

No. ISSN : 2339-1650



universitas
bandar lampung

THE FIRST
INTERNATIONAL CONFERENCE ON
**LAW, BUSINESS
& GOVERNANCE**

23-24

OCTOBER 2013
BANDAR LAMPUNG
UNIVERSITY (UBL),
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PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the First International Conference on Law, Business and Governance (Icon-LBG 2013) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 67 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Utrech University, Maastricht University, Unika ATMA JAYA, Universitas Sebelas Maret, Universitas Negeri Surabaya, Universitas Jambi (UNJA), Diponegoro University, Semarang, Universitas 17 Agustus 1945 Jakarta, Universitas Bandar Lampung, Universitas Andalas Padang, University of Dian Nuswantoro, Semarang, Universitas Terbuka, Universitas Airlangga, Bangka Belitung University, President University, Tujuh Belas Agustus University Jakarta, International Business Management Ciputra University, Surabaya, University of Indonesia, Business School Pelita Harapan University, STIE EKUITAS, Bandung, STAN Indonesia Mandiri School of Economics Bandung, Lampung University.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also gratefull to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

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URGENCY OF REGULATORY PRIORITIES WATERSHED IN ORDER TO CONDUCT AN INTEGRATED WATERSHED ADMINISTRATIVE LAW IN INDONESIA

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Abstract

Watershed destruction also triggered the destruction of the water catchment area around the peak. Has led to the destruction of Ciliwung river discharge rapidly changing. Integrated Destruction of Ciliwung watershed is one of the causes that make Jakarta will not be free from floods. Ciliwung watershed management is resource management efforts involving various parties who participate from the planning stages through to monitoring and evaluation. Classification is based on the Government Regulation No. 37 in 2012 that 8 (eight) watershed in the watershed JABODETABEK, Angke-Pesanggrahan, DAS of Krukut, DAS of Ciliwung, DAS of Buaran, DAS of Sunter, DAS of Cakung, and DAS of Cisadane and DAS of Bekasi, a restored watershed carrying capacity and categorized as Priority One. Optimization of central and local governments in order structuring regulation is needed in order to administration of law of integrated watershed management.

Keywords : Regulatory, Priorities Integrated, Watershed, Administrative Law.

1. INTRODUCTION

1.1 Background

Structuring Integrated Watershed Management Regulation in order to develop practices good governance at the central and local government through strengthening the role of the executive , Bappenas / Bappeda , Ministry of Forestry / Forest Service , Legal Department through strategies ,mechanisms , and development potential construction formulate legal drafting Regulation Integrated Watershed Management in order to develop practices good governance at the central and local government through strengthening the role of executive Bappenas / Bappeda , MoF / Forest Service , the Legal and through strategies , mechanisms , and development potential , as well as the preparation of regulatory procedures in order to repair attention to watershed conservation . Moreover Classification Based on the PP. 37 In 2012 that 8 (eight) watershed in the JABODETABEK watershed DAS of Angke - Pesanggrahan, DAS of Krukut , DAS of Ciliwung , DAS of Buaran , DAS of Sunter, DAS of Cakung, and DAS of Cisadane, DAS of Bekasi, a restored watershed carrying capacity and entry category PRIORITY 1, be very important in relation to the recent floods that occurred in the Greater Jakarta area. Repair procedures regulatory drafting to pay attention to the preservation of the watershed to be urgent . Moreover Classification Based on the PP. 37 In 2012 that 8 (eight) watershed in the watershed JABODETABEK DAS of Angke - Pesanggrahan , DAS of Krukut , DAS of Ciliwung , DAS of Buaran, DAS of Sunter, DAS of Cakung, and DAS of Cisadane Bekasi , a restored watershed carrying capacity and entry category PRIORITY 1 . Especially when seen from the losses resulting from the flooding that has just occurred in Jabodetabek the loss of trillions of human lives and livelihoods depend on the relationship with the surrounding nature conservation . Environmental concerns in principle arise when there is an imbalance between the human and natural resources that exist in the environment . Imbalance between the human and natural resources , among others, caused by the destruction of natural resources as a result of human activity, we conducted River watershed management . Things like that can happen due to the underdevelopment of human and environmental knowledge that poor economic life so that they are faced with the choice to make ends meet.

