

THE MOVEMENT OF SALVAGING THE ENVIRONMENT AND THE DILEMMA OF LOCAL DEMOCRACY (CASE IN BATU TOWN, EAST JAVA)

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Democracy is explained as the ideal political system in which all citizens could fulfill their individual needs. Besides, the State is obligated to ensure citizens' economic, social, politic, and environmental rights. Related to the previous statement, the movement of salvaging the water source in Batu Town, East Java, is interesting to analyze. Joining NGOs, three villages that are the users of the water source organize an environmental movement for halting the construction of the hotel close to the water source. The main figures of the movement are anxious about the potential risks of the construction. Here, the issue about the fulfillment of environmental and social rights and the practice of local democracy develop. Some research findings can be summarized as the followings. There are the blessings of democracy, namely: no violent actions and the utilization of constitutional channels. Unfortunately, the democracy also still leaves some shortcomings, namely: 1). the closeness of dialogue among the conflicting parties, 2). the prosecution of hotel investor, 3). the deadlock of the solution outside the court. Then, the factors that cause the shortcomings are: 1). the conflict of actors' rationality, 2). the conflict of authorities, and 3). the clash of game rules.

Keywords: the movement, democracy, environment/natural resource conflict

INTRODUCTION

After the fall of Soeharto regime, there has been the current development of democracy and democratization in Indonesia. The state governance is evaluated and the institutionalization of democracy is executed in most sectors. This political process is not only practiced in central government, but also in many local governments. Then, the institutionalization of democracy occurs in politic, economic, social, and education institutions.

Furthermore, one of the blessings of democracy is ensuring

community freedom. The rights of community are acknowledged and those rights are possibly communicated freely without the fears by terrors that may be executed by the State. This guarantee as stated in the Article Number 5, the Regulations Number 9/1998 ruled that every citizen has his right to express his/her thoughts freely and to get the law protection.

Besides, the State protects these rights by facilitating the working of democratic institutions; therefore, communities have channels to struggle their interests. There are democratic institutions, such as: National Commission of Human Rights (*Komisi Nasional Hak Asasi Manusia/Komnas HAM*) and Indonesian Ombudsman Commission (*Komisi Ombudsman Indonesia/KOI*). Both institutions give guarantees about the citizen rights, both human rights and the governmental practices that should be practiced the best by state apparatus. This phenomenon shows that the repressive approach has been left, leading to the dialogue-democratic approach.

Problem/Purpose

The open public sphere for all groups to struggle their interests is the blessing of democracy because all interests can be discussed. Therefore, there is no single dominant party. This condition is not automatic in democratic state because the ideal condition is largely influenced by the participating actors including in this context of article related to the management of environment/natural resources.

Natural resources are one of resources that are utilized by many parties. Therefore, in a particular community there are many parties that have interests in utilizing the resources. Democracy should not stand still in this problem. The management of natural resources has strong relationship with democracy because it relates the State's decision in the public concerns. Democracy also has a relationship with the community rights to access their sustainable surrounding natural resources.

Deliberative democracy is one of the kinds of democracy that promises the aims. The democracy promotes democratic deliberation (inclusive and reasoning political dialogue) that is sensitive toward the plurality of environmental values and accommodates the politics of non human. Also, this democracy is oriented to the mutual understanding that tries to solve all problems through arguments (Smith, Graham 2003).

In this respect, democracy is expected to solve the problems, emerging from many interests in the management of environment and natural resources. The question whether local democracy can give solution to deal with the problems. What factors that determine the success of working local democracy? Then, this article will explain about the working of local democracy in the resolution of the environment/natural resource conflict.

The background of this article is the movement for salvaging the environment that is triggered by the conflict of hotel constructions that proximity to the water source. The water source is utilized by many parties including three villages that protest the construction of hotel. However, local government has its own authority to give license of constructing the hotel. Furthermore, hotel investor rejects stopping the hotel construction because the investor claims that he has a right to make a business activity as a citizen of the country.

