

A Sociological Study on the Grassroots Environmental Movement after Reformation in Indonesia: A Case Study of Water Source Conservation Movement in Batu, East Java

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(開始ページ / Start Page)

1

(終了ページ / End Page)

203

(発行年 / Year)

2018-03-24

(学位授与番号 / Degree Number)

32675乙第228号

(学位授与年月日 / Date of Granted)

2018-03-24

(学位名 / Degree Name)

博士(公共政策学)

(学位授与機関 / Degree Grantor)

法政大学 (Hosei University)

(URL)

<https://doi.org/10.15002/00014637>

法政大学審査学位論文

**A Sociological Study
on the Grassroots Environmental Movement
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Rachmad Kristiono Dwi Susilo

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Acknowledgements

This dissertation was made possible by JSPS RONPAKU Program FY 2014-2016. Therefore, I am grateful to the Japanese government because the JSPS scholarship made it possible for me to earn a Ph.D. degree in the Department of Public Policy and Social Governance, Hosei University. Also, I am grateful to Hosei University for giving me the opportunity to add to my knowledge.

My advisor and co-advisor in this dissertation are Prof. Ikeda Kanji, Ph.D. and Aoki Takenobu, Ph.D. Their contributions to finishing this dissertation were significant, for which I am thankful. They are not only the best advisor and co-advisor, but also mentors and friends who contributed their thoughts, time, and energy to the completion of this dissertation. I avow that they have helped me with countless contributions, and of course, I am in debt to them.

I also give thanks to the administrative staff of the Research and Development Center, Hosei University, especially to Ms. Hasegawa and Mr. Higa Masaya. Their assistance in handling administrative matters, especially during my stay in Japan for consultation and finishing my dissertation, is highly appreciated. Without their facilitation, the process of finishing this dissertation would not have been smooth.

It is hard to imagine that I could have produced this dissertation without the enthusiastic support from many people in Batu. I have to thank Pak Supi'i, Pak Joko SP, and Mas Jumadi, the board members of HIPPAM Bumiaji Village who kindly permitted me to join FMPMA. Through this opportunity, I was able to participate and write about almost all activities of FMPMA. Mas Untung and Pak Wagiman, both founders of FMPMA, welcomed me to participate in fieldwork in Cangar hamlet, Bumiaji, and Sidomulyo villages. Their knowledge and experiences concerning the movement are worthy of this dissertation. H. Rudi, Pak Agus, Pak Nugroho, Mas Aris, and Mas Bowo welcomed me and allowed me to spend many hours in their homes during my fieldwork. Zaenal and Basuki were hospitable and sincere, spending much of their time in discussions about the movement. Heran Tri always welcomed discussing the movement with me although mostly spontaneously. He motivated me to complete this dissertation right away. I want to thank Chamim and Yunanto for their readiness to be interviewed several times. When I contacted them for interviews, they were always ready. My thanks go to Tubi for his hospitality and brotherhood while sharing information with me in his home. We thank Mbah Rai, Pak Gendut, Bu Rini, Pak Pardi, Mas Priyo, and Pak RW 1 Cangar for their hospitality when we chatted in several meetings and informal gatherings.

I appreciate all actors of the movement who cannot be mentioned individually. My interaction experiences with them during my writing of this dissertation has honestly taught me a great deal.

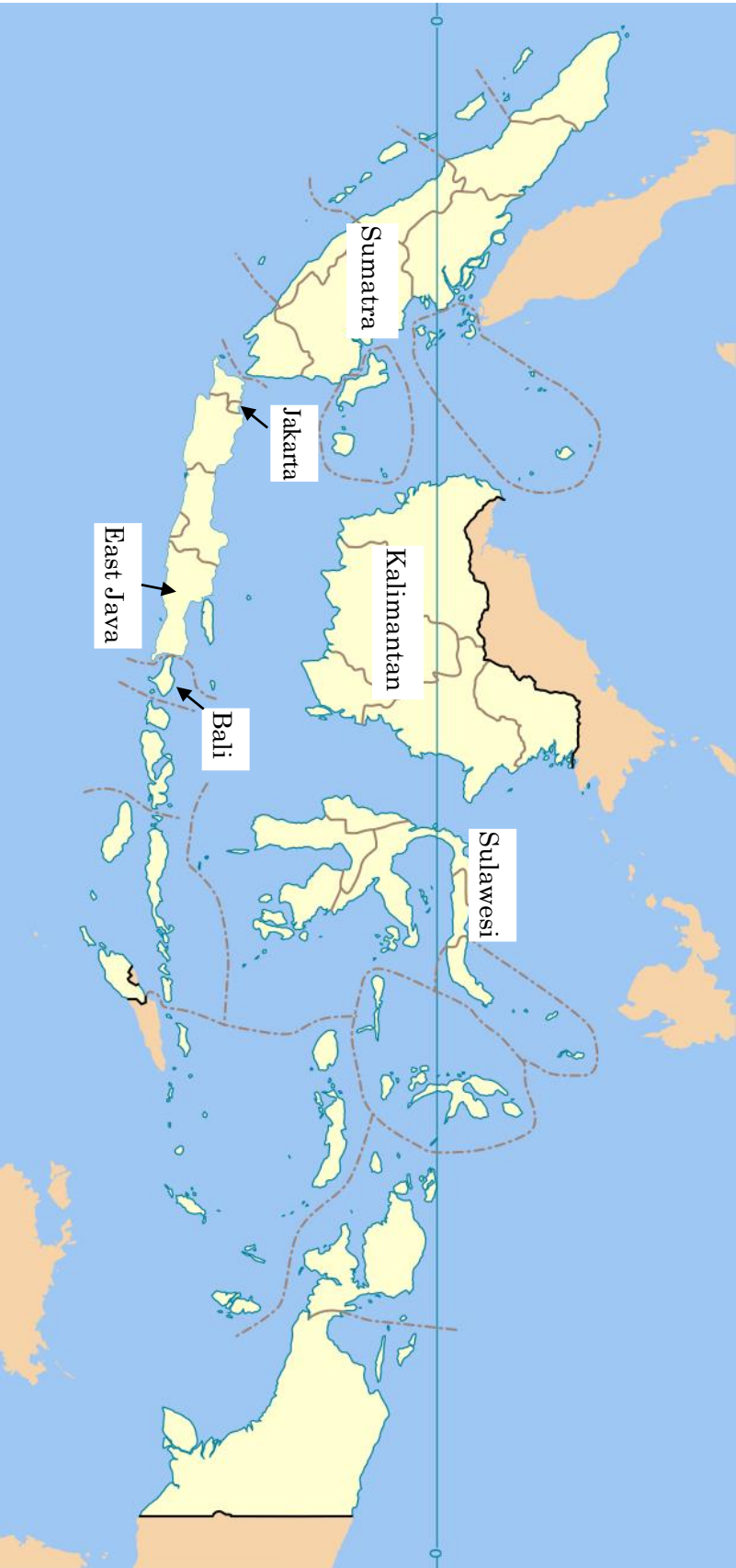
I also want to thank some officers in the Batu City Government, and especially Mayor Bapak Eddy Rumpoko, who was ready to be interviewed after making an impromptu appointment. I appreciate his availability at midnight for my interviews near a street food vendor around Batu City Square. My appreciation also extends to the head of Bumiaji Village and the head of Resident Community (RW) 1, Cangar Hamlet, Bulukerto Village, who always warmly welcomed me. I am also in debt to Pak Slamet Hendro Kusumo, Bu Bambang Parianom, and Mas Yusak, who were ready to discuss Batu City and have lent me some books on the history and the administration of Batu

City.

The rector of the University of Muhammadiyah Malang, Malang, East Java, Indonesia has given me a chance to earn my degree and facilitated my undertaking in the doctoral program. I highly appreciate his concerns. Also regarding the former Dean of Faculty of Social and Political Sciences, University of Muhammadiyah Malang, Dr. Wahyudi, I especially express my gratitude for his constant motivation and recommendation. I do hope that you will get everything in return in the future because of your kindness, *amal sholeh*.

Finally, I would like to thank my wife, Anita D. Retnowati, for devoting her endless care to our family during my studies and fieldwork. Especially to her, I am sorry for frequently leaving our house to collect data in Batu City. I dedicate this dissertation to her and our daughter, Intan Rachmanita Nur Cendekia.

Rachmad Kristiono Dwi Susilo
Malang, Indonesia
February 2017



Map 1 Map of Indonesia

Chapter 1 Introduction

This chapter will show the overview of environmental issues and their background in contemporary Indonesia after the Reformation, as an introduction.

1.1 Environmental Crisis in Reformation Era

After the Reformation of Indonesia, the shifting policy toward de-centralization has brought many new types of environmental problems which were caused by the local government development policy. One of these new types of environmental problems is the water resource crisis in Batu city, East Java, which we discuss in this dissertation. The problems over environmental crisis around them due to the development of tourism infrastructures by the local government development policy.

The 2014 Indonesian Environmental Statistics show that every year from 2003 to 2006 around 1.17 hectares of forests were damaged. Based on the interpretation of 2005 Landsat images, the total percentages of forest area per island in 2005 were 19% (Java), 54% (Sumatera), 43% (Kalimantan), 43% (Sulawesi), and 71% (Papua). Plant (tree) destruction represented the most severe disturbances (Kementerian Negara Lingkungan Hidup 2010:11).

Meanwhile, forest fires in 2012 were estimated to span 8.3 thousand hectares. A dangerous condition can also be seen in damaged mangrove forests. Out of 3.99 hectares of mangrove forests (2013), the percentages of conditions were 47.71% (good), 15.52% (fair) and 7.94% (damaged). However, 28.82% of them cannot be classified due to their condition.

The damage above forest areas is not balanced by the intensive efforts of conservation programs. It has been proven that conservation activities like replanting and reforestation have experienced a downturn. In 2010, 1.79 billion trees were planted, while in 2012, this figure decreased to 1.44 billion trees (Kementerian Negara Lingkungan Hidup 2010: 113).

In addition to the above problems, there are other environmental crises, such as pollution, decreasing oil reserves, and natural disasters. A survey conducted by the Ministry of Environment on 57 rivers in 33 provinces (2014) found that 80 percent of rivers in Indonesia were polluted heavily. This condition was worse compared to 2012 when the pollution rate was 75.2%. Then, in 2014, as many as 14.60% of villages experienced air pollution, 10.69% of villages experienced water pollution, and 1.58% of villages experienced soil pollution. As for natural disasters, floods are the most common. In 2012, there were 540 occurrences, which went up to 636 occurrences in 2013.

These environmental crises and destruction occurred due to a combination of many factors, the result of development activities, and natural resource utilization. The rising number of cases of environmental destruction and decrease in environmental carrying capacity is caused by the growth rate of residents, infrastructure development, industrialization, consumptive lifestyles, weak law enforcement, and low human resources (Kementerian Negara Lingkungan Hidup 2010: 5). Development is an instrument of social change that does not always result in positive effects for both people and the environment.

After Suharto had resigned from the presidential position in 1999, triggered directly by the monetary crisis, the Reformation movement emerged to correct authoritative-centralistic development practices toward democratic decentralization. This political change was followed by changes in the management of natural resources. First, natural resource management was shared in a fair and democratic way between central and regional governments. Second, environmental management practices were openly criticized through both the local legislative council and mass media. Third, access to and management of natural resources were made open to local people who were previously disregarded in the New Order era (the Suharto's regime). Afterwards, direct participation of the people was widely invited, both in development planning and the management of natural resources.

Meanwhile, we can see the negative impact of the reformation by decentralization. The local government and communities started to practice over-exploitation of natural resources. Unfortunately, these practices are not matched by appropriate regulations.

Consequently, this decentralization still leaves confusion. (1) Conflicts occur, such as conflicts between the national and regional governments. (2) There are weak regions and intervention by the central government, especially in sectors where the central government still has interests in its authority. (3) There are often ambiguous regulations: political uncertainties, inconsistent laws and regulations, weak law enforcement, and uncertainties in land ownership, all of which cause conflicts among regional governments and conflicts among local communities. (4) Corruption has become more widespread and involves many parties, including both the central and regional governments. (5) There has been an income increase, which was obtained from the disturbance taxes and license fees on natural resource extraction (Semiarto Purwanto 2005: 230-232, Hariadi Kartodiharjo and Hira Jhamtami 2009: 35, Budy P. Resosudarmo 2006: 6-7).

In the Suharto's regime, the central government had full authority, but in the era of decentralization, local governments are stronger. However, because their control and management are weak, local policies result in collusive practices involving the local government and local entrepreneurs (Semiarto Purwanto 2005: 234). Environmental crises have continued to occur after the reformation movement. This can be seen in the poor forest management¹, a reduction in green open spaces, land that is left unproductive after it has been mined, and there is a lack of water supply in specific regions. In addition, social conflict has occurred as a result of the conflict of interests between the state and local communities, for example, between the local community and PT at Inti Indorayon Utama², the local community and PT Newmont Nusa Tenggara,

¹ Herman Hidayat (2005: 312) states that forestry problems have increased in Indonesia after the reformation. Despite the fact that there are now easier procedures for obtaining forest management permits, issued by regents or mayors, there has been an increase in illegal forest-cutting practices and log smuggling.

² This social-environmental conflict has occurred as a result of the operation of PT Indorayon Utama (which has changed its name to PT Toba Pulp.) It operates in the management of pulp and paper business, but it has damaged the forests and caused river pollution, due to waste. This conflict has gone on for 26 years and has not been resolved in the Reformation era. The people, NGOs, and other organizations have been against the establishment of the company and have asked the government to revoke the permit for the company. See Victor Silaen (2006) and Dimsos Manalu (2012).

and the local community with Pabrik Semen Indonesia³. In some regions, the local community has initiated resistance movements against environmental policies enforced by the government.

Given the development of natural resource management, whether in the New Order or Reformation era, which seems to be stagnant, the goals of sustainable development seem even more difficult to achieve. The Reformation era also does not show ideal conditions such as (1) good governance, (2) infrastructure improvement both economic and social infrastructure, and (3) pro-poverty policies. According to Emil Salim, the first Indonesian Minister of the Environment, development is not only guided by the government, but it involves the government, civilians, and businesses in a balanced triangular partnership (Emil Salim 2005: xxiv).

1.2 Environmental Laws in Indonesia

In contemporary Indonesia after the Reformation, there are lots of serious environmental problems, the especially crisis of natural resource management as mentioned above. However, Indonesia has many regulations about natural resources management for conservation of the environment.

The 1945 Constitution as the Fundament of Environmental Laws

In Indonesia, the management of water resource refers to the 1945 Constitution (*Undang-Undang Dasar 1945* = UUD 1945), especially Article 33 (3). This article states that "Soil and water and natural wealth contained therein shall be controlled by the state and used for the welfare of the people to the utmost" (Kementerian Hukum dan Hak Asasi Manusia 2010). In this context, the government just exercises its authority on behalf of the state; meanwhile, the owners of natural resources are all Indonesian people. On the other hand, because the 1945 Constitution just regulates the fundamental things, which are to adapt to actual cases, the government needs to make regulations that are consistent with the 1945 Constitution.

For instance, as the first regulation of water resources, Law No. 11 was issued in 1974. Just as in the 1945 Constitution, Law No.11/1974, water is recognized as national wealth and also a common resource that is prioritized for social utilities (Ismala Dewi 2013: 79-81). However, in its implementation, there are some drawbacks, namely the different interests among institutions, corruption, and budget shortcomings (Bunasor Sanim 2011: 50).

Basic Environmental Laws

According to Indonesia's 1945 Constitution, there are three fundamental environmental laws, as explained below.

(1) *Environmental Protection and Management: Law No. 32/2009 on Environmental Protection and Management, Chapter XI (article 70)*

³ This was a case that occurred in the Regencies of Pati and Rembang because the people, NGOs, and other organizations were against the establishment of PT Semen Gresik, which they thought would damage the environment. A cement factory is perceived to damage the limestone and sources of water that are used by the people; this condition would affect the livelihoods of people working as farmers. See Suharko (2013).

This is the legal umbrella for all of the environmental legislation in Indonesia. Law No. 32/2009 was an amendment of Law No. 4/1982 on Principles of Environmental Management and Law No. 23/1997 on Environmental Management and Protection. The former is the first law enforced in the wake of global and national awareness of the significance of environmental management (Takdir Rahmadi 2015: 39).

Law No. 4/1982 and Law No. 23/1997 lent a legal framework for developing other environmental legislation and for adjusting the existing laws (Koesnadi Hardjasumantri 2012: 76). The laws govern the involvement of all stakeholders, including the government, people in business, non-government organizations, and communities.

The recent law also includes Strategic Environmental Assessment (*KLHS/Kajian Lingkungan Hidup Strategis*) and guarantees for environmental rescue efforts. Batu government used the law as a reference in developing Regional Regulation No. 16/2011 on Environmental Protection, Management, and Preservation.

(2) *AMDAL (Environmental Impact Assessment): Government Regulation No. 27/1999 on AMDAL (Environmental Impact Assessment), Chapter VI article 33*

The aims of the regulation are three: (a) creating harmony between various businesses and activities in implementing environmentally sustainable development, (b) maximizing positive impacts of every business and activity and minimizing its negative ones, and (c) guiding decision-making on the implementation of business/activity plans with severe impacts on the environment.

(3) *Environmental License: Government Regulation No. 27/2012 on Environmental License*

This law regulates business owners' obligation to apply for AMDAL (environmental impact assessment), UKL/UPL (environmental management/monitoring efforts), and RKL/RPL (environmental management/monitoring plans). For instance, in East Java, every business is required to apply for UKL/UPL by Governor Regulation No. 30/2011 on Business and Activity.

Basic Laws for Water Conservation

Indonesia also has four basic regulations for water conservation.

(1) *Water Resources: Law No. 7/2004 on Water Resources*

The law governs class-action and the right to file a claim for NGOs about water resource management. The law is very important for Batu City because it opens the door for their movement (Takdir Rahmadi 2015: 191).

(2) *River Basin (DAS = Daerah Aliran Sungai) Management: Law No. 7/2004*

Forest management is aimed at creating to the maximum extent fair and sustainable public welfare by improving river basin capacity for the conservation of water. The government sets and maintains the adequacy of forest area and forest cover in every river basin (DAS), i.e., at least 30% of the river basin and island area with the proportional spread.

According to Law No. 7, 2004, the river basin (DAS) is a land area constituting an ecological unit with a river and the streams that function to catch, store, and distribute water originating from rainfall to lakes or the sea in a natural manner (Law No. 7/2004,

Article 1).

(3) River: Government Regulation No. 38/2011, on Rivers

This regulation aims to manage rivers for conservation. It controls licensing for the development of rivers, information system about the rivers, and community empowerment around rivers (Article 2). It also regulates the conservation of river basin areas.

This regulation articulates Law No. 7/2004, on Water Resources (Articles 25, 36, and 58). It is highly relevant for Batu on the Brantas River basin.

(4) Water Quality: Government Regulation No. 82/2001, on Water Quality Management and Water Pollution Control

The regulation governs the productive use of water, water quality classification and criteria, water quality monitoring, water quality status, water pollution control, and wastewater disposal fees.

Related Laws on Water Conservation

We need to pay attention to other regulations that are related to water conservation, although they are not directly concerned with water conservation.

(1) Space: Government Regulation No. 26/2008, on National Spatial Planning

This regulation contains guidance, policies, and strategies related to the utilization of public space. Planning and management are explained in detail. This regulation is further articulated in the Regional Regulation of East Java Province No. 5/2012 and, especially for Batu, Regional Regulation of Batu No. 7/2011 on Batu Spatial Planning 2010-2030 comes into effect. This regulation is essential for the water conservation to control the development plan around water sources.

(2) Forest: Law No. 19/2004, on Forestry

The law governs foundation and objectives, forest status and functions, forest management, forest planning, research and development, education, training, extension of forestry, transfer of authority, indigenous law community, community participation, class action, investigation, and penal provisions. Because, of Batu, lots of water sources are in forest areas, so this law is highly relevant for water conservation.

1.3 Water Policy and Governance in Indonesia

In this section, I will attempt to give an overview of the water policy and water governance in Indonesia.

Water governance in Indonesia is divided into two types: water resource management that is based on customs, as well as on the Constitution. It is through a customary law that each community has organized the ownership, distribution, and utilization of water resources, for example, in Subak in Bali (Jelantik Sushila 1991: 214). Meanwhile, the constitution-based management of water resources is implemented by institutions, which have the authority in this matter.

Water Policy in Indonesia

In the Dutch colonial period, the water resources were legislated to be the property of the government, and they were intended to be used for the business interests of Dutch colonialism. In the preliminary stages, irrigation systems were built, in cooperation between Dutch people and the communities, which was followed by institutional development. One of the models that was applied is that the irrigation water was distributed, based on a day and night schedule. The day schedule was for sugar cane farmers, and the night schedule was for rice farmers.

In the Old Order era (during the first President Sukarno's regime, 1945-1965), the water policy was stipulated by the 1945 Constitution, Article 33, and the Basic Agrarian Law No. 5/1960. The 1945 Constitution regulates that the natural resources are under the control of the State, as mentioned above. The Law on Basic Regulation for Agrarian Affairs, 1960, organizes the land, but also, water, of which the source is located under the land as stipulated. It can be concluded that this law regulates the unity among the land, water, and air. Water is the national riches; meanwhile, *adat* local customary law is also accommodated in the law.

In the New Order era (the second president, Suharto's regime, 1965-1999), Indonesian governmental policy on the management of water resource refers to Law No. 11, 1974, on Water Resource. However, it did not give any substantial bases to develop and use water and water sources. This law adhered to the principle of sustainability in the development (Article 10) and the protection (Article 13), including the description of pollution. To implement the law, Government Regulation of the Republic of Indonesia No. 22/1982, on Water Arrangement and Government Regulation No. 35/1991, on River were approved. In the law, it is explained that drinking water is given priority in water use in Article 13. Meanwhile, Government Regulation No. 35/1991, on River is intended to manage well and optimally by using the river for the public interest.

After Reformation (1999-), changes in the policy of water resource management are the follow-up to the issuance of the Law No.22/1999 and Law No. 32/2004, on Local Government. These laws stipulate that water must be managed in a decentralized way. It states that the local government has some authority in the management of water resources (Bunasor Sanim 2011: 49). The policy on water resources in the reformation era was marked by the enactment of Law No. 7/2004 on Water Resources. This law replaced Law No. 11/1974 on Water Resources. The main principles of the Law No. 7/2004 are different from Law No.11/1974, as it contains the rights of the customary community, an NGOs' right to sue, and rights for a water enterprise (Takdir Rahmadi 2011: 191, Gunawan Yusuf 2015: 65-70).

To implement the above Law, the following government regulations have been enacted: Regulation No. 16/2005 on Drinking Water, Regulation No. 42/2008 on Water Resource Management, Regulation No. 43 on Ground Water, Regulation No. 20/2006 on Irrigation, and Regulation No. 37 on Dams. According to these regulations, the local governments have strong authority. Moreover, if there is a particular interest, people can use water resources to conduct their businesses. This deregulation has been criticized, because it may cause severe environmental damage.

Two Forms of Local Water Governance in Indonesia: PDAM and HIPPAM

The water governance system in Indonesia is marked by the establishment of water management institutions, namely PDAM (*Perusahaan Daerah Air Minum*: Local

Government-owned Water Supply Company) and HIPPAM (*Himpunan Penduduk Pemakai Air Minum*: Water Supply Cooperative Association). PDAM is a local government-owned company working in the drinking water business. This is based on the Law of the Republic of Indonesia No. 5/1962, on Local Enterprise. The objective of the two organizations is the same; providing a drinking water service system to the people to fulfill the peoples' right to drinking water (Government Regulation No. 122/2015).