The development of widespread demands that official policies are pro - environment state can be reflected in the form of legislation remember to abide by all of the stakeholders. Law enforcement

becomes very important today, as said Teinzor " ... If one agrees that enforcement varying styles are also cultural differences related to the shift in the U.S. from traditional command and control to a more flexible system of industry self-regulation could therefore be a dangerous journey ... " ¹ No exception , Indonesia is also facing charges that the same , namely the need to formulate a policy that can be enforceable in the form of a separate law governing the environment . There is no policy that is integrated and linked with the comprehensive watershed management JABODETABEK supported by Academic Text.

Another resource element is also very important relation to Watershed Conservation is human resources . Humans are often regarded as obstacles or even as a destroyer of natural resources . Forms of destruction of natural resources by humans due to a lack of awareness and knowledge of mankind or because of the pressure of economic necessity. Because the human factor needs to be taken into account as well, in connection with the ultimate goal of the management of watershed management is to improve the welfare and prosperity to the people living inside or outside the watershed².

Development of human activity in the utilization of natural resources in the watershed management framework is intended to : raise and increase awareness , willingness and ability of people to be able to participate actively in the management of natural resources in order to achieve maximum benefit and sustainable.³ Watershed conservation success is ultimately determined by the user and the owner of the land itself . In this matter the motivation for the owners and land users feel obliged, willing, and able to carry out soil conservation in the context of watershed management.⁴

Watershed conservation efforts is intrinsically part of the environmental management in general . It is reasonable cause Watershed is one form of the environment. Environmental management forms another example: the management of marine , mining and industrial businesses , which all have the same goal which is to the welfare of mankind both present and future generations . Spatial planning problems that can be identified are as follows: synergy has not been handling the shift in land use , urban areas continues to increase and exceeds that specified in the plan. Problems in the management of water resources can be identified as follows: water in general has been very critical, yet well controlled use of space along the river banks and river management in the agency , the availability of water that can be used for a variety of increasingly expensive and scarce interest of both quantity and quality, giving rise to various conflicts between sectors and between regions, fluctuations in the availability of surface water is very high, so it often flooded in the rainy season and drought in the dry season . It is a form of upstream watershed conservation function has been substantially reduced, synergy between regions in the form of role- sharing between the Province / District / City State / District / City in the downstream areas in the upstream watershed management framework , these conditions provide an overview of the occurrence watershed damage to the problems that affect the surplus / deficit of water throughout the year . It is therefore important to conduct regulatory arrangement in 8 watershed. Watershed Management Priority 1 that restored and protected with a carrying capacity of good regulation is not only the norm but also the process .Destruction of Ciliwung watershed is one of the causes that make Jakarta will not be free from floods . According to the Head of Data Information and Public Relations National Disaster Management Agency Sutopo Purwo Nugroho , Ciliwung damage also triggers the destruction of the water catchment area around the peak . Has led to the destruction of Ciliwung river discharge rapidly changing . Of the data in the Directorate of Planning and the Ministry of Forestry Watershed management through watershed there are 8 Jabodetabek namely : DAS of Angke - Pesanggrahan, DAS of Krukut , DAS of Ciliwung, DAS of Buaran, DAS of Sunter , DAS of Cakung, DAS of Cisadane and Bekasi. For the total catchment area of 150 890 ha through the city, while the total area of 66 152 ha of Jakarta . Integrated watershed management is resource management efforts involving various parties have different interests, so that success is determined by many parties , not solely by the executor on the ground, but by those who participate from the planning stages through to monitoring and evaluation. Therefore very important to do the reconstruction regulation watershed management in the area related to the follow-up Law No. 41 of 1999 on Forestry and Government Regulation No. 37 of 2012 About WFP set up with a clear philosophy of how important the values of watershed management is absolutely necessary in the drafting of legal

¹ Steinzor, R.I., 1998. *Reinventing Environmental Regulation: The Dangerous Journey From Command to Self-Control*. Harvard Law Review, Vol. 22, p. 103-202.

² Cunningham G M., 1986, *Total Catchment Management – Resource Management for the Future*, Journal of Soil Conservation, NewSouth Wales 42(1), p. 4-5.