In this condition, the State failed to solve the conflict among citizens. In fact, both local government and the local House of Representative left the process of solving the conflict that has ever been discussed by the conflicting parties. It can be stated that the absence of State institutions in solving conflict shows the powerlessness of democratic institutions to facilitate compromises and mediations. As a result, until this article is written, the conflict does not find the point of solution yet that is satisfying for all parties.

Also, this article will explain about how local democracy could not get successful in solving the conflict in the management of water resources. Although the democratic cultures have been practiced by the conflicting actors, the final satisfying solutions have not been reached.

Theoretical Framework/Literature Review

Some important points of democracy are stated by Charles Tilly (2007). The first is the division of democracy and the democratization as a process. Democracy is divided into four kinds, namely: constitutional, substantive, procedural, and process oriented. Constitutional explains about democratic laws of regime that are related to the political activities. These traits give an advantage that is different from the government system with other government systems.

Substantial democracy focuses on the condition of life and politics that promotes ideal conditions. The government finds it possible to promote social welfare, individual freedom, security, equality, social justice, public freedom, and peaceful conflict resolution. Meanwhile, process oriented approach explains democracy that identifies some minimum process arrangement that should exist and continue to create the democratic conditions.

Then, procedural democracy specifies the narrow range of government practices that determines how the regime is qualified as democracy through the general election that is followed by the number of citizens. Tilly states that there are four characteristics of democracy, namely:

1. The competitive multi political party system.
2. The universal adult vote right for all citizens.

3. The regular general election that prioritizes the fair practice.
4. The important political access for the main political parties to the voter through media and open campaigns.

Meanwhile, process oriented approach sees democracy differently from constitutional, substantive and procedural democracy. Dahl states that this approach chooses more on working with voluntary associations. This approach proposes democratic mechanism, such as: effective participation, equal voting, the enlightening understanding, agenda control and the involvements of adult.

Quoted from Dahl, Tilly explains poliarchal democracy that puts/locates six different institutions, namely: elected staffs, freedom, fairness, regular election, freedom of expression, alternative information source, relationship autonomy, and inclusive citizenship. From Dahl's criteria, poliarchal democracy points to the working process and the order between community and the officials. This criterion is far from the procedure standard.

Besides explaining about democracy, Tilly also explains the condition of democracy and de-democracy. A regime is categorized into democratic when the political relation is wide, equal, protected and binding consultations.

Moreover, democracy will result in the positive things as far as this political system covers the followings:

1. As an instrument to protect the community from the abuse of power from the leaders (Berry in Fachruddin, Fuad, 2006: 26).
2. Stated as an important aspects of democratic governance, such as: the pluralism of policy, State reformation, and the respect of human rights (Suharko, 2005: 58-59).
3. Covering some norms and values, such as: the solution of conflict through peaceful and institutionalized ways, the peaceful change in the changing society, the regular succession, the limitation of using violence, the recognition and appreciation of pluralism and the guarantee of law enforcement (Henry B. Mayo in Zuhro, 2009 : 18).

Democracy is stated in plural form (not singular) because it is defined from multiple perspectives. Democracy can be seen as government system and democratic values that are believed by the communities. Also, there are many arguments related to the practice of democracy. At least, there are two groups, namely: optimistic and pessimistic groups. Optimistic groups see democracy as the positive development of civilized community; especially it is seen from the appreciation and protection of individual rights in many freedoms.

Meanwhile, pessimistic groups see democracy from its failure of promised conditions. In the real democratic State, there are the worse

democratic practices, such as: the over freedom, corruption, and nepotism. Furthermore, when the State is in a weak condition, the democratic state will deal with economic, politic and social problems. In this condition, the pessimistic groups will be worried about the development of democracy.