PDAM is a local government-owned enterprise under the administration of the local government. The status of this enterprise is stipulated in the Regulation of the Minister of Home Affairs and the local governmental regulations. PDAM plays the role of fulfilling consumers' rights for water and services, such as bills payments, complaints, new water connections, and other services (meter exchange, meter control, meter shift, and installment). According to the 2004 data, there are 278 PDAM's in Indonesia, and all of them are under the management of the district level government, except the PDAM in Jakarta, which is under the Provincial Government (Raja Siregar et al., 2004: 102).

Concerning the organization, all PDAM's throughout Indonesia have become the members of the Indonesia Drinking Water Company Federation (*Perpamsi = Persatuan Perusahaan Air Minum Indonesia*). This organization serves as a bridge of cooperation among (domestic or overseas) PDAMs and coordination with concerned agencies.

On the other hand, HIPPAM is a self-help, community-based association with its own initiative and village government under the control of the district government. The activities of HIPPAM are determined by the committee and the village government. As an example of HIPPAM, I will describe a HIPPAM in Batu, in Chapter 4.

Water Crisis and Governance Crisis

Water resources are one of the critical issues in contemporary Indonesia. Aspects of this crisis include water source scarcity, uneven distribution, and water conflicts. For example, in the Klaten district, Central Java, a severe conflict broke out between farmers and the bottled water company PT Tirta Investama.

The decentralization policy triggered many conflicts over water resources among autonomous regions. The central government cannot control these conflicts. For instance, in Sleman (near Yogyakarta city), Central Java, water shortages have also created conflicts between users of the Umbul Wadon water source, PDAM Tirtamarta (Yogyakarta city government-owned water supply company), PDAM Sleman (Sleman district government-owned water supply company), PD Argajasa (a private water supply company), and local community members who utilize the water for irrigation and drinking (Hariadi Kartodiharjo and Hira Jhamtani 2009: 187).

The causes of the crises are not the lack of water supply but ineffective governance practices, as stated by Batchelor (n.d.: 1). Therefore, it is important to explain the relation between the water crisis and the governance crisis; meanwhile, the forms of the governance crisis are as follows.

Now, in Reformation-era Indonesia, although the Indonesian water management policy shifted from the central government control to the cooperation between local governments and stakeholders, ironically, Indonesia faces new problems as a result of decentralization. The decentralization policy accelerated the privatization of water resource management, like the drinking water supply, because it is a quick and easy way

for local governments to meet water management cost and to seek more efficient management (Raja Siregar et al. 2004: 152-158).

The Law No. 7/2004 on Water Resource contradicted with the International Convention Water Right and Article 33 of the 1945 Constitution. Some articles regulate the rights of enterprises and open some chances for privatization. This condition may be harmful to people's rights.

In addition, this law does not pay attention to the role of local-communal institutions such as *Tuo Banda* in West Sumatera, *Subak* in Bali, *Raja Bondar* in North Sumatera, *Mitra Cai* in West Java, *Darmo Tirto* in Central Java, *Manti Siring* in South Sumatera, *Ili-ili* in Lampung, and *Tudang Sipulang* in South Sulawesi (Affendi Anwar and Ansofino 2008: 135). So, although some local-communal institutions face the conflict of water sources with private companies, it is difficult that by this law, their rights to use water sources cannot protect against private companies' activities. We need to review and renew this law to solute the water conflict between community and private companies.

In short, we may say, in Indonesia, the water governance crisis causes the water crisis.

1. 4 Organization of the Dissertation

This dissertation contains 12 chapters including this introduction, and this introduction ends with summaries of chapters.

Next, Chapter 2 will explain the ethnographical approach, fieldwork and theories of water governance, cultural and social capitals for water governance, and collective identity formation for water governance. Then, Chapter 3 will explain the description and analysis of Batu that covers: 1) Batu and its ecosystem, 2) History of Batu and 3) The socio-economic condition of Batu.

After that, in Chapter 4, I will overview through HIPPAM about water governance in Batu before the Reformation in Batu. This chapter explains the management of drinking water and social network of this organization with other stakeholders. Chapter 5 explains the shifting of development policy in Batu after the Reformation, as the starting point of the movement.

Chapter 6 will overview the chronology of the movement from the emergence, development, and latest condition. This chapter begins with the movement initiated by villagers and gained support from villages that use the Gemulo water source and the activists of NGOs until the hotel owner prosecuted actors of the movement. This chapter describes how the strategy and characteristics of the movement are sustainable and successful.

Based on the descriptions of the history of the water source conservation movement and its social and policy background until Chapter 6, in the following chapters, I will analyze the primary factor of the sustainability of the movement, through my field observation data.

Chapter 7 will explain the characteristics of FMPMA as a platform for the movement by analyzing their various backgrounds as social capital. Moreover, in Chapter 8, I will analyze the basic motivations that make their movement sustainable and the cultural resources that serve as the basis of their motivation. Then, in Chapter 9,

I will discuss their network, that is, how actors who have various backgrounds are integrated for the sustainability of their movement. Moreover, in Chapter 10, I will explain the formation of collective identity as the most fundamental factor.

In Chapter 11, from the case study of the water source conservation movement in Batu, I will discuss the policy implications for environmental problems in Indonesia after Reformation. In Chapter 12, I will conclude this study.

Chapter 2 Research Question, Hypotheses, Theoretical Framework, and Research Method

2.1 Research Question and Hypotheses

As mentioned in Chapter 1, the decentralization process caused the new type of environmental problem, all over Indonesia. Exactly, Indonesia experienced a rash of environmental destruction by the local governments' development policy. However, those environmental problems do not necessarily make the resident's movement to oppose the government policy. Although the resident's movement arises, the movement cannot always be continued. Furthermore, every movement cannot make to change the government policy. However, in Batu, people started their movement against the hotel construction under the local government permission near the water source, and they made the hotel construction and the government permission suspended. So, we may say that the Batu case is a unique case in Indonesia.

Why does the movement in Batu affect the local government policy, different from other movements? This is my research question for this study.

In my hypothesis, first, the Reformation made people possible to demand to the government for their interests. Before the Reformation, the central government had a mighty power, so it was difficult to resistance to the government.

Second, it seems that because the movement is sustainable and rational, not emotional, they can affect the local government policy. They demanded to suspend the hotel construction of the government, by utilizing related regulations and their cooperation with the central government institutions. I suppose that because their request was reasonable, at least the local government accepted their demand, although officially the local government had never acknowledged their policy mistake.

Third, rich and various social capitals of leading actors of the movement can make their movement rational. They can utilize their skills and knowledge based on their background, such as a retired local government officer's knowledge about regulation.

Fourth, the movement in Batu is sustainable because the actors of the movement succeed in optimizing social capitals and cultural resources and forming an indigenous collective identity by utilizing local (Islam and Javanese) and global values. In the three villages that support the movement to save this water source, the values were utilized to form an environmental struggle primary motivation, to take benefit of social and cultural resources, and to form a collective identity. All contribute to strengthening, sustaining and making a change of the local government development policy.

2.2 Theoretical Framework

Water Governance

Water crises are often primarily "governance" crises (OECD 2015: 2). The causes of the crises do not lack water supply but ineffective governance practices, as stated by Batchelor.

(The) water crisis is largely our own making. It has resulted not from the natural

limitations of the water supply or lack of financing and appropriate technologies, even though these are important factors, but rather from profound failures in water governance. Consequently, resolving the challenges in this area must be a key priority if we are to achieve sustainable water sources development and management. (Batchelor n.d.: 1)

Improving water governance is widely regarded as the key to solving water insecurity problems in developing countries (Araral, Eduardo and Yu 2013: 5307).

Water governance refers to the range of political, social, economic, and administrative systems that are in place to develop and manage water sources, and the delivery of water services, at different levels of society. The notion of governance for water includes the ability to design (Rogers and Hall 2003: 15).

In the management of natural resources, governance is an exciting model because this not only manages water sources but also governs them. Then, governance was chosen to replace the centralistic role of government. Because this concept is broader than government, this mode could facilitate the change of water policy and management.

Politically, governance is demanded in efficient and legitimate actions. Thus, effective governance requires the combined commitment of the government and various groups in civil society, particularly at the local/community level and the private sector (Rogers & Hall 2003: 17). This kind of governance is characterized by three shifts below. a) From consensus forums to non-consensus forums, b) from centralized public law treatment of the good nature of water to more private law treatment of the commodity of water, and c) toward pluralistic and multilevel governance systems of water management (Gupta 2011: 6). Then, public discourse, the rule of law, and check and balance are required (Toonen 2011: 13).

Furthermore, governance comprises the mechanism, process, and institutions through which stakeholders articulate their priorities, exercise their legal rights, meet their obligations, and mediate their differences (Nayor 2013: 89). Hence, the crucial factor of adaptive governance is to welcome the participation of multiple actors in governance.

To seek good environmental governance through the participation of multiple actors at the local level, we need to pay attention to the local culture through socially embedded dynamics. As McCarthy and Warren pointed out:

Outcomes at the local level emerge within and as a result of socially embedded dynamics, at least as much as they are affected by the officially constituted institutional regimes associated with the state and with globalizing processes. Socially embedded processes include local customary *adat* systems and other normative arrangements that order local property relations and are used on reciprocity and obligation, including community, kinship, and patron-client arrangements regulation social action. In many instances, these processes are more important than state recognized structures and procedures set out in 'official' regional autonomy policies (McCarthy and Warren 2009: 16).

In other words, we may say that cultural resources and social capital, including

local customary *adat* systems, can support making good environmental governance.

Cultural Resource and Social Capital

The social capital necessary for sustainable and equitable solutions to natural resource management comprises a mix of existing endowments and that which is externally facilitated. External agencies or individuals can act on or work with individuals to increase their knowledge and skills, their leadership capacity, and their motivations to act. They can act on or work with communities to create the conditions for the emergence of new local associations with appropriate rules and norms for resource management. If these then lead to the desired natural capital improvements, then this again has positive feedback on both social and human capital (Pretty and Ward 2001: 2121). For instance, in Batu, Javanese and Islamic values contribute to the movement by formulating their basic motivation. As Aoki pointed out, Islamic values, as a cultural resource, are vital to promoting community-based environmental movements (Aoki 2016: 83).

Social capital strengthens social networks and cultural resources. Through social networks, the actors are able to invite widely diverse residents to join the movement (Larson et al. 2013: 4432). Meanwhile, social networks provide the context for socializing specific values and developing strong emotions (Diani 2003:8). Shared emotions and cultural values are also vital to promoting the social movement. This sharing is what makes a "collective identity."

Collective Identity

Collective identity has some essential functions, such as shaping and increasing solidarity and collective cohesion (Smithy 2009: 659), being an incentive for participation (Della Porta and Diani 2006: 98-100), and providing a source of mobilization (Cerulo 1997: 400, Bloemraad 2001:272).

Melucci defined collective identity as an interactive and shared identity produced by several individuals (or groups at a more complex level) concerned with the orientation of action and the field of opportunities and constraints in which action takes place. (Melucci 1995: 44, 1988: 342).

Collective identity consists of 1) formulating a cognitive framework concerning the ends, means, and field of action, 2) activating relationships between the actors who interact, communicate, influence each other, negotiate, and make decisions, and 3) making emotional investments which enable individuals to recognize themselves (Melucci 1988: 343). Collective identity may crystallize into organizational forms, a system of rules, a leadership relation/model, or a technology of communication. All are constitutive parts of this networking relationship (Melucci 1995: 342, 1996: 71).

Some mechanisms are utilized by the actors of movement for constructing collective identity, namely: framing, creating boundary works, raising consciousness, and changing the symbolic meanings of everyday life. Framing is set on belief and meaning which inspire and legitimize activities and campaigns of social movement organization. Framing is open, contentious, and debatable. Framing has an essential role because actors of social movements actively engage in the production and maintenance of meaning for constituents, antagonists, and bystanders or observers (Benford and Snow 2000: 613-614). Besides, frame describes mental constructs and

subjective meanings (Miethe 2009: 137). Melucci states that this formation is a continual process because identity is constructed and negotiated through the repeated activation of the relationships that link individuals in the movement (Melucci 1988: 342, Melucci 1995: 43).

In a social movement, there are some frames, namely: diagnostic, the protagonist, motivational, oppositional and, figurative framing (Klandermans 1994:190-192, Adler 2012: 295-298). Diagnostic framing identifies some event or conditions or problematic and in need of amelioration and thereby, it designates culpable agents (Hunt, Benford, and Snow 1994: 191-192). Besides diagnostic framing, there are prognostic framing and motivational framing. This framing makes the outlines of a plan of redress, make targets, strategies, and tactics more specific. The issues discussed included their concern about damage to the water source area caused by hotel construction. A part of prognostic framing is a figurative framing that refers to the articulation of what the movement is for, and this frame describes the shared visions of the movement.

Boundary works are created through a mutual identification between group members that simultaneously express commonality and difference with reference (Fominoya 2010: 395). Boundary creates "we" feelings, and for building and conveying this sense, the work needs to set a boundary, informal fellowship, and ritual behavior (Casquete 2006: 46). For boundary work, humor and languages (discourses) can also work effectively. Berger said that "(t)he boundary-marking function of humor becomes very clear in the case of so-called in-group jokes" (Berger 2014: 53). Willis also analyzed that one of the defining characters of being a working-class group is the ability to produce jokes (Willis 1977: 29). Meanwhile, as Zhao summarized from his study of Beijing student movements in 1989, language, such as slogans, also had a significant impact on the movement (Zhao 2000: 1954).

2.3 Research Method

This research uses a qualitative method with identifying characteristics to analyze the water source conservation movement among three villages' residents in Batu. This case has not yet been resolved entirely until now. The timeframe for this research is from January 31, 2013, to December 31, 2017. This date marks the termination of hotel construction, and the actors of FMPMA waited for the decision of the Supreme Court (*Mahkamah Agung/MA*) on the appeal made by the hotel.

The field research was conducted in Batu, East Java. The consideration for the selection of this location is the existence of an environmental movement in the form of resistance against hotel construction near a water source used by three villages.

Given that goal of the research is to uncover the factors of the characters of the movement, the subjects of this research are composed of people involved in the movement as below:

(1) Actors that became the primary players in the movement to save the Gemulo water source who live in the following villages: Cangar hamlet, Bulukerto village, Bumiaji village (Bumiaji subdistrict), and Sidomulyo village (Batu subdistrict). The above actors are FMPMA (*Forum Masyarakat Peduli Mata Air/Community Forum for Concern Water Sources*) and *Nawakalam Gemulo* activists.

(2) NGO actors who support the movement. They come from WALHI (*Wacana Lingkungan Hidup*; The Indonesian Forum for the Environment) East Java and Malang, Malang Corruption Watch (MCW), *Yayasan Pusaka* (Pusaka Foundation), and *Konservasi Brantas* (Brantas River Conservation).

(3) Public informal leaders who support the building of the hotel and have also been involved in the activities of the movement.

(4) The mayor and Local government officers of Batu City related to environmental concerns.

(5) Hotel owners and consultants

In this research, two kinds of interviews were used, namely structured and unstructured interviews. To complete the structured interview data, the researcher used social network services such as Facebook. Focus group discussions (FGD) were also conducted to find data that required opinions from the research subjects. The FGD was held twice by inviting all subjects (the actors of movement, local government officers, and the actors of HIPPAM). There were much data to be confirmed simultaneously. Discussions were conducted to uncover and develop data. Discussions were conducted by the researcher with actors from FMPMA, HIPPAM, and *Nawakalam Gemulo*.

Field observation was also conducted to complete information regarding the movement during these activities, as below:

(1) Rallies (demonstrations and protests) staged by FMPMA or held by other groups and attended by FMPMA actors

(2) Internal movement meetings, whether conducted by FMPMA, *Nawakalam Gemulo*, or other movement-supporting organizations

(3) Community activities such as *tahlil*, *pengajian*, *istighosah*, *bantengan*, and *slametan*

(4) FMPMA activities to commemorate World Water Day and Water Source Festival

(5) Meetings conducted by particular universities that invited FMPMA actors

(6) Court sessions at the District Court of Malang and the High Court of Surabaya

Besides these activities, I also did my participant observation on actors' informal meetings and daily life.

Furthermore, I also used some archives related to the movement, including:

(1) Documents from HIPPAM, FMPMA, and PPL (*Pemuda Peduli Lingkungan/Youth Caring for the Environment*) of Batu.

(2) Documents from the hotel company goupe

(3) Documents from the Government and Legislative Council of Batu City

(4) Documents (including letters) from state organizations and other government-related organizations; a) National Commission on Human Rights (*Komnas HAM = Komisi Nasional Hak Asasi Manusia*), b) Ombudsman of the Republic of Indonesia (*Ombudsman Republik Indonesia*), c) Ministry of Environment of the Republic of Indonesia (*KLH = Kementrian Lingkungan Hidup Republik Indonesia*), and d) Public Service Commission of East Java (*KPP = Komisi Pelayanan Publik Jawa Timur*)

(5) Judgment of District Court of Malang, High Court of Surabaya, and the Supreme Court

(6) Documents from the Government of Bumiaji, Bulukerto, and Sidomulyo Village

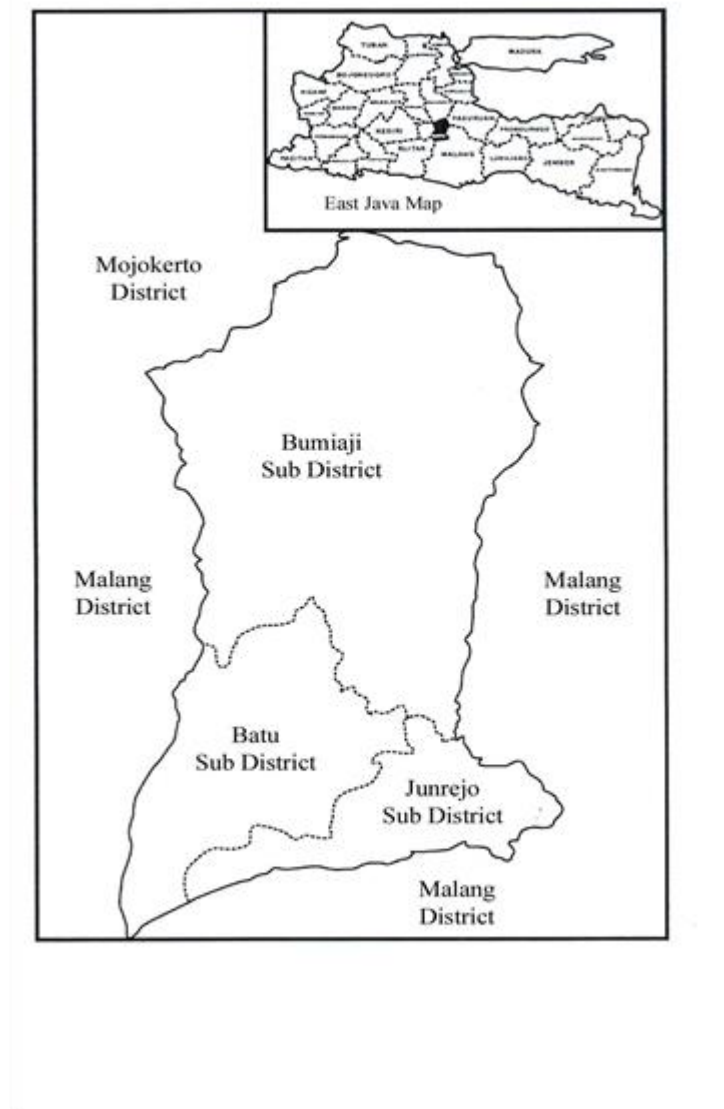
(7) Newspapers and magazines

Chapter 3 Description of the Case: Ecosystem, History, and Sosio-economic Condition of Batu

This chapter will explain Batu city as a background of the conservation movement. The explanation includes Batu and its ecosystem, and its historical and economic condition.

3.1 Batu and its Ecosystem

Batu is located in East Java and borders the Malang district in the South, East, and West (Map 3.1). Mountains and hills are prominent features in the North and West sides. In Eastern and Southern relatively plain regions, people cultivate crops with vegetables, apples, and flowers/ornamental plants.



Map 3.1 Map of Batu City

From 1950 to 2001, Batu was administratively a sub-district in the Malang district of East Java. In 2001, Batu became an autonomous municipality governing three sub-districts: Bumiaji, Batu, and Junrejo. Each sub-districts' features are of different geographic conditions. While Bumiaji is hilly and mountainous, the other two sub-districts tend to have flat landscapes.

The area of Batu is 199.087 km². Bumiaji sub-district (127.979 km² / 64.28%) is the largest, followed by Batu (45.458 km² / 22.83%), and Junrejo (25.650 km² / 12.80%). The three sub-districts are divided into 24 villages/wards: eight in Batu, nine in Bumiaji, and seven in Junrejo (Badan Pusat Statistik Kota Batu 2014). The distribution of villages is shown in Table 3.1.

Table 3.1 Villages in Batu

	Bumiaji Sub-district	Batu Sub-district	Junrejo Sub-district
1.	Punten	Sidomulyo	Beji
2.	Sumber Gondo	Sisir	Mojorejo
3.	Sumber Brantas	Temas	Torongrejo
4.	Bulukerto	Sumberejo	Junrejo
5.	Bumiaji	Songgokerto	Dadaprejo
6.	Pandanrejo	Pesanggrahan	Tlekung
7.	Giripurno	Ngaglik	Pendem
8.	Gunungsari		
9.	Tulungrejo		

Demographic Condition

Batu's demographic condition can be seen from its population as below:

Table 3.2 Batu Population (2015)

Sub-district	Population	Area (km ²)	Density (per km ²)
Batu	98,209 (46%)	45.458 (23%)	2.16
Bumiaji	60,764 (29%)	127.979 (64%)	0.47
Junrejo	52,325 (25%)	25.650 (13%)	2.04
Total	211,298 (100%)	199.087 (100%)	1.06

Source: Batu Population & Civil Registration Office and BPS (2015: 42)

Table 3.3 Population by Employments (5 most common) (The year 2015)

Employment	2015
Non-/un-employed	55,094 (25.7%)
Managing household	38,792 (18.1%)
Student	30,832 (14.4%)
Private sector employee	23,354 (10.9%)
Farmer	22,539 (10.5%)
Entrepreneur	7,713 (3.6%)
Total	214,091

Source: Batu Population & Civil Registration Office

Table 3.4 Population based on Religion 2015

	Islam	Protestant	Catholic	Hindu	Buddha	Kong Hu Cu	Traditional beliefs	Total
Batu	91,323 91.90%	5,219 5.25%	2,314 2.33%	64 0.06%	369 0.37%	5 0%	78 0.07%	99,372 100%
Bumiaji	60,268 97.90%	758 1.23%	208 0.34%	282 0.46%	11 0.02%	0 0%	29 0.05%	61,556 100%
Junrejo	50,310 94.63%	2,134 4.01%	363 0.68%	73 0.14%	228 0.43%	0 0%	55 0.10%	53,163 100%
Batu Total	201,901 94.3%	8,111 3.78%	2,885 0.22%	419 0.19%	608 0.28%	5 0%	162 0.07%	214,091 100%

Source: Population & Civil Registration Office of Batu

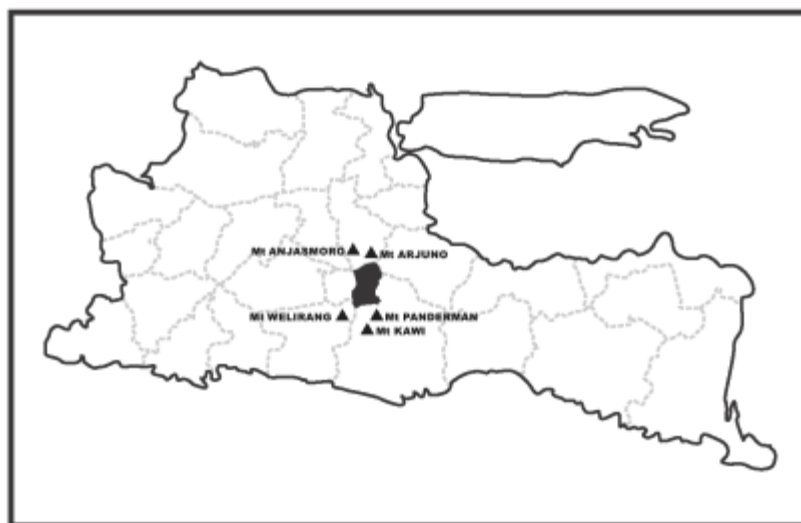
Based on the tables above, some characteristics of Batu can be generated as follows:

- (1) Bumiaji is the largest sub-district.
- (2) Batu is the smallest and the most densely-populated district.
- (3) The number of unemployed individuals is high.
- (4) The number of student's category is high.
- (5) Only 10% of the population are farmers, the same as private sector employees.
- (6) Based on employment status, laborer/employees top the list, followed by self-employed and unpaid workers, and agricultural workers. It is because Batu is increasingly developing into a tourist town. Private businesses with permanent workers bottom the list.
- (7) Most of Batu's population (94.3%) are Muslim.