³ Mitchell, Bruce., B Setiawan, Dwita Hadi Rahmi, 2000, *Pengelolaan Sumberdaya dan Lingkungan*, Gadjah Mada University Press, Yogyakarta.

⁴ Nerbas M., 1992, *An Environmental Audit of the Eastern Irrigation District*, Brooks, Alberta, Canadian Water Resources Journal 17(4), p. 391 – 403.

regulation . Therefore, to escort WFP Integrated policy , became urgent legal drafting regulations to the construction DAS Eight Priority In Greater Jakarta in the Context of Development Practices Towards Integrated Watershed Governance Green Governance . Especially when seen from the losses resulting from the flooding that has just occurred in Jabodetabek swallow the loss of trillions of dollars.

1.2 Research Methods

This study used empirical methods or non- doctrinal juridical intended as an attempt to approach the issues examined by the nature of the law in accordance with the reality of living in society . The approach used is sociological / empirical approach using a non- positivistic and qualitative analysis.⁵ The research approach using qualitative research approach. By quoting the opinion of Denzin and Lincoln⁶ explained that qualitative research is a research that uses natural background, with the intention of interpreting phenomena and performed by letting the various existing methods .

1.3 Theory framework

A. Principle Legislation

Laws are written rules that contain a binding legal norms in general and created or established by a state agency or official authorized through the procedures set out in the Legislation. The legal system is to be realized under a legal system that serves as the constitutional system baselines effective in the process of state and national life everyday . Referring to Article 7, Paragraph (1) of Law No . 12 Year 2011 on the Establishment Regulation Legislation , Regulation District regulations including types Legislation. Consequently, the principle of the establishment of binding legislation also time to make decisions.

In the effort to create an effective legal system , the institutional realignment law , backed by the quality of human resources, culture and public awareness continues to increase, along with the renewal of legal materials harmoniously structured, and continuously updated in accordance with the demands of necessity .

Rule of law in society is often raises many issues , legal and even considered a legitimate instrument of control in the state law. With such a position , the law has the power to compel . Related to the existence of the law itself in the community, Mochtar Kusumaatmadja stated that the primary purpose of the law is a guarantee of order , fairness , and certainty.⁷

In the legislation there are characteristics that must be possessed, namely⁸:

- a. comprehensive general and thus is the opposite of the special properties and limited .
- b. is universal , because it was created to deal with the events that will come is not clear yet concrete . Therefore, he can not cope certain events .
- c. has the power to correct and repair itself . It is unusual for a legislation to include a clause that includes the possibility of judicial review.

The term statutory or legal drafting is a term commonly used in the repertoire of both academic and practical . " Legal " according to Indonesian dictionary is in accordance with the provisions of legislation or law . While the term " draft " can be defined as a concept , adding " ing " on the back can be interpreted as " drafting " or " design " . So " legal drafting " , is a legal drafting or design . More details are suitable for the preparation of the draft regulation demands , theories , principles , and rules of drafting legislation .

Within the framework of the establishment of regulatory , legal drafting new regulations should take heed the principle of formation of legislation that either as stipulated in Article 5 of Law no. 12 In 2011 , as follows : " In the form of legislation should be based on the principle of formation of legislation that good , which covers "

- 1) clarity of purpose
- 2) institutional or official right shaper
- 3) the correspondence between types , hierarchies , and substance
- 4) can be implemented
- 5) usefulness

⁵ Peter Mahmud Marzuki, 2006, *Penelitian Hukum*, Jakarta, Kencana Prenada Media Group.

⁶ Lexy J. Moleong, 2005, *Metodologi Penelitian Kualitatif*, Bandung, P.T. Remaja Rosdakarya.

⁷ Mochtar Kusumaatmadja, 2002, *Konsep-Konsep Pembangunan Hukum dalam Pembangunan*, Bandung, Alumni, hlm.5-6.

⁸ Satjipto Rahardjo, 2000, *Ilmu Hukum*, Bandung, PT Citra Aditya Bakti, hlm. 83-84.

6) clarity of formulation

7) openness .

