the end of 2016. There must be something wrong here. Before conclude there is something wrong, it needs to present the data that can be considered as the main aspect that triggered the failure.

In 2018, Mongabay (Moukaddem: 2011) released two articles about garbage management in Banyumas. The first article, dated May, 29th 2018, titled "Banyumas Darurat Sampah. Ada Apa?" wrote about the rejection of people around the new TPA Kaliori. This TPA is the new TPA that substitutes the old TPA Gunung Tugel. According to the article, the reason for rejection is the spreading of pollution to the air and water around them.

The consequences of this spreading pollution were the people there unable to take benefit from its air and water. Moreover, since most of the people there work as a farmer, the pollution handicapped their farm. As mentioned in the article, the pollution of the water can harm their farm, so that they unable to do harvest it. Financially, the people admit they lose their income from the harvest, almost 7 million rupiahs each year.

The implication of the pollution encouraged people around Kaliori to rejected TPA and force the local government to shut it down and displace it with another one. The local government tried to took instant solution to put garbage back to old TPA Gunung Tugel. Unfortunately, people who live around old TPA Gunung Tugel took the same action to reject their solution. It happened almost four months, from June till September of 2018.

The second article came out on October, 9th 2018, titled "Setelah Carut Marut Sampah di Banyumas, Bagaimana Penanganannya," which took deeper perspectives on the contemporary event that happened in Banyumas. The first perspective revealed the fact that even though TPA Kaliori is broader than old TPA Gunung Tugel (it is reached almost 4,5 hectares with 3,5 hectares activated as garbage dump), it was placed near to the residential area, which was only 100 meters. Moreover, the liquid waste placed on the TPA was disfunctioned. As a result, liquid waste absorbed and handicapped people's farms.

The second perspective revealed that everyday Banyumas domestic activities produce 500 tons of garbage with an average of 0,3 kg/domestic activity. This shocking amount of garbage also revealed that only 55% amount of garbage was able to proceed, while the rest of it was left unprocessed.

When it crawled up to the culminating point, Banyumas local government decided to took the unpopular policy to published Surat Edaran Bupati Banyumas Nomor: 660.1/7776/2018 tentang Pengelolaan Sampah di Banyumas. That letter contains 7 points:

1. Shift the garbage management from government basis to people basis with the suggestion to separate reused garbage and to terminate non reused garbage by January 2nd, 2019;
2. Encourage the garbage source, e.g., domestics, hotels, restaurants, offices, markets, to be able to terminate the non-reused garbage as soon as they created it. If they were unable to do so, they could collaborate with an independent group that already exists in society;
3. Banyumas local government provided separation garbage hangar in some areas: Desa Tipar Kidul, Ajibarang, Desa Banteran, Wangon, Desa Karangcegak, Sumbang, Desa Kedungrandu, Patikraja, and Kelurahan Kradenan, Sumpiuh. The management of this hangar submitted to the independent group that already exists in society;
4. Ever since this authority refund, Banyumas local government will no longer withdraw retribution since January, 2nd 2018;
5. Recourse all leaders of the university, bureau, local government office, and BUMDes to manage the garbage produced at their every office to support this program;
6. Recourse all village government to support this program and collaborate with an independent group that already exists in society;
7. If any has the problem to manage the garbage, the letters already mentioned the contact number of an independent group that already exists in society in every garbage management hangar.

Through that two articles and Surat Edaran Bupati Banyumas Nomor: 660.1/7776/2018 tentang Pengelolaan Sampah di Banyumas there is something wrong with garbage management in Banyumas. In the cynic conclusion, it is proved that Banyumas local government unable to rationalize the chaos of social life by internally redefining events and ideas outside the legal system, and in fatal conclusion, it is proved that they unable to guide the social change they expected through legal-form.

DISCUSSION

This discussion contains an explanation of society as the object of social change. As mentioned on the method research above, there will be a presentation based on a deep interview with peoples as the member of society. The population took in this paper was RT 04/01 Kelurahan Pabuwaran, Purwokerto Utara, Banyumas. This interview was held from May, 7th 2018, to Juli, 9th 2018. The reason for taking this society as the population was because they were examples of the object of social change that been expected by Banyumas local government.

The first member of the society that was caught in confusion was Dartim Raharjo. He is Ketua RT 04 RW 01 Pabuaran. His confusion based on the fact that before Banyumas local government published Surat Edaran Bupati Banyumas Nomor: 660.1/7776/2018 tentang Pengelolaan Sampah di Banyumas, there was an only suggestion from Kelurahan that he, as Ketua RT, must be able to encourage the member of his RT to reduce garbage production also managed the garbage that been produced. According to his recognition, it must be easier if this suggestion came with an exact example such as: reuse the plastic bags that they already have, capitalizing plastic products to the plastic garbage collector, in local native language they called as taking rongsok or providing them a decomposing tool to create fertilizer from it. As a result, he only ordered the member of RT 04 to separate the garbage. But then again, how decisive was his order compared to the higher hierarchy's order?