Ecological Condition

On Batu's ecological condition, we need to explain various conditions and environment potentials that can be summed up into three central themes: *giri* ("mountains" in Javanese), *wana* ("forests" in Javanese), and *tirta* ("water" in Javanese).

Mountains surround batu: Mount Kawi (2,651 m) and Mount Panderman (2,010 m) in the south, Mount Anjasmoro (2,277 m) in the west, Mount Welirang (2,156 m) in the east, and Mount Arjuno (3,339 m) in the north (see Map 3.2).



Map 3.2 Mountains surrounding Batu

Batu areas have an average height of 650 m and average temperature of 15 to 19°C. These contribute to the town's relatively cool temperature and beautiful sceneries. This condition attracts people from Malang, Surabaya, and other cities to come to Batu for recreation.

Batu has 30% protected forest areas. These areas cover a total of 5,197.40 hectares: 3,674.40 hectares in Bumiaji, 622.80 hectares in Batu, and 810.20 hectares in Junrejo (see Table 3.5).

Table 3.5 Forest area

Sub-district	Forest area (ha)	Sub-district area (ha)	Percentage of forest (%)
Bumiaji	6,682.30	12,797.89	52.2
Junrejo	412.01	2,565.02	16.0
Batu	1,115.90	4,545.81	24.5
Total	5,197.40	24,454.53	21.2

Source: Batu Mid-Range Development Plan 2012-2017: Chapter II-33

Parts of the forest areas are managed by the Batu government, while other parts are under the management of a State-owned Forest Company (*Perhutani*) and Forest Park for Conservation (*Tahura=Taman Hutan Rakyat*) R. Soerjo. Forest under *Perhutani* and Forest Park are in Sumber Brantas, Giripurno, and Tulungrejo villages.

Brantas River is the second longest and largest river after Bengawan Solo River¹. It runs through 14 districts and four cities in East Java, including Malang, Blitar, Tulungagung, Trenggalek, Kediri, Pasuruan, Sidoarjo, Mojokerto, Jombang, Nganjuk, Gresik, Madiun, Pasuruan, Ponorogo, and Surabaya (See Map 3.3 and Fig. 3.1).

The Brantas River rises from Bumiaji Sub-district in Batu and runs through nine villages in Batu: Sumberbrantas, Tulungrejo, Punten, Gunungsari, Sidomulyo, Pandanrejo, Sisir, Temas, and Torongrejo. The 2009 BPS Data indicates that around 19.9 million people of East Java (roughly 56% of the population) rely on the Brantas River basin. The Brantas River divides Batu city into two areas, *Lor Brantas* (Northern Brantas River) and *Kidul Brantas* (Southern Brantas).²

The Brantas River basin (*DAS Brantas = Daerah Aliran Sungai Brantas*) runs 12,000 km from upstream to downstream, and consists of 485 rivers (Pemerintah Kota Batu 2013: II-12). *DAS Brantas* occupies more than 25% of the East Java area and is indispensable from people's lives from the kingdom era up to now.³ In Batu, the Brantas River has some streams that provide alternatives to surface water. They are managed for agricultural irrigation, flood control, tourism activities, and hydropower generations (Batu BAPPEDA Kota Batu 2016: III-5).

¹ *Bengawan Solo* (Solo River) issues from Gunung Kidul (Central Java) and Ponorogo (East Java) and runs up to its estuary in Gresik (East Java). The river runs for approximately 548.53 km. It is one of the Javanese cultural icons and is famous for a popular song "Bengawan Solo" (1940).

² The division is based on the natural border (river). In fact, during Hindu-Buddha periods, two villages were established: Sangguran and Batwan to the South of Brantas and Batu to the North of Brantas (Cahyono 2011: 95). Such division illustrates the significant meaning of the river for the people.

³ IPB Training Materials and Ministry of Forestry, Dirjen RLPS, BPDAS Brantas, 2012.

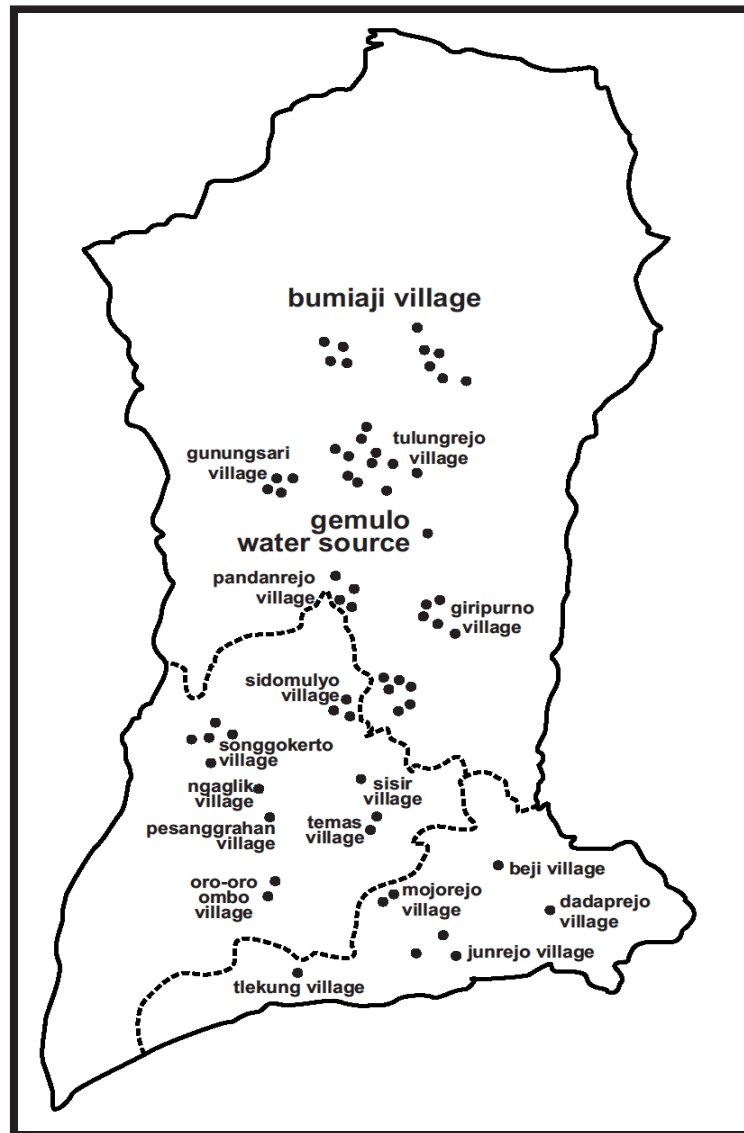


Map 3.3 Brantas River Flows in the East Java Province



Fig. 3.1 Brantas River flows through Sidomulyo Village

Beside Brantas River, Batu City also has other water sources. There are 107 water sources in Batu (Map 3.4, Table 3.6). These water sources are mostly located in the Bumiaji sub-district (48 water sources). Based on land ownership statuses, in Bumiaji 20 water sources are located on state lands, 20 in private lands, and 20 in Perhutani areas. In the Batu sub-district (34 water sources), 4 water sources are located in state lands, 19 in private lands, and 10 in Perhutani areas. Then, in the Junrejo sub-district (20 water sources), there are 15 water sources in state lands and 6 in private lands. There are also some water sources in lands with unidentified ownership: 4 in the Junrejo sub-district, 8 in the Bumiaji sub-district, and 2 in the Batu sub-district. These water sources are managed by Batu's PDAM (Local Government-Owned Water Company), Malang District's PDAM and Malang City's PDAM, and HIPPAM (The cooperative association of water) for the supply of drinking water.



Map 3.4 Water sources in Batu

Table 3.6 Number of Water sources in Batu

Bumiaji Sub-district		Junrejo Sub-district		Batu Sub-district	
Tulungrejo	10	Torongrejo	2	Ngaglik	4
Sumber Gondo	2	Dadaprejo	1	Temas	10
Puntan	7	Tlekung	5	Sunggokerto	9
Bumiaji	6	Junrejo	7	Pesanggrahan	5
Giripurno	9	Beji	5	Oro-Oro Ombo	2
Pandanrejo	10			Sumberejo	3
Gunungsari	4			Sidomulyo	1

Source: Regional Water Sources Inventory Data, Water Sources, and Energy Office, Batu

Because the northern part of Batu (especially the Bumiaji sub-district) has abundant water sources and fertile lands, there are many agricultural fields to cultivate vegetables like cauliflower, lettuce, carrot, onion, and celery. The cultivation of apples as a mainstay commodity is also developed in this area. The cultivation of oranges is also well known in this area. People in Bumiaji, Tulungrejo, and Bulukerto villages have always enjoyed high prosperity from their apple production. They habitually spend their income on new cars and electronic goods.⁴ They also willingly use their wealth for helping community members. At one time, Batu city was known as “apple town.” Therefore, until now, the Bumiaji sub-district has been the center of agriculture in Batu.

On other hand, the southern Brantas region was developed as an urban area by the Batu city development policy. For instance, facilities such as the business center, market, shopping malls, government offices, and hotels are located in this area.

In summary, (1) in Batu they have abundant water with lots of water sources, (2) those water sources are supported by abundant nature, such as a rich forest, and (3) they have fertile lands for agriculture.

3.2 History of Batu

Dynastic Age to Colonial Period

We can trace Batu history back to the 8th century. At that time, Batu was under Kanjuruhan kingdom’s control. In the 9th century, Mataram (Mataram Hindu) conquered Kanjuruhan. After that, Batu came under the control of Panjalu/Kediri. However, Ken Arok liberated this area from Kediri. During the reign of the Majapahit kingdom (1293–1478), Batu (known as Batwan village) obtained the status of an autonomous village.

The Islam era in Batu started under the Demak kingdom (1475-1548). During the 1500s under the control of Mataram (Mataram Islam, 1578-1755), Islamization in this area was led by Giri⁵(Dwi Cahyono 2011: 117). Prominent figures in disseminating Islam in Batu were Mbah Batu and Bambang Selo Utomo; the latter was Mbah Batu's disciple. Both contributed to the spread of Islam in Batu. The grave of Mbah Batu is in Banaran hamlet, Bumiaji village and Bambang Selo Utomo’s grave is in Punten village, Bumiaji sub-district, Batu. Today, lots of people in Batu and East Java visit these graves as sacred places.

From the Majapahit period until Dutch and Japanese occupation periods, Batu was famous as a recreation area for the king’s family and also, a fertile agricultural area. Because of this, the Dutch colonial government operated lots of plantations of coffee, kina, and tea by themselves, and lots of plantations of vegetables and flowers with Chinese merchants through the compulsory cultivation system (Sukrisman 2014: 16). The Japanese troops arrived in Batu in March, 1942. They forced the people to change

⁴ “Kejayaan Sektor Pertanian yang Sempat Menjadi Primadona KWB, Ulang Sejarah, Usai Panen Bangun Rumah (Agricultural Sector that once was KWB's Mainstay, History Repeats Itself, Building a House After Harvesting Season)”. *Malang Post*, October 18, 2013

⁵ More, popular as Sunan Giri, one of *wali sanga*’s nine saints for the Islamization of Java.

the coffee, kina, and tea plantations to paddy rice, corn, and cassava fields (Sukrisman 2014: 36). The farmers suffered because the Japanese had seized all their food crops.

Post-Independence: *Orde Lama* Sukarno's Regime and *Orde Baru* Suharto's Regime

After the independence in 1945, during the regime of the first President Sukarno (*Orde Lama*; Old Order), Batu was part of the Pujon sub-district under the Malang district. The administrative capital of Pujon sub-district was in Batu.

After the second President Soeharto's regime (*Orde Baru*; New Order era), Batu became a sub-district with the status of the administrative city, in the region of the Malang District. However, the feelings of dissatisfaction grew, especially among elite groups, due to the imbalance between Batu's contributions to the Malang district and the developments in Batu. Besides, the Batu people also did not have satisfactory administrative services. For instance, they had to visit the office of the Malang district for administrative matters.

Reformation and Decentralization

After the Reformation, there was a significant milestone in Batu's history, which was the establishment of Batu City as an independent municipality by Law No. 22/1999, on Regional Government⁶. Finally, in 2001 the president of RI signed Law No. 11/2001, on the Establishment of Batu, and in conformity to this law, officially, Batu City was established. This establishment was supported by the new decentralization policy of the central government in the Reformation era.

The first election of members of Batu City assembly was held on August 30, 2002. Then, on November 4, 2002, the first election of the Mayor of Batu City was held. H. Imam Kabul, with M. Khudhori, was elected the first mayor and vice-mayor of Batu. Under the new mayor, Batu's vision was declared, "Batu, Agropolitan Tourism City with Civil Society."

For the second election of the mayor, Edi Rumpoko declared his candidacy and was elected. In Edi Rumpoko's administration, Batu City's development policy was that Batu city would become the center of organic farming based on international tourism.

3.3 Socio-economic Condition of Batu

Batu has two primary industries; agriculture and tourism. Batu has vast agricultural areas totaling 4,018.50 hectares or 20.19% of the Batu region (BAPPEDA 2015). Based on the usage, the areas can be classified into rice fields and non-rice fields. Rice field areas total 2,436 hectares; Non-rice fields, on the other hand, cover an area of 4,067.09 hectares. Based on the distribution, non-rice field areas are dominant in the Batu and Bumiaji sub-districts, covering an area of 979.15 hectares and 2,559.69 hectares respectively. Rice field areas are dominant in the Junrejo sub-district, covering 1,039

⁶ The transition status of the city to change an autonomous city at the level of district/city or sub-district, based on Law of Republic of Indonesia No 5, in 1974 concerning the Essentials of Local Government (*UU No 5 tahun 1974 tentang Pokok-Pokok Pemerintah Daerah*). After Law Indonesian Republic No 22/1999, was issued, this administration system was abolished.

hectares (BAPPEDA Kota Batu and LPPM UB 2014: V-3). Historically, Batu is an agricultural region. Vegetables and fruit are the town's primary agricultural products. For instance, they cultivate potatoes, cabbages, carrots, onions, and garlic.

Batu's agricultural productivity is made possible by the temperatures (minimum 18-24⁰C and maximum 28-32⁰C), humidity (around 75-98%), and rainfall (yearly average 875-3,000 mm per year), which are all suitable conditions for cultivating various sub-tropical commodities (Department of the Environment, Batu 2013).

Batu is famous as Apple City because there are many apple fields. However, after the end of the 1990s, the production of apples in Batu started to decrease drastically, because (1) the fertility of farmlands for apples declined, and (2) low-price imported apples affected the domestic apple market in Indonesia.

In the tourism sector, lots of tourists are attracted by the luxuriant natural environment. The tourists who visit Batu aim at enjoying the natural surroundings, like beautiful mountain scenery, clean water, fresh air, and cool weather. Meanwhile, in 2001, they started to support the human-made tourism that is mostly executed by investors and was established in the Batu sub-district. The success of tourism development can be seen from the number of visits, which has been steadily improving since 2007 (Table 3.7). Moreover, to fulfill tourists' demands, Batu provides a wide array of supporting infrastructure like hotels (Table 3.8).

Table 3.7 Tourists Visit Batu 2007-2015

2007	1,007,058
2008	1,180,042
2009	1,906,170
2010	2,176,794
2011	2,587,777
2012	2,547,855
2013	2,547,855
2014	3,834,021
2015	3,961,021

Source: Kota Batu (2016)

Table 3.8 Tourism Support Facilities in 2004

Tourism Support Facilities	Total
Hotel/restaurant	48
Villa	203
Hotel/cottage	150
Homestay	10
Inn	4

Source: *Badan Penanaman Modal Kota Batu* (Capital Investment Coordinating Board)

Furthermore, the economic condition of Batu is developed by macroeconomic policies including:

(1) Developing the agricultural sector in harmony with trade, hotel, and restaurant sectors.

- (2) Preparing and improving the growth of trade, hotel, restaurant, and agricultural sectors, which are specific sectors having a tremendous competitive advantage.
- (3) Improving the competitiveness of financial and service sectors to support the economic growth of Batu.
- (4) Driving industrial growth that leads to the development of trade and service sectors.

Table 3.9 Rate of Economic Growth 2010-2015

	2009	2010	2011	2012	2013	2014
Batu	6.99%	7.52%	8.04%	8.25%	8.20%	8.03%
East Java	5.01%	6.68%	7.22%	7.27%	6.20%	5.90%
Indonesia	4.58%	6.10%	6.05%	6.81%	5.81%	5.00%

Source: Didik Soemintardjo (2015)

Table 3.10 Gross Regional Domestic Product (PDRB) at Current Market Price in Batu (in thousands of rupiah)

Sector	2011	2012	2013
Agriculture	660,771.82	740,000.41	836,193.75
Mining and Excavation	7,546.38	8,423.70	9,287.25
Manufacture	239,919.79	261,715.78	298,822.49
Electricity, Gas, and Clean Water	51,660.36	57,543.38	64,958.66
Building	74,296.58	89,011.41	108,473.00
Trade, hotel, and restaurant	1,812,300.72	2,062,915.76	2,419,584.81
Transportation and communication	124,971.05	139,119.60	158,076.04
Finance, rental, and company service	144,356.85	164,974.70	193,601.72
Services	581,955.12	662,282.88	744,741.70
Gross Regional Domestic Product (PDRB)	3,697,778.67	4,185,987.62	4,833,739.42

Source: Ahmad Erani Yustika (2015)

Batu's economic growth increases from year to year. Batu records a consistently higher economic growth than East Java and Indonesia, in general (Tables 3.9). Based on table 3.11, it can be concluded that the tourism sector have more significant economic products than the agricultural sector (trade, hotel, and restaurant contribute 50% to PDRB while agriculture contributes 17.3%). We may say that the tourism sector leads the contemporary economic growth in Batu.

Chapter 4 Water Governance in Batu before Reformation: HIPPAM

This chapter will explain the water governance before the Reformation in Batu. For water governance in a hamlet or village, a community-based organization (HIPPAM), play important roles as the platform for water source conservation and drinking water supply. These two roles are inseparable because the drinking water service cannot be given if the water source is not conserved well. Therefore, if there are some threats to a water source, HIPPAM will be involved in saving the water source (Rachmad 2011:197-199).

4.1 Formation of HIPPAM

Before the 1970s, water fulfillment for domestic use was taken from the nearest water sources and rivers. People brought water to their houses, using containers like buckets, cans or bamboo baskets. Men usually brought water in two *pikuls* (four cans in Javanese) a night¹. Some wealthy people had a waterway made of bamboo.² The wealthy villagers also purchased water from water sellers, who take water, from water sources, to peddle.

At that time, water sources and rivers were used by the people freely, either for bathing, washing or even opening the bowels of animals. Older villagers said that, formerly, the river was clean, and there was no contamination of domestic wastewater because villages were not so large.

Around the 1970s, some villagers made public bathrooms near water sources or rivers. These public bathrooms were usually constructed at strategic locations around the settlement for community members' convenience. Public bathrooms were screened by walls. However, they had no roofs (Fig. 4.1). People utilized these public bathrooms for bathing and washing clothes, too. Also, some bathrooms near mosques or saints' graves were utilized for ritual ablutions.

There were two management types for public bathrooms. Village governments managed some public bathrooms, and community members managed others. The public bathroom in Kliran hamlet, Bulukerto village, was an example of the former. Moreover, most of the public bathrooms in Bumiaji village were examples of the latter.

In the 1980s, the pipeline program was launched by village governments and communities because many people wanted their water supplied by pipes to their houses. After that, in Bumiaji village, some public bathrooms were closed because people did not need them anymore. However, some people still make use of public bathrooms today. In Tlogorejo hamlet, Bumiaji village, for example, people use them for cleaning their agricultural products such as soy and carrots.

In the beginning, the Sidomulyo village government made pipelines for supplying water to villagers' house, then the Bulukerto village followed them around the 1980s. In Bulukerto, at that time, because they used pipeline made by bamboo, this program was called *bumbungisasi* (built by bamboo, in a local dialectal Javanese). Village government's initiative manages these water supply systems with villagers.

¹ Interview with Arpai dan Sarpain at their houses, July 3, 2016

² Interview with Mujiono at his house, July 23, 2016



Fig. 4.1 Public Bathroom using a creek in Sidomulyo village

Meanwhile, some villagers tried to establish HIPPAM for their water supply service by themselves. In three villages, Bumiaji, Bulukerto, and Sidomulyo, there are seven HIPPAMs. In 1975, HIPPAM Tinjumoyo hamlet, Sidomulyo village, had already been established. After that, in the 1980s, the establishment of many HIPPAMs in these three villages, were followed. The latest one was HIPPAM Tlogorejo hamlet (Bumiaji village) in 2014. In short, the demand for fresh water pipeline programs promoted to establishing HIPPAM in many hamlets.

The Instruction of Governor of East Java, No. 9 /1989 on the establishment of HIPPAM, instruct the Major or the governor of the district to promote establishing HIPPAMs in villages that have no PDAM's service. This instruction made every village to establish HPPAM easily. In fact, some villagers established their HIPPAM, even because they wanted to manage water supply by themselves and couldn't satisfy the water supply service of PDAM. In 2017, Batu City has 94 HIPPAMs (see Table 4.1).

Table 4.1 Number of HIPPAM in Batu

Bumiaji sub-district		Batu sub-district		Junrejo sub-district	
Villages		Villages		Villages	
Sumber Brantas	2	Songgokerto	3	Junrejo	9
Tulungrejo	7	Ngaglik	2	Dadaprejo	2
Sumber Gondo	3	Pesanggrahan	6	Pendem	1
Pandanrejo	4	Sisir	1	Tlekung	4
Punten	6	Temas	5	Mojorejo	4
Giripurno	7	Oro-oro Ombo	1	Beji	4
Bumiaji	2	Sumberrejo	2	Torongerjo	3
Gunugsari	7	Sidomulyo	3		
Bulukerto	6				
Total	44	Total	23	Total	27

For their water supply, usually, they use a water source in their village. However, some HIPPAM take water from a water source in another village. For example, HIPPAMs in Tinjumoyo, and Sidomulyo village take water from two water sources, namely water sources Dolo and Banyuning in Bumiaji village. They manage water supply for households. However, also there are HIPPAMs for agricultural water, like a HIPPAM in Bulukerto village.