Materials And Methods

This article is the result of descriptive qualitative research. Then, the research aims to describe the reality of the movement for salvaging the environment (water source). The approach of this research is ethnography.

The locations of the research are three villages (Bumiaji and Sidomulyo Villages and Cangar Sub Village, Bulukerto Village), Batu Town, East Java. There are some considerations why the researcher chosed Batu Town as the location of research, namely: 1). The special characteristics of environment, such as: the existence of Brantas Upstream, mountains, hills, forests, water sources, and rivers, and. 2. The massive tourism development that are signed by the massive changes in physical, biological and social environments occuring in Batu Town.

Then, the technique of sampling is purposive sampling in which the researcher interviews all parties that were involved in the movement for salvaging the environment, such as: the main figures of FMPMA, the main figures of NGOs that supervise FMPMA, officials and the member of the local House of Representative. Next, the techniques of collecting data are conducting the deep interview, observation, FGD (Focus Group Discussion), and documentary and literature studies.

RESULT AND DISCUSSION

The Setting of the Problem

The emergence of the movement for salvaging the environment was triggered by the construction of hotels that was rejected by the surrounding communities that are the users of Gemulo Water Source. The hotel has characteristics as the followings: the width of hotel is 9,358 m². The width of land that is located in Bulukerto Village is 8,700 m²; meanwhile, the width of land that is located in Punten Village is 358 m².

The width of building is 14,147.36 m²; the height of building is 12 m with the width of basement is 10.20 m. The planned hotel will consist of four floors, one basement, two ground floors, and 85 rooms with supporting facilities of three-star hotels, among others: Karaoke room, Café, Stage, Meeting Room, Restaurant, Safety Box, Multifunction Room (*Ruang Serba Guna*), Roof Garden and Swimming Pool.

The users of Gemulo Water Source perceive that the construction of hotel would cause the damage of water source. There are two possibilities of the damage which were disappearance of water flow and the destructed reservoir area . These damages were predicted in long and short terms. The argument of short term was supported by reason that the construction of hotel used the nail of mast (*tiang pancang*) and would penetrate the bottom area of water source. Meanwhile, the argument of long term viewed more on the risk of water source as a risk of the working of hotel, such as: waste of hotel and the possibility of hotel to take water from Gemulo water source if the planned water supply will not be sufficient to fulfill the hotel needs.

Therefore, three villages (Bumiaji and Sidomulyo Villages and Cangar Sub Village, Bulukerto Village) initiated the movement for the halting of hotel construction and making Gemulo Water Source as an conserved area. The initiators of movement are the public figures of community organization (HIPPAM (*Himpunan Penduduk Pemakai Air Minum*/the Association of Drinking Water Users), HIPPA (*Himpunan Penduduk Pemakai Air*/The Association of Farming Water Users) and Farmer Groups (*kelompok tani*). Some formal and informal leaders also joined in this movement. Then, strengthening the movement, three villages make an alliance with NGOs which are *Konservasi Brantas*, *Yayasan Pusaka* (Pusaka Foundation), Malang Corruption Watch and WALHI (Indonesian Environment Forum).

In the early period of movement, the four NGOs cooperated, but it was only limited to MCW and WALHI that continue to supervise FMPMA. Finally, the actors of movement initiated the organization called FMPMA (*Forum Masyarakat Peduli Mata Air*/Community Forum Caring Water Source). Because the organization is only a forum, there has not been any formal procedures. FMPMA is a flexible organization which aim to annul the hotel construction license.

The people demands that are the communities' anxiety should face with the stance of government that approved the hotel construction. In the government view, the license of hotel is appropriate and there is no something wrong in the procedures of hotel license. In fact, if there are the communities who object to the license, the license could not be annulled automatically.³ Also, referring to the recommendation of Team of The Center of Environment Research (*Pusat Penelitian Lingkungan Hidup*), Brawijaya University, the hotel construction would not cause the damage of water source.