Furthermore Article 6 of Law no. 12 of 2011 stipulates that " The content of legislation should reflect the principle of " as follows :

1) Humanity

2) Nationality

3) Kinship

5) Unity in Diversity

6) Justice

7) Equality before the law and government

8) Order and the rule of law

9) The balance , harmony , and harmony .

As for the "other principles in accordance with the law of legislation is concerned" , among others :

- a. In Criminal Law , for example , the principle of legality , the principle of no punishment without fault , coaching principles prisoners , and the presumption of innocence ;
- b. In the civil law , for example , in the law of contract , among other things , the principle of the agreement , freedom of contract , and in good faith .

B. Local Government Authority

Article 18 UUD 1945 states that " the division of the region of Indonesia for large and small areas , with the form of the government established by law, to perceive and remember the principle of deliberation in the system of government and the rights of local origin - special regions" .

Principles of Local Government According to Law No. 32 of 2004 according to Company Law No. 32 Year 2004 on Regional Government there is some principle of local autonomy is used as a guide in the formation and implementation of autonomous regions , namely :

- a. Implementation aspects of democracy, justice, equality and diversity and the potential of the Region;
- b. Implementation of regional autonomy based on broad autonomy, real and responsible ;
- c. Wide implementation of regional autonomy and placed intact on the Regency and City, while the Provincial autonomy is limited ;
- d. Implementation of regional autonomy should be in accordance with the state constitution guaranteed the harmonious relationship between the central and regional and inter- regional ;
- e. Implementation of regional autonomy should further enhance the independence of the Autonomous Region .

Autonomous systems are now imposed by Act No. 32 of 2004 is autonomy . On that basis, Law no. 32 of 2004 provides authority autonomy to the District / town (only) based on the principle of decentralization in the form of autonomy , real and responsible . The authority of local autonomy is the freedom to govern that includes authority in the field of foreign policy, defense, security, justice , monetary and fiscal , as well as other fields set by government regulation . Autonomy flexibility extends to the whole authority and round in its implementation from the planning , implementation , monitoring , control and evaluation .

Local authority to create legislation that comes from the local level tasks (medebewind) is more limited than with the affairs in the field of autonomy . In the field of co-administration authority is limited to the affairs of organized ways that require assistance , while the authority to regulate its own affairs remain with the unit of government that helped . Nevertheless , the region has the complete freedom to regulate the ways perform tasks. Because of these freedoms (although limited to implementing ways) in which the region is responsible for the implementation , then the co-administration is considered there is also an element of autonomy.⁹

Government authority has been explicitly stated in Law No. 32 of 2004 . To implement these regulations have been prepared in Government Regulation No. 38 of 2007 on the coordination between the Government , Provincial Government , Local Government and District / City (State Gazette of the Republic of Indonesia Year 2007 Number 82 , Supplement to State Gazette of the Republic of Indonesia Number 4737) .

Intertwined with the authority of the PP. 38 of 2007 has provided guidance regarding the division of governmental affairs between the Government , Provincial Government , and the Government of Regency

⁹ I Gde Pantja Astawa dan Suprian Na'a, 2008, *Dinamika Hukum dan Ilmu Perundang-undangan di Indonesia*, Bandung: Alumi.

/ City , which was classified in proportion . In principle, Regional Government held government affairs under its authority , except in matters of government into the affairs of the Government . In Article 2 paragraph (2) Government Regulation No. 38 of 2007 determines that the affairs of government under the authority of the Government (Central) covering foreign affairs, defense, security, justice, monetary and national fiscal, as well as religion .

For the record , that it should be understood that all administrative matters outside the 6 (six) above areas are government functions that are shared between different levels and / or levels of government . In the elucidation of Article 2 Paragraph (3) PP. 38 of 2007 states that the government functions that are shared between different levels and / or the composition of the government , which is also called " concurrent nature of governmental affairs " is a government affairs outside government affairs under the authority of the government entirely , which is organized jointly by the Government , local government provincial , and local government district / municipality .

The affairs of government was composed of 31 (thirty one) field of government affairs include : education, health ; public works , housing, spatial planning ; development planning ; nexus ; environment; land ; demography and civil ; empowerment of women and protection of children ; family planning and family welfare; social ; manpower and transmigration ; cooperatives and small and medium enterprises ; investment; culture and tourism ; youth and sport ; national and political unity in the national regional autonomy , public administration , financial administration area , the area , staffing , and coding ; empowerment and rural communities ; statistics ; archives ; library ; communication and informatics ; agriculture and food security , agriculture, forestry and energy mineral resources ; maritime affairs and fisheries , trade , and industry .