As for their management style, HIPPAMs, are managed by villagers, and parts of HIPPAMs receive financial support from village governments. For example, a HIPPAM in Keliran hamlet, Bulukerto village, has a chair, a secretary and a technical team and committee members. They work for their HIPPAM voluntary. All HIPPAM members share the total cost of maintenance for their facilities.

Most of HIPPAMs members do not have any skills and knowledge about water supply, so they usually learned those skills and knowledge practically through their trial and error in their activities.

One of the prominent characteristics of HIPPAM is its independence. This character sometimes caused a lack of cooperation among HIPPAMs, although they are in the same village.

4.2 Activities of HIPPAM

In this section, I try to describe the general character of HIPPAM through HIPPAM in Bumiaji as a typical example. HIPPAM in Bumiaji village was established in 1987 by villagers from three hamlets, Banaran, Beru, and Binangun. In the 1980s, they only had some public water places for villagers. Until now, everyone could use these public water places freely. Then, after 1990, they tried to build a water supply facility for each house via water pipes. The total length of water pipe was 926 meters from the water source to their village and 10,320 meters to each house. Also, three water-storage facilities were built.

HIPPAM Bumiaji uses the Gemulo water source in Bulukerto village. In Indonesia, as mentioned in Chapter 1, every natural resource, including water sources, belongs to the state, and everyone has the right to use them. Because of it, HIPPAM Bumiaji village can take water for their water supply under East Java Province's permit with a use tax, of Rp. 150,000 a month.

According to the data of HIPPAM Bumiaji, numbers of HIPPAM members are increasing. For instance, in 1998, there 480 people; then, in 2008, there were 1,250. New members had to pay Rp. 350,000 to subscribe. As for water charges per month, for using 0-10 m³, users paid Rp. 150/m³; for 10-20 m³, they paid Rp. 200/m³; for 20-30 m³, Rp. 250/m³; and for 30 m³ and above, Rp.300/m³. Besides water supply to villagers' houses, HIPPAM provided water to public facilities, such as *mushollas* (small player houses), mosques, and cemeteries (*pemakaman umum*), no charge.



Fig. 4.2 Board members of HIPPAM are working to maintain their facilities



Fig. 4.3 HIPPAM monthly routine meeting

Because the demand for water supply was increasing, HIPPAM sometimes had to find new water sources for its water supply service. Now, HIPPAM Bumiaji village has an additional water source, the Precet water source, in Banaran hamlet, for water supply. Water supply facilities, like facilities for water intake at water sources, pipes, meters, and water storage facilities, are managed together with HIPPAM members, who do so voluntarily. HIPPAM usually discusses management issues in the so-called *rembug desa* meetings. Sanctions for members who violate rules are also discussed. As for sanctions, such as for members who do not pay their monthly fees, they only stop supplying them with water.

The activities of HIPPAM are not limited to the management of water supply. They also join some village government's activities as an organization, such as the construction of a village hall, the election of village and hamlet heads, and the ceremony of *Agustus* (the Independence Day of the Republic of Indonesia on August 17). Meanwhile, they conduct the *slametan* Javanese Islamic ritual at the water source, in every *Sura* month (The first month of the Javanese calendar). To express their gratitude to the God, they play together.

Before Reformation in Batu we may say that they have good water governance because they can manage well water sources by the community-based voluntary association, HIPPAM. However, after Reformation, the conditions had changed dramatically. In the next chapter, we will see the changing condition in Batu, the shifting of the Batu city government development policy, after Reformation.

Chapter 5 Shifting of Developmental Policy in Batu after Reformation

In this chapter, I describe the shifting Batu City government development policy after Reformation as the trigger to the water crisis in Batu.

5.1 Shifting Batu City Development Policy: Apple City to Tourism City

Until the 1990s, Batu city was known as an apple town. However, after that, the condition was changed. The main reason for shifting the Batu city development policy, from apple farming to tourism, is the apple farming slowdown that is caused by the ecological and economic condition. Ecological one refers to the decreasing of productivities of apple farming. The fertility of apple farmlands soil became low. Meanwhile, economic one refers to globalization with open the local market and made apple of Batu lost in price competition.

As for ecological problems, first, the lowering productivity of apple was caused by some plant diseases, including leaf spots, pink fungus, cancers, rotten fruits, and rotten roots. Also, some vermin includes green scales, mites, leaf miners, sucker insects, black leaf miners, and fruit flies, attacked apple trees. Moreover, finally, many apple trees have passed their productive age (already 25-30 years old). These problems can be solved by a special chemical treatment, such as intensive fertilizing. However, these treatments were costly.

As a consequence, lot of farmers left the apple orchards (BAPPEDA Kota Batu 2012: 1).¹ Even though apples are no longer Batu's primary commodity today, in many villages in Bumiaji, we can still see apple sculptures. Some of them are also installed in the town center (Fig.5.1). The sculptures are reminiscent of the town's historical past.

Developing Tourism

Because of the slow-down in apple farming, Batu City needs to seek an alternative industry. Finally, the government decided to shift the development policy to the tourism sector. Batu City has many potentials in tourism, such as its beautiful scenery, cool climate, clear water supply, and soil fertility. Even before Eddy Rumpoko had led this city as its mayor, some tourists already visited Batu for recreation. For instance, during the pre-colonial era, the officials of the Kingdom visited and rested in Batu during their religious journeys. However, it was not until around 2000 that Batu became interesting for a lot of tourists.

Consequently, Mayor Eddy Rumpoko developed tourism objects to attract the tourists and started to invite investors. Eddy Rumpoko said:

At that time, I visited to ask some significant investors to invest in Batu. However, it was very tough for me. No investors were interested in investing in Batu. So, we needed a particular strategy for them.²

¹ In 2013, though, it is stated that the Batu farmers still produced apples and mandarin/tangerine oranges. See Badan Pusat Statistik Kota Batu (2014: 114).

² Interview with Eddy Rumpoko at the Batu City Square, January 7, 2017.

His strategy is to make the permit process for some facilities easier. After he had guaranteed the simplification of the licensing process in Batu, Batu was successful in attracting some important investors such as Paul Sastro from Malang City. He has invested an enormous amount of money through his company, *Jatim Park Group* (East Java Park Group). Paul has had a close business relationship with Eddy Rumpoko for a long time.

We can say that the prominent new tourism objects in Batu City are all human-made tourism objects such as an amusement park. The Batu city government has tried to build roads to provide access to the new tourism sites. With support from the Batu city government, the massively built human-made tourism objects complement other tourism objects such as natural and cultural objects³. Natural objects are such as mountains, water, forest, rivers and beautiful scenery in rural areas, while cultural objects are historical heritages such as old temples, statues, tombs, and so on.

Besides the tourism objects above, the government of Batu city has also been developing tourism villages. In these tourism villages, tourist can enjoy living with villagers and their traditional culture.⁴ Rural community drives tourism villages for improving their prosperity. Some villages have been encouraged to create new tourism objects to attract tourists. However, unfortunately, the visit to these tourism villages cannot compete with human-made tourism objects.



Fig. 5.1 Monument of Apple at Batu City Square, Symbol of Apple City Batu



Figure 5.2 Apple trees on a farm in Bulukerto village

Under Eddy Rumpoko (2007-now), tourism development in Batu reached a peak. The development was derived from Batu Development Vision 2012-2017 as follows:

We will make Batu the center of organic farming based on international tourism, supported by efficient and competitive education with abundant resources (natural, human, and cultural), and a good, creative, and innovative government that is inspired by the faith and devotion to God the Omnipotent.

³ BAPPEDA Kota Batu (Batu City Regional Planning Board) (n.d.). *Draft Laporan Fakta dan Analisa Rencana Induk Pengembangan Pariwisata Daerah (RIPPDA) Kota Batu 2014-2029 (Draft Report of Facts and Analysis of Local Tourism Development Master Plan, Batu City, Year 2014-2029)* Batu: BAPPEDA Kota Bat

⁴ A. Faidlal Rahman, SE Par., M.Sc. 'Pengembangan Daya Tarik Desa Wisata Berbasis Pemberdayaan Masyarakat Lokal (The Development of Tourist Village Attractiveness Based on Local Community)', presented in the Workshop on Managing a Tourist Village, November 29, 2016

Moreover, the vision says that the tourism development aims to make Batu a competitive and sustainable tourist destination, using the economic profit from the tourism sector for the development of social welfare in Batu (BAPPEDA Kota Batu 2014: II-6).

Developing Organic Farming

Meanwhile, the government of Batu also tried to develop an eco-friendly tourism and organic farming because most of the farmers in Batu were left behind in the tourism sector. Some parts of their farmland were even used for the development of tourist attractions. Moreover, most agricultural products had lost a competitive edge against the products from outside of Batu.

Besides, after showing a real achievement in the tourism sector during his first five-year administration (2007-2012), Eddy Rumpoko concentrated on developing the agricultural sector because the largest population by occupation in Batu was farming.⁵

As a result, the agricultural sector was given priority especially in organic farming, because organic farming was considered to have the following strengths:

- (1) Organic farming is a preliminary effort to improve healthy and sustainable agriculture.⁶
- (2) Organic products are healthy, high-quality and cost-efficient⁷
- (3) Organic farming is intended to solve agricultural problems, dependence on agricultural medicines and residue of pesticides on the soil and agricultural products.⁸



Fig. 5.3 Billboard of Organic Farming with the photography of the mayor



Fig. 5.4 Organic farming in RW 6, Temas Ward

Agricultural and Forestry Service section (*Dinas Pertanian dan Kehutanan*) has also facilitated farmers to get certificates for their organic products by a private institution, such as LeSOS (*Lembaga Sertifikasi Organik Seloliman*, Seloliman Organic

⁵ Interview with the mayor of Batu City, January 6, 2017, in the City Square of Batu city

⁶ “Langkah Awal Meningkatkan kondisi pertanian (Launching Shining Batu Go Organic)”, in <http://humasbatu.blogspot.c.id/2014_03_01archive.html> (sited February 2017)

⁷ “Signing the Memorandum of Cooperation between *Dinas Pertanian dan Kehutanan Kota Batu* and the community elements on the Development of Organic Agriculture” in <<http://humasbatu.blogspot.co.id/2014/07/penandatangan-nota-kerja-sama-antara.html>> (sited February 2017)

⁸ “Pengembangan Pertanian Organik Kota Wisata Batu (The development of organic farming in Batu)”, in <<http://humasbatu.blogspot.co.id/2014/01/pengembangan-pertanian-organik-kota.html>> (sited February 2017)

Certification Institute). Nine groups of farmers have registered in the program of the organic certification. Four groups of those could obtain their certification for organic farming. They are a mushroom farmer in Tulungrejo village, Prosperous Bumiaji Company by Mr. Imam Ghozali (fruits), *Sembada Makmur* group in Mojorejo village (orange), and (4) *Srimulyo* group in Pendem (rice cultivation).

Besides these groups, there is also an independent organic farming village that is supported by the Temas village government. They named their village *Kampung Wisata Tani Temas* (Temas Agricultural Tourism Village). The farmers there grow spinach, *kangkung* leaf, kale, strawberries, and so on. In 2013, they used 2,800 m² for their organic farming, which consisted of 2,000 m² for cultivating crops and the rest of the land for a water treatment pool.⁹

In 2016, the government of Batu City planned 14 villages for organic farming, namely Punten, Sumberejo, Torongrejo, Sumberbrantas, Giripurno, Tulungrejo, Pendem, Sumber brantas, Tulungrejo, Giripurno, Torongrejo, Temas, Sumberejo, and Junrejo.

Besides the environmental factor, the Batu City government expects that the economic factor will support the development of tourism. Most of the tourists to Batu City are from the upper and middle class. According to the Batu city government's conjecture, these people prefer organically-farmed products as "healthy products" even though their prices are higher than non-organic ones.¹⁰ Now, they sell their products to hotels and restaurants in Batu City and Malang City. PHRI (*Persatuan Hotel dan Restoran Indonesia*; Indonesia Hotels and Restaurants Association) recommends that hotels in Batu City use organic agricultural products.

5.2 The Initiator of the Policy Shift

Regional autonomy also supported new development in the tourism sector. After Reformation, the mayor received the authority to manage local resources, as stated in Law of the Indonesian Republic No. 32/2004 concerning local government. Eddy Rumpoko succeeded in utilizing this regional autonomy policy to shift Batu City's development policy.

We should pay attention to his political background, too. He is supported by PDI-P (Indonesian Democratic Party for Struggle). PDI-P is one of the significant political driving forces in the Reformation movement. In 2001-2004, the leader of PDI-P, Megawati, became the president of Indonesia. It can be stated that PDI-P is a symbol of the Reformation.

However, to win in the competition between political parties, party inevitably needs considerable capital. Therefore, PDI-P recruits entrepreneurs to join the party. For entrepreneurs, this opportunity opens the door to becoming a member of an assembly or the head of a local government. Eddy Rumpoko was a typical entrepreneur who joined PDI-P.

Eddy Rumpoko is a politician and an entrepreneur. His business started when he was 19 years old. At that time, he established a youth organization *Javanova Club* that

⁹ "Kota Batu Terima Sertifikat Lahan Pertanian Organik" (Batu City receives the organic certificate), <<http://suaraindonesia-news.com/kota-batu-terima-sertifikat-lahan-pertanian-organik>> (sited February 2017)

¹⁰ Interview with Eddy Rumpoko at the Batu City Square, January 7, 2017.

conducted many significant events, such as marching band competition, car rally, and boxing competition. After graduating from senior high school, he focused on the mass media, the property sector, and the construction industry. These characters have promoted to shifting policy to tourism and organic farming as economic development

After Eddy Rumpoko was elected as the mayor in 2005, Batu City shifted from agriculture to tourism town. The essence of the policy is to produce profit massively in the short term. However, it seems that seeking significant profit in the short term is selling the potencies of Batu City for investors.

Eddy Rumpoko seems to ignore the environmental matter, like conservation areas. Under his government, most of the areas in Batu is opened for any business activity, and Batu city eases the development license for investors, against regulations. We may say that the mayor's primary concern is the economic development, not environmental.

One of the investors whom Eddy Rumpoko invited, was Willy Boenardi Koesnandinata. He is the general director of a travel agent Full Moon Express Tour and Travel in Surabaya¹¹. According to him, Eddy Rumpoko promised his support in getting permission to construct the hotel. So, Willy started to plan to construct the Tayja Batu Resort hotel. According to Eddy Rumpoko and Willy Boenardi Kosnadinata, it is necessary to develop resort hotels for the economic development that will help to improve the people of Batu lives.

Willy is a Christian of Chinese descent. However, unlike the movement against a governor of Jakarta Special Province who was a Christian of Chinese descent in 2016, there were no ethical issues around the case in Batu. He regularly donates a certain sum of money from his company profits to charity because he feels that according to the Christian teaching, helping each other is our duty. He also donated to Bulukerto village, in which he planned to construct the hotel, including the repair of the Nurul Hidayatulah Buludendeng Gintung Mosque. Then, he planned to employ around 60% of workers from residents in Bulerto village. We cannot conclude whether this attitude is genuinely faith-based or only an alibi to gain economic interest. However, some people believed his faith-based motivation. Moreover, the majority of people in Batu agreed on shifting policy, which was initiated by the Mayor Eddy Rumpoko. Because of it, Eddy Rumpoko won the election twice.

5.3 Impacts of Policy Shift

After shifting policy, the number of tourists visiting this city has been increasing, particularly in the last three years. In 2013, the tourists were 2,547,855 persons, in 2014, 3,834,021 individuals and in 2015, 3,961,021 persons.¹² In 2007, the number of tourists was less than 1 million people. Moreover, investment also increased viewed from the number of tourism facilities such as hotels and accommodation services. The number of companies in the tourism sector, was 437 in 2012, 500 in 2014, and 532 in 2015.

The description of the tourists' visits may be seen from data by PHRI (Indonesia Hotel and Restaurant Association) in Batu City. Dealing with tourists' visits at the end

¹¹ Interview with Willy Boenardi Kosnadinata, November 5, 2017

¹² A Responsibility Report of the Mayor in the 2015 fiscal year.

of 2016, 100,000 people visited this city, and they spent 600,000 rupiahs per day on the average. Therefore, the tourists spent 60 billion rupiahs a day.¹³

During the second period of Eddy Rumpoko's administration in Batu city, a target is to reach an international tourism model. In the 2016 fiscal year, the fund for the promotion was 700,000,000 rupiahs.¹⁴

As for the organic farming program, the target of the program has not been reached. One of the reasons is that the program had not been planned well. For instance, the development of particular marketplaces to promote organic agricultural products lasted for one year only because in the next year, it was abandoned; an example is the marketplace in Sultan Hasan Halim Street.

Meanwhile, there were some threats on the conservation areas, which were caused by the development of tourist infrastructures like amusement parks and hotels. For instance, the Museum of Animal Jambu Luwuk Resort, which was located near the reservoirs, worried the residents about the negative impacts that may cause a lack in water supply.

People were skeptical of the process of environmental assessment analysis by the Batu government. For instance, during the construction of the Predator Fun Park, they had seemed to skip their environmental assessment analysis process, although the permit to construct must be done formally.¹⁵ The residents also looked at the licensing of the Raya Hotel with suspicion. Before the process of the environmental assessment was finished, the Batu government had already given the license to the hotel. Related to this case, an activist of a local NGO *Forum Kajian Lingkungan Menuju Kerasian Alam* (Forum for Harmony with Nature), Parno Muttakin, stated that the Batu government "ignores environmental conservation" and that "the process for the development permit is too loose".¹⁶

The local government is simplifying the licensing process. The requirements can even be negotiated with the excuse of developing a tourism town. An officer in the Batu City government unofficially told me that the permission is either given from the top down or from the bottom up. In the "top-down" method, the mayor decides to grant a permit without any examination of the documents that request permission. In the "bottom-up" method, the process starts with an institution or individual's application for permission from the agencies concerned. After the official examinations, and depending on the final report from the relevant sections, the mayor makes the final decision about the permission. There are those who speculate that some of the mayor's final decisions in the "top-down" method might violate regulations or at least not refer to environmental impact.

The members of the local assembly state that these licensing problems will cause crises and damage the environment. The local assembly must monitor the government's policy. Several times, they have sent their recommendations in attempts to review

¹³ "A day 60 billion rupiahs", *Malang Post*, January 2, 2016

¹⁴ Mayor of Batu city, East Java province, The Local Regulation No: 04 Year of 2016, dated on October 12 2016 on the Change in Local Budget in the 2016 Fiscal Year, P. 189

¹⁵ Memo Arema, April 27, 2015, in <<http://memoarema.com/57935-penangkalan-buaya-ilegal-dikeluhkan>> retrieved on June 11, 2015 (sited February 2017)

¹⁶ "Batu Town: Tourist Icon without Amdal (Environmental Assessment Analysis)?" in <<http://www.simpuldemokrasi.com/kota-batu-ikon-wisata-tanpa-amdal>>, and "Kebanyakan sektor Wisata dan Perhotelan" (Mostly Tourism Sector and Hotel) in <<https://malang.memo-x.com/1575/tahun-2016-ini-pemkot-batu-kebanjiran-investasi>> (sited February 2017)

permission. However, these efforts have not had any significant results. In fact, the government has ignored the recommendations, and the parliament cannot force the government to execute their recommendations. We can say that this is a weakness of the local system of governance.¹⁷

¹⁷ Interview with Suwandi, a member of the local parliament at the Parliament Office, Batu City, August 21, 2017; interview with Ludi Tanarto, a member of the local parliament at his house, August 19, 2017.

Chapter 6 Chronology of the Movement

In this chapter, I try to describe the chronology of the movement in Batu from the beginning and to consider its strategy and characteristics.

6.1 Protest against the Hotel Construction Plan

As mentioned in Chapter 4, since about 1980, villages around the Gemulo water source have received help from HIPPAM in managing their water supply. In 2011, an investor planned to construct a new hotel near the Gemulo water source. Residents were anxious that the hotel construction would damage the Gemulo water source. In a HIPPAM meeting in Cangar hamlet on December 24, 2011, the head of Cangar hamlet reported to members that a hotel would be constructed in the area. After the meeting, Untung with Nugroho and Wagiman came to the head of Cangar hamlet to confirm the issue about the hotel construction plan near the Gemulo water source. The head of Cangar hamlet replied to their inquiry that the hotel would be constructed and they could not reject the plan.



Fig. 6.1 Gemulo water source in Bulukerto village, Batu

Untung, Nugroho, and Wagiman guessed that the plan certainly would have some adverse impacts on the village, namely through the destruction of the water source. Then they decided to stop the hotel construction in order to save the water source, and they were followed by Sugeng Paesnu, Suryanto, Agus Bayan, Karnu, Supangi, and Anto in their efforts.

Then, they consulted to Bambang Parianom, the director of *Yayasan Pusaka* (Pusaka Foundation, a local NGO on environmental issues) on January 13, 2013. This foundation is working in the field of Environmental Conservation and once made cooperation with the government of Bulukerto village to build fences for the Gemulo water source. Moreover, Bambang Parianom is a former head of Bumiaji sub-district and a former head of the Department of Environment in Batu city. Following his advice, they came to Environmental Board, and Irrigation and Road Maintenance Agency, East Java province on January 14, 2012. However, both heads of these provincial institutions answered that this issue should be referred to the Batu city government.

Therefore, Wagiman made the statement for their request to stop the hotel construction based on the Batu City Government Regulation Number 26, 2008. This regulation states that within at least a 200-meter radius from water sources, every construction which may give any harmful damage to the water resource, do not be allowed.

Bambang then proposed that the actors of the movement officially should ask an NGO, Yayasan Pusaka¹ to support their letter of request to the Batu City government. On January 20, 2012, they sent letters through Yayasan Pusaka, to the people persons concerned².

After that, Wagiman, Nugroho and Untung invited other HIPPAMs in Sidomulyo and Bumiaji villages to join their movement, because HIPPAMs in these two villages also use the Gemulo water source. They also contacted local NGOs such as Yayasan Pusaka, Konservasi Brantas³, Malang Corruption Watch (MCW)⁴, and WALHI⁵.

The first step of the movement was marked by the first meeting initiated by the head of HIPPAM of Bumiaji village, Supi'i on March 6, 2012. The committee of HIPPAM in Bumiaji village, Cangar hamlet, and Bulukerto hamlet attended this meeting. Prominent members of Yayasan Pusaka, MCW, Konservasi Brantas, and WALHI also joined. The meeting was held in the HIPPAM office in Bumiaji village.

The prominent actors in the meeting were Zaenal and Basuki from Sidomulyo village and Joko SP⁶, Jumadi, Wirai, Tomo, Supriyadi, Imam Ghozali, Ali Mustofa and the head of Bumiaji village were there as was Imron, the head of HIPPAM in Tulungrejo village.

In this meeting, they discussed the impact of the hotel construction nearby the Gemulo water source from various points of view, including environmental, legal, and political angles. We can say that the atmosphere of the meeting was calm and rational.

At last, after this session, they reached their consensus to disapprove the hotel's construction plan, stating that they should first ask the local parliament members in Batu City. Untung was appointed to make an application letter for a meeting with the local parliament members.