³ The statement of KPPT (license office), Batu Town Government in the meeting with FMPMA, January 30, 2013

The stance of hotel is similar to the government stance. The license of hotel was complete and followed the license procedure. Also, the hotel investor rejected stopping the construction. Similar to the government, according to team of the Center of Environment Research (*Pusat Penelitian Lingkungan Hidup*), Brawijaya University, the construction would not result the damage of water source.

Finally, FMPMA initiated the pressures toward Batu Government and Local House of Representative. Negotiation was executed by FMPMA and Local House of Representative and the result was moving out the bulldozer from the location of hotel. Then, the second meeting was that the House decided that the hotel license should be reevaluated.

Then, when FMPMA perceived that there was no follow up from both the House and government, FMPMA initiated demonstrations. These demonstrations succeeded in pressuring the Major to make a statement letter that contained the annulment of hotel license. This moment occurred in Bumiaji Village Office, May 3, 2012. This moment is used by FMPMA when this organization initiated the following demonstrations. FMPMA demands that the Major realizes the promise and demands the execution of the promise.

Finally, FMPMA met the government. At that time vice Major was the representative of government. In the meeting the vice Major stated, "The building would not disturb the water source. It is the result of scientific study, also, the building is not a hotel; but just a cottage that is three floors".

*("Tidak akan mengganggu, itu sudah kajian ilmiah apalagi yang dibangun bukan sebuah hotel, namun rumah singgah yang hanya tiga tingkat")*⁴

Then, he intended to crush the demands of FMPMA by making a promise,

"If there is a destruction or contamination of water, he would halt the construction immediately. Or, if the communities object to the project, please prosecute it through PTUN (*Pengadilan Tata Usaha Negara/ the Court of State Administration*)".⁵

⁴ Radar Batu, 2 Februari 2013, "Dialog, Warga Walk Out"/Radar Batu, February 2, 2013 (23), "Dialog, Communities Walked Out

⁵ Radar Batu, 2 Februari 2013, "Dialog, Warga Walked Out" dan Koran SINDO, 2 Februari 2013, Pemkot Batu Memihak Investor, Warga Kecewa Pembangunan Hotel Terus Berjalan/ Radar Batu, February 2, 2013 (23), "Dialog, The Communities Walk Out" and Koran SINDO, February 2, 2013, Local Government Take a Side on Investor, The Communities are

Then, when the main figures of FMPMA concluded that the local government could not be expected to the solution giver, the sending of letters was executed. FMPMA invited the involvement of national State institutions, such as: Komnas HAM, Komisi Ombudsman Indonesia and Indonesian Environment Ministry. The institutions initiated mediation and the recommendations were published, whether government, hotel investor or FMPMA followed the mediation processes that were facilitated by the institutions. The mediation did not produce the consensus; however, the recommendations were resulted.

In the practice, the recommendations were not executed well. Seeing this condition, FMPMA initiated pressures to the institutions that made and should execute the recommendations. Finally, FMPMA initiated demonstrations for pressing the Major. In the third demonstration, the agreement was resulted. The agreement called it the Pointers of Policy Concerning on the Solving of Problem of the Plan of The Rayja Hotel Construction in Bulukerto Village, Bumiaji District (*Pokok-Pokok Kebijakan Langkah Penyelesaian Permasalahan Rencana Pembangunan Hotel D'Rayja di Desa Bulukerto, Kecamatan Bumiaji*)⁶

Then, after demonstrations occurred, government made a letter that the hotel construction should be halted. The letter was issued Batu Town Local Secretary on June 21, 2013 of which the number was 730/287/422.400/2013.

After the processes, there were meetings of FMPMA and government that proposed the land in the surrounding of Gemulo Water Source as the conserved area. In the meetings, government promised to purchase the hotel area using local budget (Anggaran Pendapatan Belanja Daerah). In reality the discussions had not finished yet; the hotel investor prosecuted the central figure of FMPMA. Finally, the meetings that were conducted more than one times did not result anything.