Followed the TPA Gunung Tugel shutdown, which also impacts the displacement of Pabuwaran temporary garbage collector on vacant land near SDN Pabuwaran 01 to Karangcegak, the condition was getting worst when finally, the officer from the independent group under the Kelurahan's hierarchy decided to resign. Their resignation was based on the fact that as a substitute garbage collector, Karangcegak was located too far from Pabuwaran, which almost 5 km. As a further effect, for almost four months, a member of RT 04 decided to burn down every plastic garbage. It wasn't an easy task to burned the garbage that month since it was raining season. This impact hit hard to RT 04 when from this unfinished garbage management problem, on that month twelve of their members suffered blood fever.

The second member is Siti Rokhimah. She is Dartim's wife. Automatically, as Ketua RT's wife, she is Ketua PKK in RT 04. Proceeded her husband's order, she tried to manifest that on PKK through "domestic policy," which is easier to understand by domestic housewives, a dominant women identity in RT 04. The idea was to be as creative as possible and to capitalize the plastic garbage.

Siti decided to command all PKK members to collect the "proper and aesthetic" plastic garbage that has been produced from domestic activities. As a result, PKK member collected plastic that "meet the criteria." They decided to transform it into things that contain function on a daily basis, e.g., bags, tablecloths, house accessories, to kid toys. When they transformed it, they were involved in the production process. But when it came to the idea to materialized something, it should be understood that they just finished the whole process, which also involved the distribution and consumption process. Unfortunately, they failed in that two advanced processes. As a result, there was only production accumulation, which actually created another form and amount of garbage.

Margi Ariyanti, the third member of society, explained a very interesting point of view. As the member of the society who took part in transforming plastic garbage into something that contains function on a daily basis found the heart of this accumulation problem. It was that the peoples themselves.

She found that everyone, at first, will be so interested when they spot the bags, tablecloths, etc. For them, it's quite good and aesthetic, so that it can be brought out the desire to consume on other people. But, when it came to the question of the materials from the things, people started to lose their taste in it. She adds that most people thought that when it came from garbage, it can generally be assumed as something dirty and can creating disease.

These grass-root voices proved that as the object of social change, they never able to conformed themselves

to the tool that been provided. In contrary, they repeatedly caught on confusion. Quoted from Baumgartner (Baumgartner: 2001, pp. 99-113), as mentioned above, in this case, the subject of social change unable took inventory to make law as 'the scientific study of legal behavior,' a study which deals only with what isobservable and measurable' while aiming to 'predict and explain legal variations of every kind' from its main source and its main object, the society.

CONCLUSION

The brief explanations can be concluding two things. First that Banyumas local government is the agent of social change, the subject, and the reflexivity. It can be proved from the fact that they are the authority that can create, legislated, and enforced legal-form, in this case, Peraturan Daerah Pemerintah Banyumas Nomor 6 Tahun 2012 tentang Pengelolaan Sampah as the tool to guide social change (HSB & JULIANTHY: 2018, pp. 1-8).

The social change that has been expected is the collaboration between Banyumas local government and the society on managing the domestic garbage. By Peraturan Daerah Pemerintah Banyumas Nomor 6 Tahun 2012 tentang Pengelolaan Sampah (HSB & JULIANTHY: 2018, pp. 1-8), it seems everything is facilitated properly. But, by the time the amount of garbage escalating from collaborating effects, e.g., fail implementation of legal-form that created, TPA Gunung Tugel shutdown, and society's incomprehension to manage their own domestic garbage, a local government unable to deal with it. This proceeds to the second conclusion that Banyumas local government utterly failed to deal with this problem. This failure increasingly surfaced with the publication of and Surat Edaran Bupati Banyumas Nomor: 660.1/7776/2018 tentang Pengelolaan Sampah di Banyumas. The publication was not a form of problem-solving rather an escape plan that exposed Banyumas local government's failure to deal with this contemporary event that happened in society.

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BIODATA

WIMAN RIZKIDARAJAT: The currently affiliation of Wiman Rizkidarajat is Jenderal Soedirman University, Indonesia; Address: Purwokerto, Jawa Tengah, Indonesia; Phone: 08122794432

ANKARLINA PANDU PRIMADATA: The currently affiliation of Ankarlina Pandu Primadata is Jenderal Soedirman University, Indonesia; She has two main skill: Sosiologi Perdesaan and Sosiologi Pendidikan. E-mail: ankarlina@unsoed.ac.id.

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