¹ Yayasan Pusaka (Pusaka Foundation) was established on October 31, 2005 in Batu city, with the vision of reinforcing the strategic critical awareness to empower the people and the environmental preservation.

² The Mayor of Batu city, the Head of the Local Parliament of Batu City, the Head of BAPPEDA (the Regional Planning Board) of Batu City, the Head of the Department of Irrigation and Road Maintenance of Batu City, the Head of the Department of Human Settlement and Spatial Planning of Batu City, the Head of the Department of Environment of Batu City, the Director of Hotel Pumama Batu, the Head of Bulukerto Village, the Head of the Council for Development and Guidance of Bulukerto Village, the Head of Bumiaji sub-district, the Director of Perum Jasa Tirta I Malang, and the Rector of Malang Technology University.

³ Konservasi Brantas (Brantas Conservation) focuses on environmental issues, primarily environmental policies. It has no specific program, but it often publishes news on the environment through Facebook.

⁴ MCW is a local NGO that works on corruption. It was established on May 31, 2000. The program is intended to monitor, investigate, and prosecute any corruption in Malang Raya (Malang City, Malang District, and Batu City) and also to undertake public campaigns and education.

⁵ WALHI was established on October 15, 1980 in Jakarta. It is one of the results of the decisions in the meeting held in October, 1980, the first national meeting of NGOs working on the environmental issues. It is aimed at improving the NGOs' participation in the efforts of environmental development and at releasing their aspirations in the national scope. See Koesnadi Hardjasoemantri (2012: 473-474).

⁶ Joko SP is a pseudonym.

The meeting between the community members and the local parliament members of Batu City was held on March 7, 2012. They met two local assembly members, Reni and Yani Andoko, as representatives of the Batu City assembly.

In the meeting, the actors of the movement instructed them to remove the heavy equipment, to be used for the hotel construction, from the location. Reni and Yani agreed with the request, and on March 8, 2012, the big equipment were removed from the site. Also, two local assembly members proposed for the halt of the hotel construction.

6.2 Actions through FMPMA

Finally, they established a local organization FMPMA. Its founders are Supi'I (HIPPAM of Bumiaji village), Untung Santoso, Wagiman, Nugroho, Zaenal, Sugeng Paesnu, Jumar, Mones, Misenu, Supriadi, Heran Tri, Kiswanto, Hadi (HIPPAM of Cangar hamlet), Bambang Parianom (Yayasan Pusaka), Lutfi Jayadi, Faruk, Didi (MCW), and Khosnan (*Lembaga Bantuan Hukum Kota Malang*, Legal Aid Association Malang City).

This organization consisted of actors with various backgrounds. They are activist of a community-based organization, the activists of HIPPAM, and the community leaders. Based on educational background, they are graduates of the junior high school, senior high school, and university. Based on the personal identity they are Muslim and Javanese. In terms of the occupation, they are a retired soldier, a retired civil servant, a farmer, a trader, a rabbit breeder, and a housewife.

The first action made by FMPMA is to mobilize the signatures of people opposing the construction of the hotel nearby the Gemulo water source. For one week, they collected 1,358 signatures of the members of HIPPAM Bumiaji village, 437 of HIPPAM Cangar hamlet, Bulukerto village, and 738 of HIPPAM Sidomulyo village. On March 15, 2012, signatures were given to the Secretary of the Batu city local assembly. They received the report and promised to respond to the reports.

To campaign the issue and to get some support from people, on March 29, 2012, FMPMA organized *Peduli Koin* (collecting coins) at *warung bamboo*, a small *warung* (food stall) in Sidomulyo village. Participants were invited to attend in the program which was intended to gather money for the movement. They planned to use the money for purchasing the land of the hotel too.

Since not so many people attended the *Peduli Coin* activity, FMPMA held a public discussion in Graha Wisata, Bumiaji village. In this forum, they got the idea to report the case of the Rayja Hotel construction plan to Komnas HAM (National Commission on Human Rights).

Lutfi J. Kurniawan raised the idea of reporting the case to the National Commission on Human Rights. He got the idea to connect the environmental issues with human rights from his experience with MCW. There are four legal points to this idea.

- (1) Every person shall have the right to live and to defend his/her life and living (Article 28A of the 1945 Constitution).
- (2) Every person shall have the right to lead a physically and mentally prosperous life, to have a residence, and to obtain a proper and healthy living environment as well as to obtain health services (Article 28H of the 1945 Constitution).

(3) Every person shall have his/her human rights protected without any discrimination (Article 3, Verse 3, Law No.39/1999 on Human Rights).

(4) Every person has the right to live in a good and healthy environment as part of his/her human rights (Article 65, Verse 1, Law No. 32/2009 on Environmental Protection and Management).⁷



Fig.6.2 Peduli Koin meeting

Then, the Batu City parliament responded by initiating a meeting on April 5, 2012. In this meeting, the local parliament members of Batu City were represented by Suhadi (*Partai Golkar*⁸), Simon Purwo Ali (*PDI-P*⁹), Heli (*Partai Hanura*¹⁰), Endang Imam Kabul (*PDI-P*), Yani Andoko (*Partai Barnas*¹¹), Sunardi (*Partai Demokrat*¹²), and Sugeng Minto Basuki (*PAN*¹³). Batu city government were represented by Dr. Enik Rachyunningsih (BAPPEDA, Regional Planning Board), Anto (Head of Bulukerto

⁷Malang Corruption Watch's Report "Analisis Kasus Sumber mata Air Kota Batu (Analysis of The Water Resource Case)", June 22, 2012

⁸ *Partai Golkar* = *Golongan Karya* (workers' organization), the ruling party from 1973 to 1999, under Suharto's New Order regime (1966-98) and the brief presidency of B. J. Habibie (1998-99).

⁹ *PDI-P* = *Partai Demokrasi Indonesia Perjuangan* (Indonesian Democratic Party of Struggle), the party of the current president of Indonesia, Joko Widodo. PDI-P was founded and is currently led by Megawati Sukarnoputri, president of Indonesia from 2001 to 2004 and the daughter of Sukarno, the first president of Indonesia.

¹⁰ *Partai Hanura* = *Partai Hati Nurani Rakyat* (The People's Conscience Party) is a political party in Indonesia, which was established in Jakarta on December 2006 and is headed by former Indonesian Military Commander Wiranto.

¹¹ *Partai Barnas* = *Partai Barisan Nasional* (National Front Party) is a political party in Indonesia. It was founded by Vence Rumangkang, former member of the Democratic Party advisory board.

¹² *Partai Demokrat* (Democratic Party), the party of the former president of Indonesia, Susilo Bambang Yudhoyono from 2004 to 2014.

¹³ *PAN* = *Partai Amanat Nasional* (National Mandate Party) is a political reformist party in Indonesia. It was founded by Muhammadiyah's members, including Amien Rais, chairman of the Muhammadiyah (1995-2000).

Village), Sidiqi (head of Bumiaji sub-district), Wicaksono (BAPPEDA, Regional Planning Board), Muklis (Environment Department) and Hendro (KPPT).

As a result, the Batu city assembly asked the Batu city government to review the permission of the Rayja hotel construction. A written application was sent to the Batu city government. Then, the mayor notified the Batu city assembly the local parliament that the local government was willing to review the process of the permission.

After that, the Batu city assembly with the Batu city government established a team to review all the permission processes of the hotel construction. They did not inform the result to the FMPMA. A Batu city assembly member, Yani Andoko proposed to Supii to ask the product of the review, but FMPMA did not propose to ask the Batu city assembly.

At last, FMPMA concluded that the Batu city assembly did not have any desire to solve the problem. Therefore, FMPMA looked for another strategy to stop the construction of the hotel. Finally, they decided to hold a demonstration in front of the mayor's office on April 25, 2012. In this demonstration, 2,500 persons participated. Staff members of Batu City met with the demonstrators and promised them a meeting with the mayor on May 1, 2012.

However, the mayor did not want to meet them, even though FMPMA held a demonstration action involving 5,000 demonstrators in front of the government hall on May 1, 2012. The government staff members did not fulfill their promise. Some Batu city government staff members stated that the mayor would announce his position on the problem and meet with the people, but the time and place of the meeting were not determined yet.

Suddenly, on May 2, 2012, the mayor came to H. Rudi's house, and the members of FMPMA from Cangar hamlet asked the mayor to repeal the hotel construction permission. The mayor did not give them a definitive answer. One of the members, Yunanto stated that the mayor did not have an earnest desire to solve the problem.

6.3 Negotiation with the Mayor

On May 3, 2012, the head of Bumiaji village asked the mayor to come to the office of the village to meet with FMPMA members. The mayor accepted his request. For the meeting, the Bumiaji village head invited heads of related villages such as Pandanrejo, Punten, and Bulukerto villages. They conveyed villagers' requests to stop the hotel construction.

After the meeting, the mayor was holding a dialogue with villagers from three villages (Bumiaji, Bulukerto, and Sidomulyo). At the end of their dialogue, members of FMPMA made the mayor sign for their statement on the repealing of the hotel construction permission.

The statement letter, however, did not solve the case. The Batu city government did not cancel the permission for the hotel construction. No action was taken by the local government from May 3, 2012 to January 24, 2014. In fact, at the location, the hotel construction was being continued without any strict action of the Batu city government.

Therefore, on January 24, 2012, FMPMA sent letters to the head of the Batu city assembly, the head of the Integrated Office for Permission (KPPT), and the Mayor.

The contents of letters are as follows:

- (1) In the Permission from KPPT of Batu City No. 180/75/IMB/422.208/2012 dated on January 30, 2012, Chapter 3, point 4 states that the permission for construction may be cancelled by the Mayor if, in six months after the permission given, the building process has not been begun, or, in one year, the concerned work has not been continued.
- (2) In a stamped statement attached in the permission document dated on January 6, 2012, point 10 states that “the constructor have to stop every construction activity if there is an objectively acceptable objection or suit by the community members.”
- (3) A Statement Letter signed by the mayor dated on May 3, 2012 states “repealing the permission for constructing the Rayja hotel in the conservation field of the Gemulo Water source.”

In this letter, they gave five days to the Batu city government and assembly to take the action of stopping the construction. However, the Batu city government did not respond to the letter. So, on January 31, 2013, thirty actors of FMPMA came to ask the head of KPPT (permission office), Syamsul Bahri, to stop the hotel construction and to repeal the hotel construction permission. He answered that the permission for the Rayja Hotel construction was legally sufficient, so it was not easy to repel it.

After that, some members of FMPMA felt that they should make efforts to stop the hotel construction. Then, they in the location blocked the entrance to the hotel using building materials. They gathered stones hand in hand at the entrance. This action was seen by the head of KPPT of Batu city, the head of Bumiaji sub-district, the police, and journalists.

Then the FMPMA decided to adopt another strategy. On February 1, 2013, members of FMPMA visited the vice-mayor of Batu City, Punjul Santoso. FMPMA requested that the construction of the hotel be stopped and the permission for the hotel's construction be repealed as mentioned in the statement letter signed by the mayor. However, Punjul stated that the hotel construction permission did not need to be canceled because according to ecological research, the hotel's construction posed no risk of destroying the water source. To convince FMPMA of his statement, he cited the research results from the team from The Center for Environmental Research at the Brawijaya University in Malang.

Meanwhile, on February 2, 2013, the hotel management company reported members of FMPMA to the police for blocking the entrance to the hotel construction site. The police reacted to this denouncement, which included accusations of unpleasant or destructive acts such as the destruction of the plywood required for supporting the water channel and removing workers' motorcycles from the hotel construction site.

The police summoned 17 members who had been involved in these actions as witnesses. Although some of the members had not participated in the blocking action, they gave moral support to the members by waiting for them during the police examinations. Zaenal, Basuki, and Heran, who did not join the action, came to the police station. They wished their movement to be solid and the opposites would not underestimate the conservation movement.

Because FMPMA considered their activities insufficient for saving the Gemulo water source, the members of FMPMA were trying to examine documents of Environmental Management Effort and the Environmental Monitoring Effort by the hotel carefully. They got these documents from the Department of Environment of Batu city. This strategy was proposed by a member of WALHI in East Java, Purnawan D. Negara, and it was then directly handled by two actors of FMPMA, Yunanto and

Chamim. After the examination of documents, they found that, in the documents, the process of obtaining the permission was inappropriate. For example, the permission for buildings (*IMB = Izin Mendirikan Bangunan*) was given before they processed it through the Environmental Management Effort and Environmental Monitoring Effort as parts of the environmental assessment analysis. Legally, they can permit buildings after processing these environmental assessment analysis. They decided to appeal this inappropriateness for their movement.

6.4 Strategy Change: From Negotiation with the Local Government to Cooperation with the Central Government

Because the Batu city government did not respond to their demands, FMPMA changed their strategy. They tried to ask some central governmental institutions to support their movement. First, FMPMA reported to the National Commission on Human Rights (*Komnas HAM*) that the Batu city government disturbed residents' rights to use the Gmulo water source.

At the same time, they also tried to report to the National Ombudsman Commission (ORI) that the process of obtaining the permission by the Batu City government was inappropriate. For example, that the process violated Law No. 11/1974 and Law No. 4/2007 concerning water resources, and Regional Regulation No. 11/2007 concerning on spatial plan of Batu City.

For seeking their cooperation with these national institutions, FMPMA utilized their close relationships with members of Komnas HAM and ORI, through members of WALHI and MCW. For instance, Purnawan D. Negara of WALHI has his close personal relationship with Syafrudin Ngulma Simeleu of Komnas HAM, and Lutfi Jayadi of MCW has his close a personal relationship with Ibnu Tri Cahyo of ORI.

Meanwhile, they also requested the Center for Environmental Research of Brawijaya University (PPLH UB), in Malang, to reconsider their recommendation for the hotel construction permission. On February 5, 2013, FMPMA will come to Brawijaya University to meet the president with their demonstration at the campus. Although the president of Brawijaya University did not meet with them, the head of the Center for Environmental Research, Heddy Swasono promised them to explain their research about the environmental assessment for the hotel construction.

Heddy Swasono and his team came to participate in a discussion at H. Rudi's storehouse in Cangar hamlet on February 8, 2016. During the meeting, researchers from Brawijaya University said that they had done their environmental research objectively and had never intended to support permission for the hotel's construction. Furthermore, it was not easy to reexamine the data.

At the same time, FMPMA continued to try to negotiate directly with the Batu City mayor. They requested several meetings with the mayor. Finally, the first meeting was held on March 19, 2013, in the office of Batu City. During the meeting, the mayor promised that he would reexamine the environmental conditions and location of the Gemulo water source. He also expressed his objection to FMPMA's cooperation with some institutions because every problem in Batu city had to be solved by Batu people themselves, without any outsiders such as WALHI, MCW, Komnas HAM, and ORI. There was no doubt that no FMPMA members agreed with his opinion. The mayor also

proposed that Batu City would buy the land around the Gemulo water source as a conservation area.



Fig. 6.3 Meeting with PPLH UB



Fig. 6.4 Report to Komnas HAM

The second meeting with the mayor was held at the hotel construction site on Wednesday, March 20, 2013. The mayor arrived suddenly and called H. Rudi on the phone. Finally, H. Rudi, Yunanto, Nugroho, Chamim, Jumadi, and Samuji met the mayor; however, they could not carry out any progress.

The third meeting was held in Batu City Hall on March 26, 2013. The Batu city government was represented by the mayor, the vice mayor, the general secretary, the head of Regional Planning Board (BAPPEDA), the head of permission bureau, the director of PDAM, the head of the Batu City Police, the technical staff of the mayor, the head of the tourism office, the head of *Bakesbanglinmas*¹⁴, and the head of the Irrigation and Road Maintenance Bureau.

The mayor and general secretary explained the ecological conditions of the Gemulo water source, then the director of PDAM reported that the amount of water in the Gemulo water source was still unchanged. Supi'i refuted the statement with his empirical data, that the water level of the Gemulo water source had fallen to 50 cm. Also, Jumadi appealed to those at the meeting that many farmers had begun to feel the lack of water for agriculture. Meanwhile, H. Rudi firmly requested that Batu City buy the land around the Gemulo water source designated for the hotel's construction as a conservation area.

BAPPEDA (the Regional Planning Board) asserted that the Batu city government had followed the appropriate processes for the hotel's construction permission. However, Untung Santoso expressed his suspicion by asking to be shown any documents as evidence. Imam Yunanto raised the criticism that BAPPEDA's recommendation was in contradiction of Local Regulation No. 07/2011 regarding the spatial planning (RT/RW) of Batu City in the year 2010-2012. This regulation states that no villas or tourism facilities may be built in Bulukerto village. However, they could not get any concrete responses from the Batu City government.

The next meeting was held on April 2, 2013. During the meeting, the mayor declared that Batu City would buy 2,000 m² of land around the Gemulo water source, including the hotel construction site, as a conservation area for about 100 billion rupiahs.

¹⁴ *Bakesbanglinmas* = *Badan Kesatuan Bangsa dan Perlindungan Masyarakat*, the Bureau for National Integration and Social Service, working for developing a democratic system.

However, the construction of the hotel did not stop. Therefore, FMPMA staged a third demonstration at the office of the Batu city government on June 17, 2013. 10,000 demonstrators came from the villages of Bulukerto, Bumiaji, Sidomulyo, Pandanrejo, and Punten. They demanded the fulfillment of the mayor's promise and the suspension of the hotel's construction. Finally, their demands were accepted by Batu City. The general secretary of Batu City issued a decision letter No. 730/287/422.400/2013 dated June 21, 2013 on the abeyance of the hotel construction.

However, Batu City had not repealed the hotel construction permission. Because FMPMA considered this response of Batu City, they tried to continue to ask national institutions for their recommendations about the hotel construction permission.

At that time, a member of the national assembly for Malang and Batu, Totok Daryanto, offered to contact the Ministry of the Environment for the FMPMA. He is a member of Committee VII (Energy, Research & Technology, and Environment) of the national assembly. For their request, the Ministry of the Environment made the recommendation letter for Batu City about the hotel construction permission. That recommendation letter stated that before constructing the hotel, the hotel should obtain the environmental assessment (*AMDAL*).

Meanwhile, the FMPMA also tried to get the recommendation letter from ORI. Finally, on October 26, 2013, ORI gave its recommendation that there was an administrative violation in dealing with the permission process; namely, the authorization for the hotel construction was issued before the environmental management effort and environmental monitoring effort documents had been completed in the environmental assessment.

It was followed by the recommendation of the National Commission on Human Rights No. 014/R/Mediasi/III/2004, March 10, 2014, containing the following points:

- (1) The construction of The Rayja Hotel did not accord with related regulations and can violate human rights.
- (2) The environmental examination by the Center for Environmental Research of Brawijaya University was not thorough enough.

All of these recommendations asked Batu City to reconsider the hotel construction permission.

6.5 SLAPP (Strategic Lawsuit Against Public Participation) by the Hotel and Struggle in the Court

In opposition to the movement, the hotel took legal action by SLAPP. SLAPP is an acronym for Strategic Lawsuit Against Public Participation. In the 1980s, a legal scholar Pring and a sociologist Canan, from the University of Denver, coined the name SLAPP to call attention to some new type of litigation in America. SLAPP is the lawsuit against individuals or groups in response to political activities such as circulating a petition, writing a letter to the editor, testifying at a public hearing, reporting violations of law, lobbying for legislation, peacefully demonstrating, or otherwise attempting to influence government action. A majority of these lawsuits claim slander or business interference to mask their real purpose, which is to silence citizens (Pring and Canan 1996: 1-3).

The hotel management group sued H. Rudi, as a leader of FMPMA, for his obstruction of business, and claimed damages in court. A suit was filed in the court, in

the first instance of the Malang local court on August 22, 2013.

The hotel stated that although they had obtained the hotel's construction permission from Batu City, the movement by FMPMA, for example, their demonstrations at the hotel construction site with breaking fences, and their appeal to central government institutions, like the National Commission on Human Rights, delayed the hotel's construction. Then the hotel suffered damage. The hotel asked for 10,000,000,000 (ten billion) rupiah in damages for obstruction of business; 20,000,000 rupiahs for moral injury; and 25,000,000 rupiahs for the court cost. The hotel also demanded apologies from H. Rudi through mass media for three days.

Meanwhile, FMPMA stated that because the examination process by the Batu city for the hotel construction permission was not appropriate, as recommendation letters from the Ministry of Environment, the National Commission on Human Rights, and the National Ombudsman Commission stated, FMPMA had no responsibility for the delay of the hotel construction.

At the Malang Local Court, the case was decided against the plaintiff, because the allegation of FMPMA was accepted. Because the hotel disagreed with this judgment, they appealed to a higher court. However, the Surabaya High Court upheld the first trial's verdict. These two verdicts could support the need for Batu City to re-examine the hotel construction permission. Then the hotel appeals again to a higher court: the Supreme Court. The Supreme Court refused both claims by the hotel and FMPMA. In the verdict, the judge stated that the examination process of the hotel construction permission was not related to the obstruction of business, and also FMPMA's actions were not related to the delay of the hotel construction.

It seems that the struggle in courts was drawing games, formally. However, we may say that FMPMA actually won because the hotel strategy, SLAPP, was not valid, and in the judicial court process FMPMA succeeded in appealing their claim that the examination process of the hotel construction permission was not appropriate. Then, Batu City needed to pay attention to their claim. We can say that FMPMA utilized the judicial court process for their achievement.

6.6 Latest Condition and Characters of the Movement

In February 2017, the FMPMA put in place a new strategy for their movement. The prominent actor of FMPMA, H. Rudi, ran for mayor of Batu city and appealed to the conservation of water sources as the most significant issue in the campaign (Fig. 6.5). Although he was unseated at the mayor election, he received about 30% votes. The percentage of the votes obtained by H. Rudi made the Batu City to pay more regard to the environmental issues, especially the conservation of water sources.

Officially, Batu City government and the mayor, until now, have not revoked the permission for the hotel construction. However, because the hotel construction is frozen, the main actors, like Heran, Basuki, Zaenal, recognize this latest condition as their tentative achievement. According to their opinions, it is clear that after they started the movement, the government and investors pay more attention to residents' opinions and environmental issues. However, they do not want to stop their movement. They cannot believe that Batu City indeed shifts their development policy to the eco-friendly development policy. They fear that without their monitoring, the government wants to

violate regulations for tourism development in Batu. So, they must continue their movement, they say.

Let us now consider main characters of their movement that made the hotel construction frozen. First of all, we have to pay attention to the positive impact of democratization after Reformation in Indonesia. Before Reformation, it was so difficult to appeal their opposing opinion to the government. A member of FMPMA told me his experience around the 1970s. Because he and his friends often expressed some doubt about the village public policy, they were accused as members of the Indonesian Communist Party (PKI). The PKI was a banned organization. Of course, this was a groundless suspicion, only for threatening them. Other actors, like Basuki and Zaenal also told their similar experiences before Reformation. They evaluated that the democratization after Reformation made them easy to act and appeal to their interests.

We may say that the main characters of their movement are their persistence, solidarity, and rationality. Although the government has not responded to their requests, they have not given up. Also, they do not want to in any way that violates but through rational ways, like utilizing regulations on environmental conservation and local government administration. Why can they do it? In the following chapters, we will discuss and try to answer this question. First, in Chapter 7, we will discuss the rich social capitals that make their intellectual movement possible.



Fig. 6.5. H. Rudi appeals himself as a candidate for the mayor.
“Thank you, my patriot. / Congratulation the 71st Indonesian Independence Day.
/HAJI A. RUDI SB/Struggle with “little people (common people).”