One of reasons why the hotel prosecuted FMPMA because the action that was executed by FMPMA in the hotel location on January 31, 2013 was presumed as the inconvenient actions and the kind of destructing activities. The moving of river stones and cements occurred; therefore, access to come into the hotel location was disturbed. Besides, the mass destructed plywood for keeping water irrigation and the mass had the

disappointed that the Construction of Hotel is continued.

⁶ Batu Government agreed to halt the field activities related to hotel construction. This process would be coordinated by the local government. Also the government promise to use the local revenue to buy the land.

labors that were inside to move away their motor vehicles outside the hotel location⁷.

Finally, the hotel investor made a report to police and prosecution to the Court. Then, the Court trials in Malang Town and Surabaya were conducted. After the court was executed for 8 months in Malang Court Office, the judge decided to reject the prosecution of hotel investor. Next, after the court trials was executed 10 months in Surabaya Court, the judge decided to reject the prosecution of hotel investor as well.

Then, hotel investor appealed to the Supreme Court. Today, all conflicting parties are waiting for the decision. Meanwhile, the call of police is still executed with the accusation of damaging the materials of hotel. Until this article is written, the calls of police have not finished; therefore, the case is not clear. Although the conflict occurred intensively; the process of getting solution did not touch to destructive things as the following.

1). Non Violent Actions

In every action, FMPMA initiates the mobilization of mass.⁸ However, the mass movement just occurred when demonstration initiated only. After FMPMA and government result a consensus/agreement, the mass went back to their villages. There was no violence, anarchy, and destruction. In fact, when the demonstration was executed in the hotel location, there was no clash among respective supports.

The similar actions were initiated by the hotel investor. The investor initiated strategies that are similar to FMPMA's strategies. The investor lobbied local government, Indonesian House of Representative, and national Institutions. Then, the public opinion was created through the media. Besides, all parties were ready to negotiate, although most meetings result in dead lock. This condition actually occurred because all parties had a commitment to avoid the violence.

⁷ Surat Tanda Terima Laporan Polisi, Nomor : STTLP/16.a/II/2013/JATIM/ RES BATU/the received letter of Police Report, Number: STTLP/16.a/II/2013/JATIM/ RES BATU

⁸ During the movement at least three times FMPMA conducted demonstrations. The first demonstration, on April 25, 2012, was followed by 2500 people. Then, the second demonstration, May 1, 2012, the number of people was 5.000, then, the third demonstration, June 17, 2013, the number of people was around 10.000 people.

2).The Utilization of Constitutional Channels

The initial strategy of FMPMA for salvaging water source is meetings, negotiations, lobbies, persuasion, and campaigns. The figures of FMPMA identify themselves as educated people, not rude people (interview). They are ready to discuss with government relating to the management of water source and the building of the hotels. Therefore, the figures of movement learned about the regulations regarding their concern about the management of water source and hotel license.

Also, they optimized the constitutional channels, such as: reporting the case toward the national institutions, namely: *Komnas HAM, Komisi Ombudsman Indonesia, and KPP (Komisi Pelayanan Publik/Public Servant Commission)*. When the institutions learned the reports of FMPMA, hotel investor initiated the reports by giving counter data. As a consequence, the conflict occurred in the mediating institutions. All parties seized public opinion. When FMPMA initiated the collective actions, they initiated the peaceful actions, such as: peaceful demonstrations and cultural based activities, such as: Puppet (*Wayangan*), *Bantengan Dance, religious gatherings (pengajian)* and *slametans*.

The Dilemma of Local Democracy

Although the salvaging of the environment was not oriented to destructive process, such as: anarchism and terror, local democracy still leaves some shortcomings, such as:

1. The deadlock of dialogue among the conflicting parties

When the construction of hotel emerged as the communities' anxiety, the main figures of movement requested the meeting with the House of Representative. Finally, the agreement was resulted. From the hotel location, the bulldozer was moved out and the construction of hotel was halted.