Important points of the PP. 38 of 2007 has defined the governmental affairs division under Article 6 has been arranged that the authorities of the provinces and local government district / city govern and manage the affairs of a government based on criteria which consists of governmental affairs division of the obligatory functions and affairs of choice . In the conduct of governmental affairs to the local authority , local government autonomy to run to set up and manage their own affairs based on the principle of autonomy and assistance .

As intended by the mandatory government affairs is a government affairs shall be convened by the local government related to basic services (basic services) to the community . In Article 7, Paragraph (2) PP. 38 of 2007 has been determined 26 (twenty six) the affairs of local government shall include : (a) education , (b) health , (c) the environment , (d) public works ; (e) the arrangement of space ; (f) development planning , (g) housing ; (h) youth and sport ; (i) capital investment ; (j) cooperatives and small and medium enterprises ; (k) and the civil population ; (l) employment ; (m) food security ; (n) empowerment of women and protection of children ; (o) family planning and family welfare; (p) transportation ; (q) communication and informatics ; (r) land ; (s) national unity and domestic politics ; (t) local autonomy , governance generally, financial administration area, the region, staffing, and coding ; (u) and rural community development , (v) social , (w) culture ; (x) statistics ; (y) archival , and (z) library.

As intended with the affairs of government affairs that option is obviously there and the potential to improve the welfare of the community in accordance with the conditions , peculiarities , and the potential in the regions concerned . Determination of affairs established by the choice of the local government adapted to the factual characteristics of each region, covering (a) marine and fisheries ; (b) agriculture, (c) forestry, (d) energy and mineral resources ; (e) tourism ; (f) industry ; (g) trade , and (h) transmigration.

C. The Concept Of Watershed Management

Integrated watershed management implies that the elements or aspects related to the performance of DAS can be managed optimally resulting in positive synergy that will improve the performance of DAS in generating output , while the opposing characteristics that can undermine the performance of DAS can be suppressed so as not to harm performance of the overall watershed .

A DAS can be used for various purposes such as for the development of agricultural areas, plantations , fisheries , housing , hydropower development , utilization of timber and others. All of these activities is to finally meet human interests in particular an increase in welfare. Nevertheless thing to note is that these activities can result in environmental impacts if not handled properly will cause a decrease in the level of production , both in the production of each sector and at the watershed level. Because it attempts to manage the watershed either by synergizing the activities of existing development in the watershed is

necessary not only for the sake of keeping the production or purely economic, but also to avoid the natural disasters that can harm such as floods, landslides, droughts and other.

Given the things mentioned above, in analyzing the performance of a watershed, we do not just look at the performance of each component / activity in the development of the watershed, such as measuring the production / productivity of the agricultural sector alone or timber production alone. We must look at the overall existing components, whether they are positive output (production) as well as negative impacts. Therefore, in addition to integrated watershed management study conducted quantitative analysis, also conducted qualitative analysis. Such analyzes are essentially based on the relationship between a sector / development activities with other development activities, so that what is done on a single sector / component will affect the performance of other sectors.

One of the main functions of the watershed is the water supplier with a good quantity and quality, especially for people downstream. Transfer of forest land to agriculture would affect the quantity and quality of water management in the watershed that will be felt by the people in the downstream areas. Common perception at this point, the conversion of forest to agriculture results in forest degradation in regulating the water system, prevent floods, landslides and erosion in the watershed. Forests have always been associated with positive functioning of the water system in the watershed ecosystem.

2. RESULTS AND DISCUSSION

2.1 Integrated Watershed Management.

In order to provide a comprehensive overview of linkages in watershed management, is required in advance of the watershed boundaries based functions, the first is based on the upstream watershed conservation functions are managed to maintain the environmental conditions that are not degraded watershed, which, among others, may be indicated on the cover conditions watershed land vegetation, water quality, the ability to store water (discharge), and precipitation

Both watersheds are based on the function of the center of the river water utilization can be managed to benefit the social and economic interests, which, among others, can be indicated from the water quantity, water quality, the ability to deliver water, and ground water levels, as well as the associated infrastructure such as irrigation management of rivers, reservoirs, and lakes. The third watershed based on the function of the downstream river water utilization can be managed to benefit the social and economic interests, which is indicated by the quantity and quality of water, the ability to deliver water, elevation precipitation, and related to the needs of agriculture, clean water, and water management waste.