Chapter 7 Main Actors of FMPMA and their Social Capital

In this chapter, we will describe central actors of FMPAM and their social capital. They utilize their social capital for their movement efficiently.

7.1 Education and Expertise

There are some main actors of FMPMA who are highly educated persons. They utilized their knowledge as experts for their movement.

Untung: A Village Organization Activist

Untung, 50 years old, lives in Cangar hamlet, Bulukerto village. After graduating from a senior high school in Kediri, he started to study in the Faculty of Economics, a private university in Malang. However, he left the university in his second semester. Then, he worked in a bank. His position was a teller. After working for six years, he started to plant apples and to trade fruits.



Fig. 7.1 Untung in the forestation program
(Photo by Untung)



Fig. 7.2 Untung in his farming field
(Photo by Untung)

Untung is a member of some local governmental institutions, such as a member of Village Consultative Council (BPD) Bulukerto village in the period of 2002-2007, the head of Village Council for Development Planning and Guidance (LPMD) Bulukerto village (2007-2012), a finance manager of Community Information Group (KIM) Batu city (2010-now), and the head of KIM Bulukerto village (2007-now).

He can execute all of these roles because of his experience in various local government institutions. Through this experience, he has obtained knowledge and skills about regulations and the method of preparing formal documents. For instance, when FMPMA sent their official letter of request to the National Commission on Human Rights, Untung was invited to draft the official letter.

Yunanto: A Member who Handles Digital Operations

Yunanto, a 34-year-old, lives in Junrejo village. After graduating from senior high school, he worked as a trader in fruits with his friend in Jakarta, Bandung (West Java),

and Samarinda (Kalimantan Island). In 2009, Yunanto started to design gardens for villas and hotels in Denpasar, Bali. When he went back to Cangar hamlet in 2010, H. Rudi asks him to join the movement. Yunanto decided to participate in this group. Nowadays, Yunanto is a trader in rabbits in Batu.

After coming back to Batu, Yunanto studied in the diploma program in the Department of Agriculture at Brawijaya University in Malang. Beside agricultural skills and knowledge, he also acquired skills on how to use the internet and how to create graphic designs on a computer. His digital skills actively support the movement.

He regularly participates in discussion meetings hosted by the Green Communication Forum (*Forum Komunikasi Hijau*), which was established by the Batu City government. This forum was established by Batu City, where they invited the Batu City officers, academicians, community leaders, and activists of NGO-related environmental issues in Batu to the forum. Through these discussions, Yunanto is familiar with main actors on environmental issues in Batu, like some academicians and activists of NGOs



Fig. 7.3 Yunanto in the second demonstration of FMPMA

He also participated in the *Forum Akademi Berbagi* (Study forum) by members of a youth group called *Karang Taruna* in Batu City. For these programs, they invite speakers to lecture on every topic, based on their life experiences. Through this forum, social networks among youths are set up.

His contributions to the movement included administration skills, mobilizing the youths of Cangar hamlet, and lobbying outsiders. One of his main tasks is to make banners for the movement. The banners contained the excerpts of hotel environment documents. They put these banners in some areas in the Bumiaji sub-district. According to him, these banners gave relevant information about the hotel construction plan to actors and villagers.

Related to lobbying outsiders, he created and kept close relationships with mass media and independent state institutions. He always contacted journalists when FMPMA initiated its actions. Then, when FMPMA needed a representative in a press conference, he spoke on behalf of FMPMA. Yunanto reported the case of the Gemulo water source conflict to KPP (*Komisi Pelayanan Publik*/the Commission on Public

Service). He was invited by the commission in Surabaya as a witness. Finally, KPP issued a recommendation for Batu City. When the Ministry of Environment invited FMPMA to Jakarta, Yunanto also reported their request.

Heran Tri: A Rational Leader

Heran Tri, 52 years old, lives in Binangun, Bumiaji village. He is selling some daily necessities at his house. Heran is a retired civil servant, and he graduated from APDN (*Akademi Pemerintahan Dalam Negeri*; Academy of Public Administration).



Fig. 7.4 Heran Tri in the meeting with the Batu City regional assembly

He worked at BAPPEDA (Regional Development Planning Agency) in Pasuruan (1968-1988) and Tulungagung districts (1988-2006). His last position was the general secretary of BAPPEDA, Tulungagung district. He was concerned about environmental policies in BAPPEDA, Tulungagung district. When he worked in Tulungagung, he had participated in a training course in LIPI (*Lembaga Ilmu Pengetahuan Indonesia*; Indonesian Institute of Sciences). These experiences made him consider environmental issues based on actual data.

After retiring from civil servanthood, he spent much time in his house. His habit is reading newspapers, especially news about environmental issues, and clipping articles for reference. His newspaper clipping supported their movement for preparing documents and references. Also, he always tried to search some data about the Gemulo water source, the hotel construction plan, and the examination process for the hotel construction permission by the Batu city, through his networks, especially former subordinates in BAPPEDA. We may say that he made the movement rational.

7.2 Javanese and Islamic Knowledge

Some actors of FMPMA utilized their Javanese and Islamic knowledge and network to promote their movement.

Agus: A Spiritual Leader

Agus, 41 years old, lives in Cangar hamlet, Bulukerto village. Since he was a senior high school student, he helped his parents to sell fruits. He sold fruits in cities, such as Denpasar in Bali Island, Jakarta, and Bandung. Then after his graduation from senior high school, he was going to big cities all over Indonesia selling apples for three years. After his marriage, he started to cultivate apples but now plants oranges and guavas. To obtain additional income, he also breeds rabbits.



Fig. 7.5 Agus, wearing a T-shirt with a *wayang* puppet character

Agus ever worked as a head of the administrative coordination section, Bulukerto village (2011-2013). Because he did not agree with the decision of the head of Bulukerto village related to the Gemulo water source, he resigned. However, until now, villagers called him *bayan* (a village officer in Javanese).

Agus is known as a master of the Javanese tradition in his village. For instance, he knows well about *primbon*, a Javanese holy book. Javanese people, until now, generally like to refer this book for fixing the date for rituals like a wedding. Agus also believes the Javanese mysticism, *Kejawen*. He often visited some sacred place like the Gemulo water source to meditate and to communicate with unseen spirits. Villagers like to listen to his mystic experience with his interpretation from viewpoints of Javanese tradition.

For instance, he told the following story: When they started the water conservation movement, an old man visited him. The old man approached Agus, smiled at him for a while, and then disappeared. Agus understood that this was the message of the spirit of the water source, and he was glad of their water source conservation movement. In the movement, Agus' interpretation of their actions was based on the Javanese tradition, made it easier for villagers to understand and accept the movement.

Aris: A Youth Leader

Aris is 29 years old and lives in the Cangar hamlet, Bulukerto village. His parents were activists of a political party, PNI (Indonesian National Party)¹. During the New Order era, his father was an activist of PDI (Indonesian Democratic Party)². Aris' last education is senior high school. He is single and a rabbit breeder.



Fig 7.6 Aris in the demonstration at the Higher Court of Surabaya

Aris likes to learn Islamic knowledge through reading sessions with the *kyai* Islamic teacher at the Haramain Foundation and Tegalarjo Islamic Boarding School in Malang. His knowledge of Islam was learned from his activities as part of IPNU (*Ikatan Pelajar Nahdlatul Ulama*/Nahdlatul Ulama Student Association) between 2006 and 2010. As a result of these activities, he knows some prominent Islamic figures well, including *kyais*, Islamic teachers in Batu city.

He respects the Javanese culture. For example, he likes to explain every real phenomenon through analogies using *wayang* (Javanese Puppet Theater) stories. According to his interpretation, while actors in the water source conservation movement are the *pandawa* group (the right side), the Batu city government and the supporters of the hotel are the *kurawa* groups (the evil side). Together with his friends, Aris established the *bantengan* Javanese traditional dance group in 2006. This group aims to preserve Javanese traditional culture and establish the identity of the younger generation as Javanese. The group performs *slametan* rituals in Bulukerto village and other neighboring villages.

¹ *Partai Nasional Indonesia*, Indonesian National Party. In 1927, young Sukarno formed a movement called the Indonesian National Association and in 1928, the name was changed to the Indonesian National Party. The party was paralyzed and dissolved itself in 1931. After Indonesian independence (1945), the party was revived without Sukarno (the president of Indonesia). In 1973, the PNI, along with other nationalist and Christian parties, were merged into the Indonesian Democratic Party (PDI) in order to limit the number of political parties and to weaken opposition to the Suharto regime.

² *Partai Demokrasi Indonesia*, Indonesian Democratic Party. As part of Suharto's program to reduce political parties in 1973, five nationalist and Christian parties (including PNI) were merged to form PDI. After Suharto's fall in 1998, a former head of PDI, Megawati Sukarnoputri (a daughter of the first president Sukarno) formed PDI-P (Indonesian Democratic Party of Struggle), and in 2003, PDI was dissolved.

Aris' most prominent contribution to the conservation movement was the establishment of *Nawakalam Gemulo*, the youth wing of FMPMA. This organization collaborates with local NGOs such as WALHI Malang, Malang Corruption Watch (MCW), and *Omah Munir* (an NGO in Batu City). FMPMA has created a social network with these NGOs through *Nawakalam Gemulo*.

Chamim: A Pious Muslim

Chamim, who is 42 years old, lives in Banaran hamlet, Bumiaji village. Chamim's educational level is senior high school. However, before entering his Senior High School, he had studied at an Islamic boarding school *Pesantren Al Amin* in Sumenep district, Madura Island. He planted apples. However, he changed the plants into corn and roses. Chamim's prominent identity is pious Muslim. His mother was the board member of Muslimat NU (a women wing of Nahdlatul Ulama), and she promoted his religious awareness. He always remembers his mother's advice that Islamic knowledge must bring him bountiful blessings.



Fig. 7.7 Chamim in his farming field

In his village, he once became the head of youth organization *Sparta*. *Sparta* conducted the event to commemorate the Indonesian Independence Day, and *pengajian* Quran learning circle. This organization succeeded in lobbying the central and local government and private enterprises for supporting those events. He once was also a member of the LPMD (Village Council for Development Planning and Guidance).

Besides activities in *Sparta* and LPMD, Chamim also participated in some religious organizations, such as the branch head of IPNU (NU Student Association) Bumiaji and a member of Anshor (a youth wing of NU) in Batu. These organizations conducted *pengajian* and charitable activities, in cooperation with the Batu city government. As a result, through these experiences, Chamim became familiar with some high-level officers in the Batu city government.

He is currently the head of *Gapoktan* (*Gabungan Kelompok Tani*, Farmer Group) of Bumiaji village, and frequently meets Batu City government officers for cooperation, especially officers from Agricultural and Forestry Service Bureau of Batu City. When

FMPMA sought some environmental documents about the Gemulo water source at Environment Office, Batu City, Chamim tried to ask his acquaintance at Environment Office.

Zaenal: An Artist and a Spiritual Leader

Zaenal, 51 years old, living in Tinjumoyo hamlet, Sidomulyo village, obtained Diploma I Degree in the drama and film study. He is an artist (painter).

He participated as a board member of HIPPAM Tonggolari, Sidomulyo Village. At that time, he only joined to construct water storage and install water pipes. After that, he was offered to be a member of the technical team. Also, until now Zaenal has been the BPD member for almost eight years.



Fig. 7.8 Zaenal playing guitar in an art gallery in Batu City

Then, he participates in the artist community in Batu City as a painter. They hold regular painting exhibitions. Every year, Zaenal takes part the exhibition. He interacts with some painters and sculptors (stone and wood). Besides conducting exhibitions of paintings in Batu, this community also initiates conservation programs, such as cleaning rivers and water sources, including Brantas River and Gemulo water source.

Related to the environmental conservation, Zaenal always considers the meaning of the sacred place. In his opinion, because the sacred place has an essential environmental function, people are forbidden to enter the site. So, he stresses that in any conservation movement we must respect and optimize traditional culture as the local wisdom. For instance, in every *Sura* month (the first month of the Javanese calendar), he conducts Javanese rituals at the water source.

Joining the Gemulo water source conservation movement is not his first experience in being involved in the struggle for conserving the environment. Before this movement emerged, Zaenal had been involved in the movement against Batu City's water supply program to Malang City from the Gemulo water source in 2004. Actors thought that the Mayor planned to sell the water from the Gemulo water source to Malang City. The actors coming from Sidomulyo and Bumiaji villages and Cangar hamlet drove the movement. Finally, Batu City gave up this plan.

In the New Order Era, he once joined the movement against the process of the general election because he felt that the process was inappropriate. The committee threatened him with a case in the court. However, Zaenal was not afraid of this action because he recognized that this threatening is only a sign of their movement stopping. According to him, after Reformation in Indonesia, these cases just occur. Indeed, Zaenal raises the criticism that because of too much freedom in contemporary Indonesia, people, especially the younger generation, tend to go too far.

7.3 Connection with the Government

The network with the central and local governments supports the movement. Some of the members are acquainted with government officials.

Wagiman: A Founder of FMPMA

Wagiman is a founder of FMPMA. He is 52 years old, was born in Malang district, and now lives in Cangar hamlet, Bulukerto village, Batu City. He graduated from a junior high school in Malang. In 1990, he started breeding rabbits, and he has been successful in expanding his business up to now. Besides the rabbit breeding, he also harvests around three tons of apples every four months and about two tons of oranges every year.

In the community, he plays his role as a market officer for the Rabbit Breeders Association of Batu. Based on his experience in this organization, he has created social networks with the Agricultural and Forestry Bureau (*Dinas Pertanian dan Kehutanan*) of Batu City, the General Secretary of Batu City, and also with distributors of rabbits in Batu.

Because of his relationship with certain Batu City officials, he has had the opportunity to recognize how they falsify accounts for their budgets. So, in his opinion, most of the government officers are corrupt. He can never trust most of the government officers.

Because of his opinion based on his experiences like this, he never trusts most of the government officers, and never satisfies any promise of officers, including the mayor, without any actual act. We may say that this attitude makes their movement more carefully and tenaciously.



Fig. 7.9 Wagiman (center) in *kerja bhakti* voluntary activities



Fig. 7.10 Wagiman with his rabbit cages

Basuki: A Member of Village Consultative Council in Sidomulyo Village

Basuki, a 50 years old, is a local vegetable trader living in Tinjumoyo hamlet, Sidomulyo village. His educational background is a technical college. His parents also educated Basuki Javanese cultural values. For instance, they taught that as a Javanese, he should be not arrogant to others. From childhood, he enjoyed the *wayang* Javanese shadow puppet theatre with his parents and learned Javanese cultural values form *wayang* stories.



Fig. 7.11 Basuki shows his notes on the movement at his house

Basuki worked at PT Caltex, a sizeable leading oil company, Riau, Sumatra Island. In PT Caltex, the employee had a multi-ethnic background. His working experience in Caltex has improved his tolerance and patience. Also, he learned how the huge company did not care about environmental damage by its activities.

After that, Basuki moved to Jakarta and worked at a printing house named ARIESTIANA in Jakarta, and he became the chief of one section. From his life in Jakarta, Basuki realized that drinking water is essential because it was not so easy to search a place with a good drinking water supply in Jakarta. After a riot in 1998 against Soeharto's regime, he came back to Batu and became a mushroom and vegetable trader. I guess that his experience at the riot in 1998, Jakarta make him careful to act in the movement.

Basuki is a member of Village Consultative Council (*Badan Permusyawaratan Desa = BPD*), Sidomulyo village. The tasks of this agency are controlling the work of the village head and concerning themselves with any regulations both in the village and the city government. Therefore, he always updates the latest news concerning the surrounding environment and learns about the regulations of government. When he gets new information about the development in Sidomulyo village, he discusses this with the village head and other members of the BPD.

His involvement in the BPD contributes much to his development. He knows some members of the DPRD (regional assembly) through his activities in the BPD. He also has close relationships with the former village government officers, former members of

the LPMD, local assembly members, and the mayor of Batu City through informal gatherings at his house. Basuki learned how to negotiate with government officers through these experiences.

7.4 Leadership and Encouragement

In the movement, some actors played the roles of community leaders or encouragers.

H. Rudi: A Community Leader

H. Rudi is 39 years old and lives in Cangar hamlet, Bulukerto village. When he was senior in high school, H. Rudi was involved in Orpolis (*Organisasi Pecinta Alam*), an association for nature lovers. Now, H. Rudi has guava and apple fields, an auto repair shop, and a used car shop. His economic condition is relatively good.

H. Rudi is the seventh son of H. Sarpain, a prominent community leader. Most of the community members respect his father. His father initiated the development of the Gemulo water source. H. Rudi is proud of his father and wants to follow in his footsteps.



Fig. 7.12 H. Rudi (right) in the Gemulo water source

He was assigned as a leader of the construction team for the village construction committee. His team constructed and improved some public facilities in Bulukerto village, such as ditches (*plengsengan*), bridges, and roads. Sometimes, H. Rudi gives some financial support for these programs. We may say that community members trust him as a community leader, *tokoh masyarakat* like his father.

His role as a successor of a legendary community leader and his profit can support the water source conservation movement.

Nugroho: An Activist with a Rebellions Spirit

Nugroho, 40 years old, lives in Cangar hamlet, Bulukerto village. He had studied from elementary school until senior high school in Semarang, Central Java. Then he matriculated in a university but dropped it out. Nugroho changed his job frequently, such as a pedicab driver, a coolie, a construction worker, and so on.

In 1983, the severe disturbance based on a racial conflict between Javanese and Chinese occurred in Semarang. Nugroho's cousin just happened to be there and was shot by a soldier who watched the riot. At that time, Nugroho was an elementary school pupil. He wondered why his cousin shot and die, although he did not participate in the riot. After the riot, his family asked the government to apologize and make compensation. However, they received no response from the government. This experience significantly embedded in him, so that he came to have a defiant attitude to authority.

Nugroho has been willing to join and initiate a social movement against authority. For instance, in Semarang, he joined the movement against a chemical factory suspected to do severe damage to the environment. After their demonstration actions, the factory was shut down. He said that this successful experience made him aggressive, then he learned that if we would never give up, we could reach our target. This discipline pushes him forcefully to the movement against the hotel construction in Batu.

His grandfather and father also influence him. His grandfather was a soldier in the Indonesian War of Independence, a guardian of the first Indonesian president Sukarno, and a coordinator of social welfare (*modin*) of Bulukerto village. Moreover, his father was a board member of PDI (Indonesian Democratic Party), a nationalist party under Sukarno.



Fig. 7.13 Nugroho in a demonstration

With his friends, he established the Association of Rabbit Breeders in 1999 and the Union of Pet Rabbit Breeders of Batu in 2008. As a board member, he participated in many activities that were conducted by the central government, the local government, and other private institutions. For instance, he joined in training by the Ministry of Agriculture, in Bogor. Also, he had some chance to join the CSR (Corporate Social Responsibility) program by the Ministry of the State-owned Enterprises. Through these experiences, he became to be familiar with many Batu city government officers, including the mayor.

Rini: A Woman Leder

Rini, a 30 year old, lives in Cangar hamlet, Bulukerto village. Her last education is a senior high school in Batu. She is an Aris' elder sister and a Nugroho's wife. Both of them are the main actors of the FMPMA. Another elder sister of Rini is also an actor in the movement.



Fig. 7.14 Rini in the second demonstration

In her community, she was one of the promoters of the *Karang Taruna* youth organization in Cangar Hamlet. Besides, she is a member of Muslimat NU (women's wing of Nahdlatul Ulama), Cangar Branch. As a member of Muslimat NU, she frequently participates in *tahlil* and *yasin* Islamic prayer rituals for women in the hamlet. She is also a coordinator of the neighborhood association (*dasa wisma*) that consists of about ten households. The primary programs of this neighborhood association, are conducting activities related to family welfare, such as training for family planning. Her leading roles are making and updating residents' data relating to fertility, mortality, and movement. These data are given to PKK (*Program Kesejahteraan Keluarga*; Family Welfare Movement) Bulukerto, once every three months.

She also participates in the activities of a local NGO in Batu, SPD (*Sekolah Perempuan Desa*, School for Village Woman). The aim of this organization is giving new skills and knowledge to village women. This NGO has joint activities with the local government and the Green Community in Malang City. Her experiences with the Green Community raised her awareness about environmental issues. She now separates recyclable waste and does not throw waste at an inappropriate site.

At informal gatherings in her house, she tried to inform her neighborhood women about the development of their movement.

Leading actors of FMPMA had various social capitals and utilized them to promote the water source conservation movement. For instance, knowledge of regulations on the environment made their strategy of the movement reasonable and acceptable for the central government institution. Furthermore, their network with Batu City government officers and some central government officers supported them to negotiate with the government. In the next chapter, we will try to consider their basic motivation which encourages their movement.

Chapter 8 Basic Motivation and Cultural Background

This chapter will explain basic motivations of actors in the movement. Their basic motivations make their movement sustainable and patient. They have various origins of their basic motivations, such as Islamic values, Javanese values, and global values.

8.1 *Ibadat*: Responsibility to Allah

Ibadat refers to the human's responsibility to Allah. For some actors, conserving water is a kind of *ibadat*, same as *shalat* obligatory prayer (five times a day) and *Ramadhan* fasting. H. Rudi, an actor from Cangar Hamlet, stated that their struggling for the Gemulo water source was a part of *ibadat*. He said that every human being needs water, so conserving water is for the public interest.

My father said that our struggle for the public interests is highly valuable in our religion (Islam). ... If our struggle would bring a beneficial result for the public good, we can get the rewards. ...As long as possible, we have to do our best for our lives for our children. *Insyallah* (if God wills), Allah will be pleased by our deeds.¹

From the above statement, it can be concluded that his motivation for the water source conservation movement to carry out his responsibility to Allah. He added his explanation about the reward of Allah: "We struggle not only for this world but also for the afterlife."² For Muslim, the reward of the afterlife means going to Heaven.

Supi'i, one of the original coordinators of FMPMA, has a similar motivation. He explains his basic motivation to save the Gemulo water source by quoting a Hadith³. "... the best human is the person who gives benefit to human beings" (Hadith narrated by *al-Tabarani* and *al-Darqtuni*).

His knowledge of Islam was cultivated through his high school lessons, his experiences as a teacher at an Islamic elementary school, and sermons at Friday prayers. According to him, the teachings of Islam that relate to his basic motivations are the four points as given below.

(1) *Muslim Brotherhood*

Supi'i states that all Muslim are brothers. Therefore, Muslim have to support each other.

(2) *Environmental Damage*

He explains that the environment is damaged because of human deeds as stated in Chapter *Ar-Rūm*, of the Qur'an.

¹ Interview with H. Rudi via Facebook, October 15, 2015.

² Interview with H. Rudi via Facebook, October 7, 2015.

³ Hadith is a record of the sayings and deeds of the Prophet Muhammad PBUH.

Corruption has flourished on land and sea as a result of people's actions and He will make them taste the consequences of some of their own actions so that they may turn back⁴. (Q 30: 41)

(3) *National Defense*

National defense means that the state defends people against any threats, including environmental problems. According to Supi'i, national defense is a part of their religious obligation, because, if we are safe, we can worship the God well.

(4) *Amar Makruf Nahi Mungkar* (enjoining good, forbidding evil)

As a fundamental principle of Muslims, Supi'i states an Arabic verse from the Qur'an: "*amar makruf nahi mungkar*" (Q 31: 17). This sentence means that "command what is right; forbid what is wrong." He also quotes a hadith verse as follows:

Upon this Abu Sa'id remarked: This man has performed (his duty) laid on him. I heard the Messenger of Allah as saying: He who amongst you sees something abominable should modify it with the help of his hand; and if he has not strength enough to do it, then he should do it with his tongue, and if he has not strength enough to do it, (even) then he should (abhor it) from his heart, and that is the least of faith. (*Sahih Muslim* narrated by Muslim)

In his opinion, for their movement, the head of the village should modify the condition with the help of hands. Villagers should act with their tongue, such as joining the demonstration. Furthermore, he stressed the importance of self-help efforts, by quoting the Qur'an verse as follow.