Then, the request of second meeting between FMPMA and the House was made by FMPMA. Finally, the meeting was successful and all parties met. The House decided that the license of hotel was reevaluated. At that time, the conflict halted. After FMPMA waited for the following decision, there was no following execution. Then, FMPMA initiated the pressure for Batu Town Government.

These pressures resulted in the meeting between FMPMA and Batu Town Government intensively. The meetings were executed more than one time by both the initiator and the Major. The meetings did not result the shared decisions. The first meeting discussed the plan of making conserved area. Then, there was no following real

action. Therefore, the coordination just resulted in the temporary decision such as: the halting of hotel construction.

Then, in the middle of trials between FMPMA and the hotel investor, FMPMA requested the meeting with the House again. This request was accepted; however, in the promised time, the members of local house representatives were absent. Finally, the figures of FMPMA were disappointed and the conflict is not resolved until this article is written. This absence of the local House of Representative in the planned meeting shows the absence of the local House of Representative in solving Gemulo Water Source case.

2. The prosecution of the hotel investor

While meetings between FMPMA and government were conducted, the hotel investor was involved in the conflict. The action was initiated by FMPMA in the hotel location (called “the moving of stones) was reported by the hotel investor as the stealing of the hotel properties. From here, the hotel investor saw this case criminal case. Therefore, the main figures of movement should deal with the calls of police.

Besides, the hotel investor reported the prosecution toward the figure of FMPMA to the court. Then, the case was judged in Malang and Surabaya Courts. Furthermore, the legal process is separated between police institution and the courts. Although the two times prosecutions of hotel were rejected by the Courts, the calls of police are still executed.

3. The deadlock of the solution outside the court

There are some solutions to solve the problem, namely: 1). the purchasing of hotel location initiated by local government. Although this solution was discussed, this solution is difficult to be executed. On the one side the local government could not execute this concept; on the other side, the hotel investor did not accept the solution. 2). the annulment of hotel license by the Major. However, the Major was not ready to annul the license because he was worried about the prosecution of the hotel investor to him.

The Major stated as the followings,

“Government has a commitment to save the water sources in Batu Town. Related to the license of The Rayja Hotel, the government still looks for the solution in order that there is no legal impact in the government”⁹

⁹ KORAN SINDO, Massa Duduki Balaikota Batu, 18 Juni 2013/KORAN SINDO,

Although the figures of FMPMA and WALHI were ready to support the Major's decision, the Major did not annul the hotel license. As the deadlock of solutions and ineffectiveness of dialogue between the local House of Representative/Government and FMPMA; finally, there is no final solution.

After some experiences related to the failure of mediations were experienced by FMPMA, the local institutions are not trusted by communities, especially the three previous villages mentioned. The main figures of movement have never expected to the roles of political institutions. FMPMA is no longer willing to lobby the Major and the local house of representative.

Also the Major and the House ignored this case, then this case has no clarity. Until this article is written, there is no way to solve this case especially outside the court. Finally, all parties waiting for the working of the Court.

Democracy is chosen to be the government system because it promises the better condition. The strength of democracy is because of the respect of citizen and State rights. The respects are strengthened by regulations. Therefore, the practice of democracy must create the ideal conditions, such as: the resolution of public problems that are faced by government and communities including the conflict of natural resources.

In fact, democracy did not afford to solve the problem. In other words, the strengths of democracy have not emerged in the case of the salvaging of the environment here. The real case is the dialogues and mediations that were executed and still ended without significant results. All parties kept in their principles strongly, then, the dialogues were not continued.