DAS critical level is associated with socioeconomic conditions in middle to upper watershed areas, especially if the forest area in the watershed is not widespread as watersheds in the Greater Jakarta and Java in general. Low level of public awareness will put the needs of primary and secondary (food, clothing, and shelter) is not concern for the environment that will improve watersheds criticality.

Another factor that led to watershed management has not worked well is the lack of coherence in the planning, implementation and monitoring of watershed management, including in terms of financing. This is because the number of agencies involved in watershed management such as government agencies, private companies and the public.

2.2 Watershed Management Practices

There watershed degradation in general, which by the occurrence of floods and droughts, as well as the rate of siltation of reservoirs, lakes, and rivers, showing the weakness of the watershed management system applied. Weaknesses of watershed management system in Greater Jakarta can be observed from the weakness of his watershed management functions, among others:

- 1) watershed management planning system is currently still partial (yet integrated), do not have a common goal (or sectors), less participatory drafting process, does not have a strong legal force, as well as less effective and less efficient (less referred to by various parties).
- 2) It concerns still sectoral watershed management, respectively working on their own based on their interests; been no division of duties, functions and mechanism of action are evident in watershed management. Watershed Forum has been formed but have not been able to work effectively.
- 3) Implementation of activities in the field tend egosektoral, yet integrated. Government policies elapsed areas tend to exploit natural resources for watershed improvement revenue (PAD); otherwise conservation and watershed rehabilitation in JABODETABEK rely on government (Central). Utilization of watershed environmental services have not been appreciated.

- 4) monitoring and evaluation function is only played by a particular institution , yet coordination and exchange of information . Supervision and control has not been a lot of community involvement in which the control of regulatory violations are less enforced consistently .

2.3. Structuring urgency as the watershed Regulation Order Administrative Law

In principle Urgency watershed as Orderly Arrangement Regulations Administrative Law are as follows :

- 1) Availability of policy or legal aspects that create enabling conditions (enabling condition) for the implementation of integrated watershed management .
- 2) Availability of policy or legal aspects that are clearly positioning integrated watershed management in the context of regional development and related sectors .
- 3) The policy or legal aspects that clearly can be the groundwork for institutions and communities in integrated watershed management .
- 4) Availability of policy or legal aspects that allow central - regional cooperation and inter - regional level integrated watershed management , including the distribution of funding and other resources , by decree with the relevant decision makers . Thematic approach at the level of integrated watershed management program is considered better at bridging the interests , roles and functions of agencies / institutions .
- 5) Availability of policies that have a legal aspect that gives incentives / disincentives are adequate for development actors in the basin .
- 6) Availability of policies that have a legal aspect that gives a clear governance for the people in the catchment area.

3. CONCLUSION

From the above it can be concluded that the critical level of watersheds is related to socioeconomic conditions in middle to upper watershed areas , especially if the forest area in the watershed is not widespread as watersheds in the Greater Jakarta and Java in general . Low level of public awareness will put the needs of primary and secondary (food, clothing , and shelter) is not concern for the environment that will improve watersheds criticality . Another factor that led to watershed management has not worked well is the lack of coherence in the planning , implementation and monitoring of watershed management , including in terms of financing . This is because the number of agencies involved in watershed management such as government agencies , private companies and the public . Local government plays an important role in generating regulatory and strategic Integrated Watershed Management do not overlap and the harmony between the regulation and the legislation thereon . In fact there are many regulations that are not in harmony and even overlap does not protect the environment. In fact, many regulations are canceled and contrary to the Act. This is due to the lack of knowledge and understanding of local government officials on legal drafting regulations . It is therefore necessary to establish regulatory arrangements and create law and order in the state administration Integrated watershed management based on academic manuscripts to create governance practices Integrated Watershed good .

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