God does not change the condition of people unless they change what is in themselves, but if He will harm on people, no one can ward it off – apart from Him, they have no protector. (Q 13: 11)

To convey these Islamic teachings, Supi'i liked to use *wayang* story. According to him, *wayang* is inseparable from Islam in Java.⁵

Yunanto, an actor from Junrejo hamlet, had the same motivation for the water source conservation. He felt that they had to do the water source conservation movement to express their gratitude for God (*syukur*).

Also, Aris' motivation was same with H. Rudi's motivation. He stated that his participation in the movement was a part of worship.

⁴ English translation of Qur'an, from *The Qur'an: A new translation by Abdel Haleem*, Oxford University Press. The same rule applies to the following quotations from Qur'an.

⁵ Interview with Supi'i, December 23, 2015.

Some actors stress that every Muslim has to keep water carefully, because water is essential for every creature, including human. Supardi, the leader of the movement from Cangar hamlet, said,

Let's imagine. Although a man does not eat for two days, he can be still alive. However, if there's no water for two days, it is impossible. It is clear! We need water. Moreover, as Muslims we need water for *wudhu*, the ritual ablution before prayer, too. So, without water, things are terrible.⁶

Chamim also explained the same understanding by using the term of “the miracle” of Allah. Meanwhile, some prominent religious leaders in Batu also supported their Islamic motivation for the movement. For instance, Nurbani Yusuf, a leader of Muhammadiyah (the oldest Islamic NGO) Batu branch, stated that in Islamic teaching, humans have two roles: the environment as the destroyer and the guardian. A human can cause a disaster that will be suffered by many people. Meanwhile, humans also can protect the environment through good deeds. Then, we can receive a reward from God for our good deeds. This reward must be higher than the reward for building a mosque.

Kyais also stressed the importance of water conservation as *ibadat*. K. H. Munir Fatkhullah, an advisor of *Majelis Ulama Indonesia* (Indonesian *Ulama* Islamic Scholar Council) in Batu, was asked why humans cause environmental destruction. His answer is because they excessively material benefits, and do not care about the afterlife. According to him, the hotel construction plan near the water source is a typical example. He criticized the hotel construction plan.

We can see these viewpoints in some leaflets about the environments by Islamic NGOs like Muhammadiyah and NU⁷. The Ministry of Environment also published some guidebooks on Islamic theology containing topics related to the environment.⁸ We may say that Islamic teaching is vital to promote the environmental movement.

8.2 Untuk anak cucu: Responsibility for future generations

“*Untuk anak cucu*” (for the future generation) is a Javanese cultural value. The inheritance of wealth is parents’ obligation to the next generation. For Javanese, the environment is also a part of wealth to be left to the next generations. So, their movement to conserve the environment is a responsibility for next generations.

Heran stated:

If there is no water left, then we cannot drink; therefore, we must preserve it. As an elder, we have to leave a good legacy, including the environment. It is our duty. We got an inheritance from our ancestor; then we have to pass the healthy environment to

⁶Interview with Supardi, September 9, 2015.

⁷For example, Lembaga Lingkungan Hidup of PP Muhammadiyah (2007) and LPPNU (2010).

⁸For example, Ministry of Environment (2005).

the future generations.⁹

Heran feels their movement is their obligation because if the hotel construction damages the water source, they cannot leave the water source for future generations.

Harjito has the same motivation for the movement. He did not want to pass the damaged environment to the future generations. He said, “I do not want to be blamed by the future generations. I have my responsibility to them. They can ask their portion of water portion.”

Wagiman also said similar motivation in other words. “We only want to leave the water as we use to the future generations.”¹⁰

Meanwhile, Jumadi felt how difficult it is to leave the water source against the hotel construction. However, he believes that they have to and will be able to do it. Because, as a Javanese proverb says, “Any hard task will be lightened if we make an effort with many people.”¹¹ Jumadi believed that although there was no sign of damage in the short term, in the future, the water source would be damaged. If the water source is damaged, our future generations will not enjoy the water.

According to Harjito, a parent must care for his children by passing on the environment to them.¹² This is an order by his ancestors. He felt that natural resources would decrease. Because “*wis nyambut gaweo, donyane tambah sempit* (if we do our job, the world is getting limited).” This Javanese proverb implies that the population increase makes the natural resources decrease. So, in his opinion, we need to preserve the environment.

Meanwhile, Wagiman related the responsibility to the future generations with Islamic teaching. He quoted a verse from the Qur’an as follows.

Let those who would fear for the future of their own helpless children, if they were to die, show the same concern; let them be mindful of God and speak out for justice. (Q 4: 9)

According to him, responsibility for the future generations is also an Islamic value. He said;

It is not ours. So, we have to take care of it. It is our responsibility. Don’t you think so? For example, if I entrust this pack of cigarettes to you, you must return this pack. Unless someone gives it to us, we cannot do whatever we want.¹³

In his opinion, the environment is not our property but only what is entrusted to us. Because of it, we have to return (leave) the environment to the future generations.

Based on this consideration, the actors expect that this social movement keeps water

⁹ Interview with Heran at his house, August 18, 2015

¹⁰ Interview with Wagiman at his house, August 30, 2015

¹¹ Ibid.

¹² Interview with Heran at his house, August 25, 2015

¹³ Ibid.

sources from destruction. The good water source is the inheritance of the next generation. Therefore, these values motivate actors to conserve the water source.

8.3 *Keadilan, Kejujuran and Perjuangan*: Justice, Honesty and Fighting through Self-sacrifice for Public Good.

Keadilan (justice), *kejujuran* (honesty), and *perjuangan* (fighting through self-sacrifice) also become their basic motivation for the movement. These are Javanese cultural values.

***Keadilan*: Justice**

Keadilan (justice) refers to the process of hotel license that disadvantages to the public interest. This disadvantage is caused by the violation of the regulations. Tubi said that he felt obligated to remind the policy makers to obey the law.¹⁴

Like Tubi, Joko SP stated that the hotel construction violated the implementation of regulations about the conservation area surrounds water sources. The hotel is less than 200 meters from the water source. In his opinion, the mayor was dishonest. Basuki also believes that the government had violated the rule. That was why he joined the movement. He believes that they can reveal the illegality of the hotel construction. Because as a Javanese proverb says, “*Becik ketitik olo ketoro*”: good deeds must be revealed, and evil deeds must be revealed, too. Javanese call this concept *keadilan* (justice).

***Kejujuran*: Honesty**

Most actors were very much affected by the concept of *kejujuran* (honesty). This cultural value is reflected in attitudes like incorruptibility and compliance. Neither the government nor the hotel was operating with *kejujuran* (honesty) because they violated the regulations.

According to Harjito, in Indonesia, they have a custom called *wani piro* (How much can you pay). For example, to ease the issuance of a permit, some government officers like to solicit bribes by using the Javanese phrase *wani piro*. He doubts that the bribe has worked for the hotel construction permit. Also, actors believe that the hotel construction plan violates the regulation of the conservation area around the water source. So, the hotel and the government are not practicing *kejujuran* (honesty).

There was more dishonesty on the part of the hotel and the Batu city government for actors. The hotel and the Batu city government made some agreements without notifying residents.

We can see the dishonesty in the changing of the hotel's name. The name of the hotel was first Hotel Purnama II. Then, the name was changed to The Rayja, a cottage. It changed from a hotel to a cottage ... The hotel lied.¹⁵

The suspicion of bribery also occurred inside the movement. Wokiss, an actor from

¹⁴ Interview with Tubi in a movement meeting held at Mones's house, January 5, 2016.

¹⁵ Ibid.

Cangar hamlet, voiced his suspicion about a member of the village council of forest (LMDH/*Lembaga Masyarakat Desa Hutan*) for Bulukerto village. In the beginning, he had been an enthusiastic participant in the movement. However, he was not active any longer. Wokiss doubted that he had received a bribe from the hotel because he had said that he had enough money to move to Surabaya. There is no clear evidence.

Untung stated that bribery could have a negative impact on his family and his future offspring. If he received money from the government and the hotel, he should be concerned about social sanctions in the future. His children would shame him as corrupt, and they would face some social problems.¹⁶

Perjuangan: Struggle through Self-sacrifice for the Public Good

Perjuangan means to struggle through self-sacrifice for the public good. This Javanese value also became a basic motivation for the movement. By members of the movement, the hotel's construction was perceived as a symbol of the opposition between individual interest and people's interest.

Every investor has the right to construct a hotel. However, investors also have his responsibility to reduce the negative impact of hotel construction on the public¹⁷. In the trial, Zaenal stated:

That (the hotel's construction) disturbed and might harm many people. Because of it, residents refuse it; we do not refuse every development. Anyway, if it endangers the drinking water, we will refuse it.¹⁸

Likewise, Tubi, an actor from Bumiaji village, thought that the people owned the water source and conserving the water source meant saving public interests, even if he did not use the water sources.¹⁹ In his opinion, the water source preservation struggle means protecting the people's interests. Their struggle is not only for particular groups but also for everyone that used the water, including the mayor of Batu.

Then, Nugroho convinced other members of the Cangar hamlet, Bumiaji, and Sidomulyo villages to initiate the movement. Noticing that preserving the water source was something that had to be done, they realized that this was something worthy of the struggle. Therefore, they used the term "*pejuang sumber mata air* (water source warrior)" to call the FMPMA actors in his SMS. *Pejuang* means the person who does *perjuangan* struggles through self-sacrifice for the public good. Nugroho sometimes cited Supardi's advice.

Do not think of wither we will lose or win. Just do it sincerely. As a result, we may obtain our victory.²⁰

¹⁶ Interview with Untung Santoso at his house, September 26, 2015

¹⁷ Interview with Zaenal at his house, September 29, 2015.

¹⁸ Zaenal's statement as a witness at Malang District Court, March 3, 2014.

¹⁹ Interview with Tubi, at his house, December 21, 2015.

²⁰ Interview with Nugroho, December 21, 2015

He also said:

“Kowe sing nglawan pemerintah punya identitas sebagai pejuang lingkungan.”

Anyone who protested against the government (to save the water source: the author) can be called an eco-warrior.²¹

For Javanese people, *perjuangan* is one of the most valued cultural norms, and it is an honor to be called *pejuang*.

8.4 Awareness of Global Environmental Discourse

Awareness of global environmental discourse also became a part of their basic motivation. For instance, Untung joined the movement because he became aware of the water crisis in Batu. People in Batu faced a water shortage. The water flow of the river decreased, and the farmers competed to get water. He found the farmers around his place involved in conflicts. These conflicts usually happened in dry seasons.

He believed the water shortage was caused by the construction of the hotel. Destruction of the water source would occur because the hotel was in the upper on the water source. Then, he proposed the government and the hotel share information about the hotel's construction plan and the ecological condition of the water source. In his opinion, improper information distribution would result in social conflicts among villagers. However, his proposal was never noted.

Nugroho was also worried about the water crisis. For him, the hotel construction could damage the water source, because the ground close to the water source would be drilled. His speculation was affected by his working experience on a building project in Semarang, Central Java. Once, he drilled the area near a water source; then he witnessed that the quantity of derived water from the source was diminished. After that, the people who used the water protested against the company. Learning from this experience, he concluded the same phenomenon would occur after the construction of the Rayja Hotel.

Wagiman supposed that a water crisis would occur after the construction of hotel because the hotel construction site is close to the Gemulo water source. He also worried that the demand for water by the hotel could exceed the water supply capacity of both PDAM and HIPPAM in Punten village, and that villagers would experience water shortage. Nugroho and Untung agreed with this opinion.

Zaenal, Hari, and Rini also explained their basic motivation to join the movement by using the concept of environmental sustainability. They stressed the need to be concerned not only with short-term interests but also with long-term interests. Rini worried that the hotel construction could destroy the water source. Therefore, to conserve water is to save our families and the next generation.²²

In Hari's opinion, water could also cool down hot situations. He says, “When our mind

²¹ Interview with Nugroho at Nugroho's house, September 5, 2015.

²² Interview with Rini at her house, June 6, 2016

is excited, with cold water we can calm down and make our mind clear.”

As I described above, actors in Batu had various social capitals (Chapter 7) and motivations. However, they could unite supports in their movements. How could they do it? In the next chapter, I will discuss their networking for the movement.

Chapter 9 Social Network of the Movement

Although the participants have various social capitals and basic motivation in the movement, they can connect to each other flexibly by using traditional Javanese social networking principles. This chapter will explain how they formed and utilized their networking, as reinforcement of the movement.

9.1 *Tokoh Masyarakat*: Leadership in Javanese Society

The prominent actors in the movement are people who are trusted within the community because of their credibility and ability to resolve the problems of the community. They can do it because they have particularly specialized skills, such as being able to lead community ceremonies, or are often referred by society when deciding on some issues. When the community encounters dilemmatic problems, and a decision should be made, they can provide a solution. In some instances, the figure himself or herself offered the help.¹

In Batu, these actors have two primary characters.

- 1) A concern to resolve problems in the society: In addition to the legitimacy given to them, these actors become involved in the execution of the tasks of the movement. So important are the roles of these actors, that without their involvement, this movement would not have expanded and would not have been sustainable. This context includes those who possess the courage to struggle for the shared interests of the people.
- 2) Firm economic basis: The strength of this basis will create a struggle that is not easily resolved. Figures that do not have a firm economic basis can be lobbied or “bought.”

Wagiman, an actor from Cangar hamlet, said this:

Now, people see it like that. People just see their wealth. H. Rudi is so, too. He is a precious guy, so people respect him, do they not?²

At Cangar hamlet, H. Sarpain (the father of H. Rudi) was one of the community leaders and was respected by most people in Bulukerto village. One of H. Sarpain's excellent qualities is his generosity. He donated money for the construction of water supply pipes for Cangar hamlet in the 1980s. The building of a small mosque located not far from his house was funded by the family of H. Sarpain.³ At that time, because H. Sarpain did not have any cash, he pawned his truck. Until now, most of the community activities in the hamlet were funded in the same way.⁴ In Javanese villages, they usually called the community leader, like Sarpain, *tokoh masyarakat*.

¹Selo Semardjan also describes the role of informal leaders, *tokoh masyarakat*, in Indonesian rural areas (Selo Semardjan and K. Breazele 1993: 198).

²Interview with Wagiman at his house, September 4, 2014. A similar case was mentioned by Supardi when the movement first emerged, and the person to become the primary actor was Nugroho. However, Supardi considered that Nugroho was economically weak, and therefore the movement must be pioneered together. Interview with Supardi at his house, September 9, 2015.

³ Interview with Aris and Suwandi (father of Aris), December 19, 2015.

⁴ Interview with Muchammad, November 16, 2014, at the Fun Walk event in celebrating the Third Water Source Festival, 2014.

Community leaders in this movement were concerned about two things: to strengthen the mentality of primary actors in the movement, and to draw the involvement of a considerable mass. When the courage to initiate and develop the movement began to dwindle, the actors of the movement regained new morale from the community leaders.⁵

Although the concern about the damage of the water source is in the collective awareness of the people, not all of the people dare to start, express, or justify the movement. This concern usually only becomes a shared concern, however, if the *tokoh masyarakat* becomes involved. Then people will follow, so the movement will develop. The *tokoh masyarakat* contributes to the movement's legitimacy, which persuades the masses to form a movement.

The movement's sustainability and success are because of the involvement of the *tokoh masyarakat*. With this support, the actors succeed in maintaining this relationship. There are also formal leaders and *tokoh masyarakat* who openly support the movement such as the Bumiaji village head, the heads of HIPPAM Bumiaji and Cangar hamlet, the BPD of Bulukerto village (who came from Cangar hamlet), the BPD of Bumiaji village, and the Heads of Neighborhood Associations (RT).

The Bumiaji village head has been one of the movement's supporters from the beginning. His presence in the FMPMA meeting added the legitimacy that motivated them to start the movement. His presence also demonstrated the support of the village head at the FMPMA meeting with the DPRD (Local Assembly) and during preparation for FMPMA rallies. Later, the Bumiaji village head was a witness in court. Furthermore, the hamlet heads also became involved.

A HIPPAM is a formal village organization that is involved in the movement, particularly the HIPPAM of Bumiaji village and the HIPPAM of Cangar hamlet. The managers of these organizations openly initiated and became involved in most of the actions to save the water source. This movement is indeed a peoples' movement, but to make things easier, it starts in Bumiaji through HIPPAM.⁶

Whether as an institution or a person, the BPD (Village Consultative Council) of the Bumiaji and Bulukerto villages became involved. The BPD and HIPPAM of Bumiaji village facilitated the mass collection of signatures that rejected the hotel's construction. At the least, this institution legitimized the struggle to save the water source, which was pioneered by FMPMA. They are also personally involved in FMPMA activities, such as what Hamid, Head of BPD of Bumiaji village, as the moderator for the Public Discussion, conducted by FMPMA at Graha Wisata, Bumiaji village.

There is an interesting phenomenon related to the involvement of formal leaders, Agus. At the time, he was Head of the administrative section of the Bulukerto Village Government, and was the only Bulukerto village official who openly opposed the construction of the hotel. After hearing directly from the village head, he rejected the development of the hotel because he thought that the hotel construction nearby the Gemulo water source would damage the water source. He was also angry at the

⁵ The magnitude of these community leader's influence, as stated by Untung, was like "spitting fire" (*idu geni*, in Javanese) where his words would be followed by many people. This is in contrast to the ordinary people who "spit water" where his word is not always followed by people. Interview, September 4, 2014.

⁶ Interview with Jumadi at his house, Agustus 29, 2014

Bulukerto village heads who did not pay attention to villagers' protest against the hotel construction plan.

In an informal debate at the office of Bulukerto village, he quarreled with the village head. As a Cangar resident, he protested against the decision of the village head that did not support the people's interest. Also, because of the failure of the village head to resolve this problem, in the end, he resigned from his position as the Head of the Administrative Section of Bulukerto Village. After that, Agus became an eager participant in the movement. Then, there were also public figures who supported the movement. Village officers often attended the rallies as civilians, without their official uniforms.

In the movement known as *tokoh masyarakat*, both private citizens and public figures participated, some as supporters, others as opponents, and there was a passive, third group. Some leaders became directly involved with the movement; others did so indirectly or simply gave moral support to the movement supporters. *Tokoh masyarakat* encouraged villagers to join the movement and connect with other participants.

9.2 *Orang Tua*: A kind of Javanese paternalism and relationship between older and younger generations

In Java, people have to respect their elders, *orang tua*. Because *orang tua* are superior to younger people, *anak muda*. *Orang tua* have rich knowledge and experience, so the young should learn from their elders. While younger people like to act emotionally, *orang tua* like to act rationally. Therefore, *orang tua* can often control their behavior.

In Javanese society, the backbone of Javanese moral order is legitimized by the relationship between *orang tua* and *anak muda*. *Orang tua* is identified with righteousness. Therefore, the younger ones must respect them. In the Javanese community, no two people are equal, but there is a hierarchical relationship seen from unlimited status positions where each is characterized by tasks, particular expectations, and the right to respect (Mulder 1989: 44). These hierarchical relationships inherently show order and the form of values (Suseno 1984: 125).

Also, *orang tua* means "parents" and *anak muda* means "children." The Javanese feel that the village head and district head are *orang tua* and "parents" of the people while the people are *anak muda*, or "children." The respect of the people for their leader is the respect of children for the parent. When they held rallies, the Bumiaji village head suggested not to protest but to meet the mayor. They agreed with his advice. When the mayor did not respond to them, the actor requested the Sidomulyo village head to help FMPMA to lobby against the mayor. The mayor then met the FMPMA actors. *Orang tua* have to support their *anak muda* children. We can look at the incident with the mayor as children complaining to *orang tua*.

Some of the things that *Orang tua* did, as an example, were at the beginning of the movement; after the mayor revoked the hotel's construction permission at the Bumiaji Village Hall, *Orang tua*, like H. Sarpain and Supangi, pressed the Bulukerto village head to sign the letter that revoked the hotel's construction permission.

When the actors of Cangar hamlet people attempted to do some action emotionally at the City Hall, Heran, one of the *orang tua* actors stopped them from staging a rally.

For Heran, that was not the suitable time to enact their demonstration. In the end, the rallies were not carried out, and people waited for a suitable time.

Such was the case after the verdict from the State Court of the Malang city. The involvement of *orang tua* was still needed, and the actors of the movement needed advice from *orang tua*. The considerations of *orang tua* were considered more thoughtful than that of *anak muda*.⁷

Supi'i, as coordinator of FMPMA, is willing if the young actors lead the movement. He believes in the Javanese principle of "*patah tumbuh hilang berganti*" (new one must grow after old one gone).⁸ Then he said, "*Sing tuwo ning mburi, sing nom di depan. Sing tuwo tut wuri handayani*" (the old people at the back, the young people in front). This sentence means that *orang tua* should support *anak muda* behind the scenes.⁹

The relationship between *orang tua* and *anak muda* is also seen in Cangar hamlet. For example, Supangi, the Head of HIPPAM of Cangar hamlet, always asks Nugroho about the movement's development. Just like Supangi, Supardi always asks about every new development within the movement. Furthermore, Supardi visits Nugroho and Aris almost every night to monitor the movement's development. Sometimes, he becomes directly involved in operations in the field. For instance, during movement meetings, Supardi gives input to the younger members.

In Cangar hamlet, the relationship between FMPMA and *Nawakalam Gemulo* (the youth organization movement) also shows the relationship between *orang tua* and *anak muda*. The FMPMA's work is identified as the work *orang tua*, and that of *Nawakalam Gemulo* is identified as the work of *anak muda*. *Orang tua* provides a lot of input, and the *anak muda* execute these ideas. If an *anak muda* runs into problems, the *orang tua* will step in to resolve them.

Basuki states that although many *orang tua* become involved at the beginning of the movement and then become inactive, their service and sacrifice must always be remembered. If needed, they can be revisited, because *orang tua* are *Pangeran Katon* (visible God).¹⁰

Respect for *orang tua* is not rigid, which means that the relationship of *orang tua* with children is reciprocal. An *orang tua* is not only an advisor to *anak muda*, but *orang tua* also have to listen to the advice of *anak muda*. If the advice from *anak muda* is considered good, an *orang tua* will follow. There are true *orang tua* and fake *orang tua*. True *orang tua* pay attention to the needs and interests of *anak muda*, while fake *orang tua* do not.¹¹ The advice of *orang tua* does not have to be obeyed. If the "father" does not behave properly, then he must be reminded. Heran states that the principle to be kept in mind is "*bener, pinter dan pener*" (be correct, smart, and appropriate). *Anak muda* supports not all *orang tua*, and in some cases, they can be opposed. *Orang tua* against the movement are considered "*wis ketuku*" (received a bribe).

In the meantime, the promises of the mayor were asked by the people to be fulfilled, shown by the installation of banners in public spaces. The banners are a form of demand

⁷ Interview with Priyo, September 9, 2015, and Agus, August 18, 2015.

⁸ Interview with Supi'i at his house, September 10, 2014

⁹ Interview with Basuki at his house, October 4, 2014.

¹⁰ *Pangeran* means "God", and *katon* means "visible". Children should respect and follow *orang tua* just like they would follow God in this world. Interview with Basuki, December 27, 2015.