Some factors that cause the dilemma including:

a. The conflict of actors' rationality

From the views of people who join FMPMA, water source is their life. The communities really depend on the existence of water source for drinking, farming, and ritual activities. Meanwhile hotel investor presumes that hotel construction is one of the investment rights. It is related to the right for life. Also, the hotel investor would not move the location because the investor' belief that the land of hotel has luck (Chinese=*hoki*). The hotel investor rejected the offer of the government to make the land as a conserved area. Then, government is reluctant to

annul the hotel license because the process of license has followed the existing procedures.

Although the license has come under review by the recommendations of the national institutions, such as: Kantor Lingkungan Hidup, Komnas HAM, and Komisi Ombudsman Indonesia, the Major does not annul the license. One of reasons is that the Major worries about the prosecution of the hotel toward him.¹⁰

Here, there is the clash of rationality between one another, FMPMA Has ecological and social rationality while the hotel investor has economy and administrative rationality. The government itself uses the political rationality. Then, all parties keep in consistently with their respective rationalities.

b. The conflict of authorities

The involvements of National Institutions (*Komnas HAM, Komisi Ombudsman Indonesia*, and the Indonesian Environment Ministry) are the efforts of FMPMA to reach the solutions. Considered by FMPMA that the solving of case in the local level could not be expected, then, FMPMA moved the case in national level.

This effort resulted; the national institutions worked. The mediation processes were executed and the recommendations were published. The contents of recommendation should be executed by both the hotel and government. The contents are the halted hotel construction and the reevaluation of hotel license.¹¹

However, both government and the hotel investor took it easy. Both referred to the license regulation that was used by Batu Town government. Then, in the regional autonomy, the management of natural resource is the authority of local government. There is no intervention from outsiders. The outsiders just give some advice that

¹⁰ ibid

¹¹The recommendation of the ministry of environment of which number was B9430/Dep.V/LH/HK/08/2013 stated important points, namely: For the process of construction activity and business, The Rayja Batu hotel Resort should have the document of analysis of environmental impact (*AMDAL/Analisis Mengenai Dampak Lingkungan*). Then, Indonesian Ombudsman Commission stated that there was mal administration in the license of hotel construction. Komnas HAM considered that the construction of The Rayja Cottage should be halted immediately because the project had still not fulfilled the procedure as the existing regulations. When the hotel investor still constructed the hotel, it meant that it could be guessed that the violation of human rights and regulation was being executed by the hotel. Therefore, Komnas HAM recommended the Major to give the firm sanction to the hotel according to the existing regulations. If the Major did not give any sanction, there was an indication of the violation of human rights by omission and the violation of law.

does not bind the government. The similar view is owned by the hotel investor. In many opportunities, the hotel investor stated that the recommendations are only not binding suggestions.

This condition was worsened by the weak execution of recommendations. The institutions do not have the executing force for the execution in the field. Finally, the recommendations are just recommendation without the following plan.

Then, when the prosecutions of hotel were rejected by the Court, the police still executes the call related to the moving of stones in the hotel location. It can be stated that the verdicts of court does not have correlation with criminal case in the field. In the common sense of the figures of movement, they questioned why the verdict of court could not halt the calls of police.

c. The clash of the game rules

In the Indonesian law, there is a clash of regulations. The different regulations took a side the movement activists and hotel investor. The legitimation that took a side of salvaging the environment is the guarantee of the health and better environment. Constitution 1945, Article 28, H , verse (1) states as the followings,

“Each person has the right of prosperous life both physically and non-physically, living, and getting the good and health environment and health service.

Then, the rights to participate in the struggling of the better environment as stated in the regulations number 32, 2009, article 70,

“Communities have rights and the widest opportunity to participate actively in the protection and management of environment”

In this context, it can be stated that the increasing citizen participations in protecting and managing the environment is the positive side from the developing of civil society. This condition will contribute to the development of democracy.

Then, when FMPMA criticized the license of hotel construction, the figures found the oddness, especially those related to the regulations. As stated in the regulations, the construction close to water source should have a distance at least 150 meters¹². In fact, the distance between the hotel building and water source is under 200 meters.

¹²Government Regulation Number 26, 2008 concerning the Plan of Nation Space. The criticized article is Article 53, (3). The area giving protection to land water as is intended in Article 52 verse (5) letter c consist of: a. added area of land water; and b. boundary of water source. Then, in article 62 verse 2 is explained, “ The area of water source boundary as is intended in article 53 verse (3) letter b is determined by criteria :

Besides the location of hotel does not follow Batu town Local Rule Number 7, 2011 concerning the Plan of Spatial Area. In this regulation, critics are related to the zone division of agricultural and tourism area in Batu Town. According to article 17 (5) it is stated that environment center in BWK III (zone area) is decided on as the following:

“Bumiaji village functions as the center of trade and local scale service, and the activity center of *agrowisata* (agricultural based tourism) and *agrobisnis* (agricultural based business) that are completed by the facilities of tourism supporting service, such as: villa, local traditional trade center and the facility of basic and advanced education”.¹³

However, the above regulations clashed with the investment rights that also become one of the citizen rights. When there is a citizen who interfered the other’s business concern, the activity is categorized as criminal action. The action will be threatened by the criminal articles, such as: the destruction and stealing of the other’s properties. This kind of articles open the possibility that actions for the salvaging water source are categorized as criminal actions. Furthermore, these articles open the practice of criminalization.

The condition is opposed to the legal guarantee as stated in the article 66, the regulations Number 32, 2009 that states,

“Every people who struggle for the right of good and healthy environment could not be prosecuted in criminal and accused in civil”

Meanwhile, related to regulation is the government interest. In the regional autonomy, the position of government is dilemmatic. In the one side, government needs supports from investor, on the other side; government needs the support of citizens.

To annul the hotel license is the solution that can be executed by the Major. However, for the Major, this decision is risky because the hotel investor can prosecute him. In this context, government has its own interest in making its position “safe”.

Discussion

Democracy promised the better condition because the citizen rights would be fulfilled and protected. Therefore, the citizen’s right for protecting the environment is protected as well. In fact, when the rights

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- a) Land surrounding water source that has benefit for keeping the function of water source; and
 - b) Area with distance at least 200 meters from water source.

¹³ This regulation states that Bulukerto Village (the location of hotel) is not planned to be a tourism site including the construction of hotel.

clash, democracy just functions to facilitate the communication of interests and aspirations without finding the solution.

Democracy has been in dilemma because the State failed solving natural resource conflict. State of local government and the House of Representative do not have concepts how to manage the conflict. All this time, they just have interests to practice the populist politics. The important thing is getting much sympathy with the principle "safety first".

Then, state apparatus plays with the capital owner that makes all parties "hostaged". When the decision makers should make a decision that take a side on the communities, they are going to rethink because this decision will cause the risky relationship with their alliance.

In this point, the State could not take a decision that is based on the common/collective interests. Furthermore, when the civil society is stronger, the State could not afford to accommodate all interests. As a consequence, the State could not do any ignorance. This political condition is not better because it potentially causes the uncertain politic and democracy itself.

The above feature support the theses that democracy is in the worrying condition because the commitment to create democratic order is not supported by moral instruments dan skills. The quality of democracy could not be separated from the morality.

CONCLUSION

Democracy as a mechanism results in positive and negative sides. Based on the freedom of citizen, democracy assures the rights of citizens. Then, the institutionalizations of democratic values have guided communities to the non violent actions.

However, democracy has not still contributed to solve the solution. It just promises the peaceful instruments that avoid the destructive actions. There is no significant benefit if democracy just facilitates the problem resolution without final solution. In this context, democracy is just accessories that noises political arena without contributing substantially.

In other words, in the contexts of the salvaging environment in Batu Town, democracy has not contributed to the problems resolution. Hence, the democracy should be questioned again. In the future democracy does not only accommodate the environmental movement, but it also contributes to the finding of significant results.

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