¹¹ Interview with Supardi at his house, September 9, 2015.

by the FMPMA to the mayor. It is at this point that their conception of a village leader as their “father” began to fall apart.

9.3 *Gotong Royong*: Javanese custom of reciprocity

Gotong royong is a traditional custom in Indonesia and is practiced by almost all communities in Indonesia. The meaning of *gotong royong* is the social relationship of mutual aid among people in local communities (Koentjaraningrat 1961:2).

The mobilization of *gotong royong* is usually based on reciprocity, so that people must return the help in the future and not in the form of cash (Kim 1996: 29). *Gotong royong* is not accompanied by exact economic calculations or how to obtain maximal results with minimal spending; therefore, this social order creates a strong sense of solidarity and a harmonious feeling of togetherness. *Gotong royong* is carried out when necessary and only for a limited period, which is one to a few days (Selo Soemardjan 2009: 356, Robert MZ Lawang 2005:228).

In Batu City, there are two kinds of *gotong royong*: *sayan* and *sinoman*. *Sayan* is *gotong-royong* to build houses, especially for needy families. *Sayan* is also practiced when someone wants to bring in a harvest. Without invitation and with complete willingness, the people help the party holding the occasion. This activity is initiated by the community as well as the village government. The basis for *sayan* is *tepo seliro* which is a feeling of empathy for someone else’s problems. In contrast to *sayan*, *sinoman* is a form of *gotong royong* that is performed by people when a particular event, such as a wedding or a circumcision, takes place. Usually, neighbors and relatives help to conduct the event.

In the case of drinking water management, we saw *gotong royong* reciprocity during the construction of the infrastructure (pipes, reservoirs, and other structures for moving water from the water sources) through HIPPAM. For example, the government of Bumiaji village provided financial aid for the activities of Bulukerto village because the people of Bumiaji village get their water from the Gemulo water source in Bulukerto village. In return, Bulukerto village, as the owner of the water source, is duty-bound to protect the integrity of the water source, and Bumiaji village is duty-bound to help out in activities conducted by Bulukerto village.

Gotong royong also occurs in the relationship between Bumiaji village and Dadapan hamlet, Pandanrejo village. Because Dadapan hamlet utilizes water from Bumiaji village, Dadapan hamlet must help out in activities conducted by Bumiaji Village. Even for the FMPMA rallied on May 1, 2012, some villagers from Dadapan hamlet also joined to support.¹²

Wagiman and Untung stated their future target as follows:

As for just only the Gemulo water source, *boloku kurang akeh* (my team mates are not so many). However, all over Batu, we can embrace the others. Gemulo is only the starting point. Later, it might be your water source, so let us do it together. That is what I mean, with the assumption that there are supports from other villages.¹³

¹² Interview with Bai, an actor of Dadapan hamlet, Pandanrejo village, May 1, 2012.

¹³ Ibid.

Because of actors succeeding in creating a social network, *gotong royong* can be used for supporting the actions of movement, such as:

(1) *Gotong royong* in Lobbying the Batu city Government

This was done at the beginning of the movement where the members involved included Wagiman; Untung; Sugeng Paesnu; Nugroho; Heru Joko; and Bambang Parianom, Director of Yayasan Pusaka. They lobbied Energy Resource Services, Irrigation Agency (Dinas Pengairan dan Binamarga), and the Environmental Office of the Government of East Java to question the hotel's construction plans. For this lobbying, *gotong-royong* is shown by the movement actors spontaneously donating whatever they had. Some donated energy, vehicles, and funds without considering any reward.

(2) *Gotong royong* in Contacting the Mayor

The revocation of the hotel permits at Bumiaji Village Hall by the Mayor of Batu is a result of *gotong-royong* between actors of the movement and the Bumiaji village head. At that time the mayor did not plan to meet with the actors of the movement. However, after being lobbied by an official of the Bumiaji village and Sidomulyo village, the mayor finally agreed to spend time meeting with the members of FMPMA in both Cangar hamlet, Bulukerto village and Sidomulyo village. All the villagers were informed, creating a mass attendance.

The case was the same when FMPMA sent a request for a meeting with the mayor but did not receive a response. Finally, Basuki asked Jatmiko, the Sidomulyo village head, for help in delivering the will of FMPMA to meet the mayor.

He took the initiative of asking the Sidomulyo village head to lobby the Mayor. With the help of the village head, the mayor was willing to negotiate with the FMPMA members. It can be seen here that *gotong royong* occurs among both formal and informal leaders from the Cangar hamlet, Bumiaji village, and Sidomulyo village.

(3) *Gotong royong* in Rallies

Gotong royong is a mutual aid and cooperation in preparing rallies and gathering masses. The people who prepared rallies initially were actors from Cangar hamlet. Masses from three villages and neighboring villages are mobilized to participate in the rallies, and men, women, children, and elders became involved in the rallies.

The phenomenon of residents' rallies at the High Court of Surabaya is an interesting observation. This activity was supported through cooperation between all parties at Cangar hamlet. Formal and informal figures cooperated for the event. The formal leaders gave announcements to people through Neighborhood Associations (RT). The people had to donate to rent vehicles. The women cooked lunch. For these activities, there was a division of labor between elders and children.

A similar case occurred when FMPMA conducted rallies in Jakarta at the Supreme Court (MA), Indonesian Parliament, and Presidential Offices on January 18, 2016. People in the Cangar hamlet who did not participate in the rally did *gotong royong*. They provided financial aid voluntarily. In Cangar hamlet and Sidomulyo village, people voluntarily donated between 20,000 rupiahs to 100,000 rupiahs. In Tonggolari hamlet, Sidomulyo village, 3,000,000 rupiahs in funds were collected.¹⁴ There was even

¹⁴ Interview with Hari, an actor from Sidomulyo Village, January 20, 2016

someone that provided feeding grass for a friend who went to Jakarta. For instance, Priyo, a participant in the movement from Cangar hamlet, paid a grass finder to find grass for the cattle of Samsul, an actor of the movement from Cangar hamlet. Also, HIPPAM of Bumiaji village funded 2,000,000 rupiahs for those who went to Jakarta.¹⁵

(4) *Gotong royong* in Police Summons

In the police summons case, the FMPMA members were served a summons to come to the police station. Then, along with the community leaders and movement members, FMPMA discussed whether they should respond to the summons or not. It was decided that they should respond and that three-village groups must be mobilized. The involvement of the people, for example, was spontaneous, and after *yasin tahlil* session, a group of women immediately came to the police station.

Gotong-royong was also seen when the members of the movement contacted the attorneys, who were all ready to come. They also informed the people of the time of the summons. The members also prepared the vehicles that would be used to take people to the police station. Some individuals volunteered to bring food and drinks for those who went to the police station.

(5) *Gotong royong in cooperation with* community leaders and NGO Activists

The community leaders also did *gotong royong* with NGOs. This produced four things: a) lobbying national organizations, b) exerting pressure on the government of Batu, c) facing trials, and d) initiating community activities.

As the case was reported to national institutions, community members began to cooperate with NGO actors such as Lutfi J. Kurniawan, who was responsible for contacting the Ombudsman of the Republic of Indonesia (ORI). Then, Untung and Yunanto prepared the reports and documents. During mediation with Komnas HAM and rallies, NGOs provided help

Exerting pressure on the government was done through the cooperation of FMPMA with WALHI in sending letters to the mayor. Aside from FMPMA, which sent a request for an explanation from the policymaker, WALHI also urged the mayor to execute the revocation of hotel permits. Pressure on the government often takes the form of cooperation between the community figures and NGOs or, at certain times, pressure comes from the NGO itself.

When expecting recommendations from national institutions, the community-level figures of the movement conducted a road show for those institutions. This decision was made by figures from FMPMA and companions of national NGOs. As explained in Chapter 6, FMPMA managed to initiate two visits to Jakarta. The recommendations produced by the institutions were one of the results of the visit to Jakarta. When inquiring about the recommendations to the national institutions, the members of the movement paid visits to the institutions.

In this case, the trip fees were organized by the three villages. The three HIPPAMs provided financial and logistical support. Furthermore, the NGOs based in Jakarta, together with FMPMA members, lobbied national organizations and provided accommodation.

¹⁵ Interview with Bowo, a young actor of Cangar Hamlet, January 19, 2016

Meanwhile, crowds of people gathered during each court session at the District Court of Malang. The FMPMA's consideration at the time was that the trial needed the intervention of the people because neither the associates nor the members trusted the Indonesian legal system. They called it "People Power."

Meanwhile, masses gathered on each court session in the District Court of Malang. The consideration of FMPMA at that time was that the trial needs to be intervened with masses because both associates and figures did not trust the Indonesian legal system. They call it *people power*¹⁶, so that people from Cangar hamlet, Sidomulyo village, and Bumiaji village would spontaneously watch the trials. Some arrived by themselves and others were coordinated by their villages.

Here is the division of work between NGO actors of the movement and community-based actors: The organizing of the movement was done with the model or spirit of *gotong royong*, where all actors become involved in the movement without expecting material rewards. With the informal division of work, the actor of the movement understood their tasks. Agus said, they did work so naturally. Every actor understood what they must do for the movement. This *gotong royong* can be executed by participants collectively because they have secure networks with those of the community.

9.4 Harmonization of Extremists and Moderates: “H. Rudi Group” vs. “Basuki Group”

As mentioned above, actors integrate villagers to their movement loosely and flexibly by using some Javanese values, like *tokoh masyarakat*, *orang tua-anak muda* relationship, and *gotong-royong*. However, there is some competition among informal groups in the movement. The most prominent competition is between the “extremists” group and “moderates” group. We would like to call the former group as H. Rudi group, and the latter as Basuki group, because they are informal leaders in their group.

After Supi'i did not play a role as the coordinator of the movement, H. Rudi started to take over actions of FMPMA, such as the field action, facing the sue from the hotel party in the court, and receiving a summons from the police.

Although some activists coming from different organizations were still involved in the conservation movement, H. Rudi and members from Cangar hamlet have a close relationship with activists of WALHI like Ony Mahardika, Rere, Ridho Saeful, and Purnawan D. Negara. The relationship is stronger than that between H. Rudi and members of communities coming from either Bumiaji or Sidomulyo village. This strong relationship is shown by the coordination with the members of WALHI (mostly informal) almost every day; meanwhile, coordination with the community members is only at particular times.

¹⁶ The crowds gathered to put pressure on and make demands of the policymakers. This term was used by Wokiss, a member of the movement from Cangar hamlet, and implied the collective power of many people with regards to one interest and need, the water source. "People Power" was envisioned by Wokiss himself based on his experience managing people. The term "People Power" implies a move towards collective action. Interview with Wokiss, via Facebook, January 31, 2015.

As a result, decisions made by FMPMA after the verdict of the District Courts of Malang were mostly produced from the discussions between H. Rudi and WALHI. As a consequence, many actions were merely executed by members from Cangar. As a consequence, members from Sidomulyo and Bumiaji villages were rarely involved, except Tubi and Wirai; two members from Bumiaji who often visited the Cangar hamlet to know about the current development of the movement.

A strong sense of solidarity among the members in this hamlet was reinforced by the work of Nawakalam Gemulo consisting of young people from the hamlet. Demonstrations, preparation for the court, and activities of the campaign on environmental issues were done by the activists of this organization. This organization was established by the activists of WALHI and the actors of Cangar hamlet.

Since many things had been planned and decided by H. Rudi, an informal group in FMPMA that made H. Rudi as the central actor appeared this group is called H. Rudi's group; moreover, the characteristics of this group are as follows:

(1) *Having membership consisting of actors who have a close relationship with H. Rudi.* Some actors were from Cangar such as Nugroho, Agus, and Aris, while those from Bumiaji village were Tubi and Wirai. The members of this group were not all from the members of Cangar hamlet because besides the three actors, there were other actors, but they did not have any close relationship with H. Rudi; therefore, they are not included into H. Rudi's group.

(2) *Being solid*

This solidity happens since the members of H. Rudi's group always met one another in *jagongans* held either in Nugroho, Aris, or H. Rudi's home. This gathering discusses many things, both personal problems, and the local issue in Batu including environmental conservation movement.

(3) *H. Rudi's group leads to non-compromising ways with national level.*

They did not want to take any compromising ways with the government of Batu City. Moreover, strategies implemented were to optimize national resources such as lobbies with national institutions in Jakarta, with considerations that water source conservations should be made in rigid, uncompromising ways with the local government due to distrust with the mayor because his promises were never kept. To solve some cases, political means were used. H. Rudi's group had a solution to the water source case, but it was considered ineffective.

Those who were not included in H. Rudi's group, however, could be categorized into Basuki's group such as Basuki, Zaenal, Chamim, Heran Tri, and Hari, from Bumiaji and Sidomulyo villages. The characteristics of this group are as follows:

(1) *Not solid*

Those in this group still had the spirit to struggle to save the water source, but they were not well coordinated since seldom communication existed among them, and they never scheduled meetings. They have no usual regulars as they always followed the decision of H. Rudi's group.

(2) *Taking compromising ways*

They were willing to compromise with the government of Batu city to solve the water source case, meaning that they proposed FMPMA to have dialogues with the mayor of Batu city. For this group, the opportunity in local politics should be used. In the case of H. Rudi's group, there was no help from the mayor, but in the case of the Basuki's group, they achieved obtaining a solution from the mayor. For instance, in the meeting of FMPMA, Chamim once proposed FMPMA to lobby the mayor; however, this suggestion was rejected by Tubi. Tubi stated that he was pessimistic of the mayor's desire to solve the conflict by accommodating the demands of FMPMA.

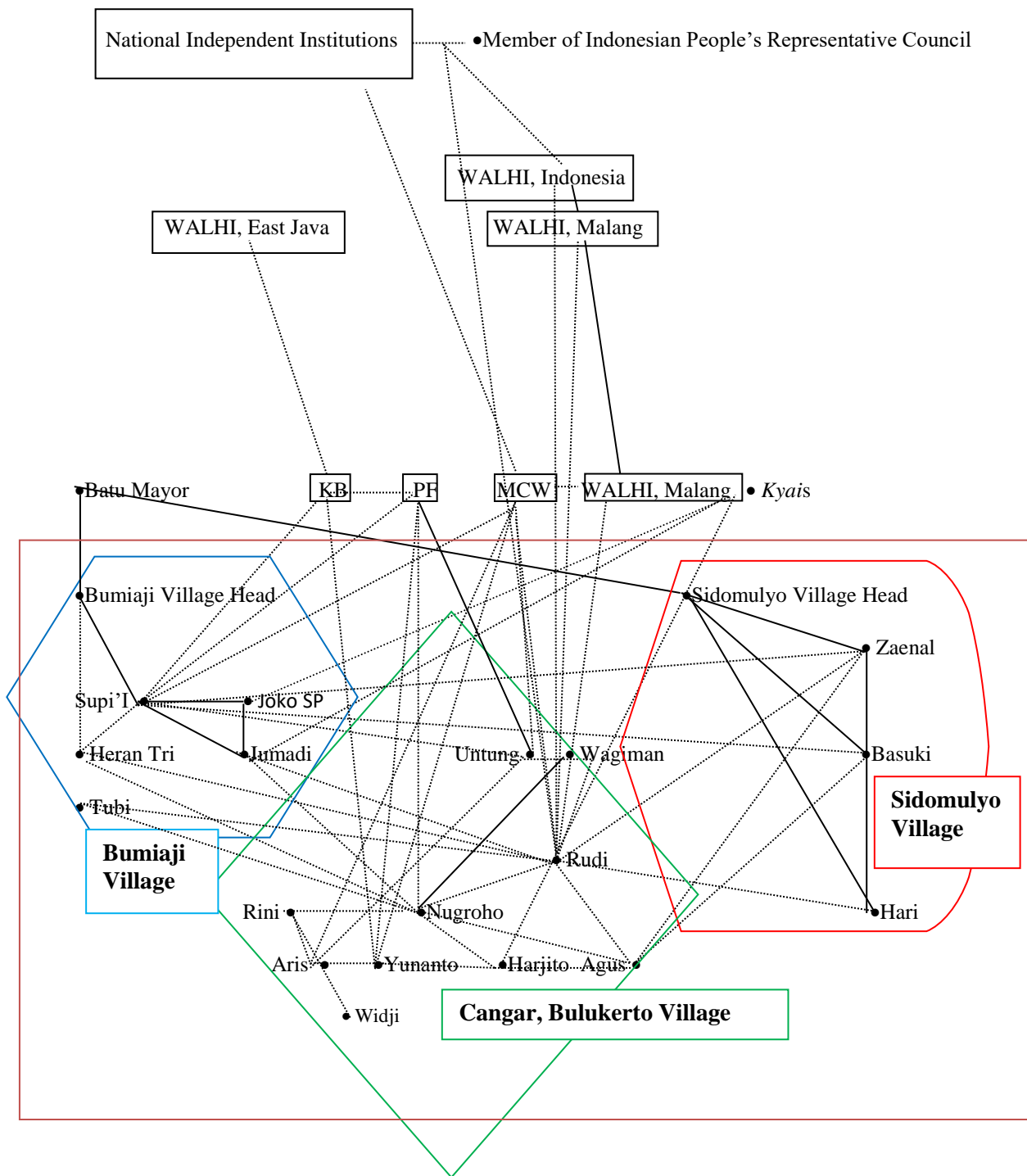
The strategies of the two groups are different. Even personal communications are made based on personal desires. For example, Basuki always sent SMS communication to Agus when anything happened at the hotel location; for example, when building materials arrived or building activities occurred. Then, Agus sent the information to H. Rudi or Nugroho.

Through specific actions, the two groups were under the command of H. Rudi's group. Basuki, Zaenal, Jumadi, and Chamim always did as mandated. When FMPMA decided to hold a demonstration in the Office of the Supreme Court on January 18, 2015, the decision was made by H. Rudi's group with the idea that it was necessary to press the Supreme Court that the decision regarding the case would take sides to FMPMA. Therefore, all groups, including H. Rudi's and Basuki's group, worked for the success of the action. They collected some logistical and financial aid to be able to go to Jakarta.

When the FMPMA members were invited by the Head of Police of Batu City on February 1, 2016, the two groups came together, accompanied by NGO activists like Purnawan D. Negara and the lawyer of FMPMA, Salma Safitri. They made their case against the hotel construction, which may threaten the existence of the water source, and talked about the summons made by the police.

As evidenced by the phenomenon above, the relationship between the two groups was strong. They do not rely on formal meetings and intensive communication between actors. When FMPMA initiated actions, there was no particular treatment between the different actors. They executed actions collectively.

Because their network was loose and flexible, there was a possibility that the movement would split into several factions. However, they succeeded in preserving their solidarity. Why could they do it? To answer this question, in the next chapter, we will consider how they strengthened their solidarity through their collective identity.



KB (NGO): Konsentrasi Brantas, PF (NGO): Pusaka Foundation, MCW (NGO): Malang Corruption Watch
 • : actors, dash (.....): informal networks, continues line (——): formal networks

Fig. 9.1 Social Network among main actors

Chapter 10 Framing Process of Collective Identity Formation

Identity formation contributes to making a movement sustainable because it can unify people who have different personal identities under the collective identity. This identity is constructed through the social institutions within the communities. Actors utilize collective identity formation to strengthen the movement. In this chapter, we will describe the framing process of this collective identity formation.

10.1 Identity as *Wong Lor Brantas* (northern Brantas River people)

The general character of Batu is an agrarian society. This agrarian society is indicated by the strength of kinship bonds. These bonds are constructed by having the same grandparents and through the formation of new families. Until now, it has been customary that when choosing life partners, they find ones who live in neighboring villages. Because of this, they often meet for community activities such as *buwuh*, *ngelawat*, *tilik bayi*, *sunatan*,¹ and others. These traditional rituals are based on *kejawen*, the syncretic Javanese Islam traditions.

Brantas River separates Batu into two regions: southern of Brantas (*Kidul Brantas*) and northern of Brantas (*Lor Brantas*). These terms are well-known in Batu. The term *Lor Brantas* describes the people of Batu who live north of the Brantas River. *Lor Brantas*, at the time of the Majapahit Empire (1293–1478), was known as a *perdikan kencono* region.²

There are some typical images of *Lor Brantas* that are different from *Kidul Brantas*.

(1) Agricultural Condition

The primary character of the *Lor Brantas* area is an agricultural environment, so the average people work as farmers, whether in a garden or the paddy fields. Mostly, their gardens and paddy fields are not far from their houses. The condition is different from the people south of the Brantas River who are urban and on average work in the service sectors, with relatively different residences, lack of kinship, and weakening of agricultural tradition. Heterogeneity is formed. One way this is done is through housing complexes that newcomers occupy.

The rural character above has the following consequences:

a) Farmers with a high work ethic

These farmers have a creative ethic, are productive, and do not give up on problems they face. For example, when the economic crisis hit Indonesia in 1998, the people of *Lor Brantas* quickly adapted. When flash floods occurred in *Lor Brantas* in 2004, the people

¹ *Buwuh* means visiting and helping the people who are holding a traditional ceremony like a wedding ceremony. *Ngelawat* means visiting a family where a family member has died. *Tilik bayi* means visiting a family with a newborn baby, and *sunatan* means visiting a family where a member of the family is to be circumcised.

² Interview with Didik, a socio-culture observer, January 31, 2016.

reflected, evaluated, and performed actions of conservation to prevent major floods in later years.³

b) Kinship Ties

The character of farming people can be seen in their relationships between one village and another and among themselves. Inter-village relationships are supported by being shared water users, for both drinking and farming. Relationships among the people also form work relationships such as those between bosses and employees. This working relationship is based on values such as *guyub*, *gotong royong*, and *seduluran* (brotherhood).

(2) Native People (Not Newcomers).

Since the establishment of the Batu Municipality (2001), the average people living in the *Lor Brantas* region are native residents, not newcomers, or even those who were not born in Batu and have long stayed in the area. This characteristic creates similarities in the culture they try to maintain. This character can be seen when the drinking water pipes were blocked at Cangar hamlet during the rallies at the City Hall on May 1, 2012. This phenomenon explains the feeling of “sameness” demanded from people joining the rallies as well as those that did not.⁴

Among the people, there is a dichotomy terminology: native people vs. newcomers. This dichotomy does not have a significant consequence on the relationships between native people and newcomers. This relationship affects merely the formation of individual perceptions that do not carry consequences in certain social aggregations. Furthermore, on certain community positions, the status of native residents is often used to legitimize the people that hold those positions.

When there are community problems, the native people are expected to be fully involved in resolving and repairing the situation. In the context of saving the water source, Untung, a member of Cangar hamlet, says that the involvement of native people developed the movement. It is different from the initial condition of the movement where newcomers initiated the movement. Even so, the native people are not superior. They are tolerant of the existence of newcomers. For native people, newcomers are not a problem as long as they follow the customs and traditions organized by the local people.

All members of the movement coming from communities from the *Lor Brantas* region give support to the development of the movement due to the strong kinship and neighborliness. The developing culture is based on “sameness” in ways of thinking, habits, traditions, and routines of everyday life. The culture guides that the perceived problems are the public’s problem.

The next supporting character of *Lor Brantas* is the multitude of meeting forums in the communities. These meetings are in the scope of the RT/RW or community activities, such as *tahlil* and *yasin*. These forums have become social institutions that are practiced even beyond generations. In the context of the movement, these meetings play a role in enabling actors to easily communicate issues and agendas of the movement and mobilize mass. The participation of people in attending court sessions at the District Court of Malang, the High

³ Interview with Slamet Henkus, a cultural observer of Batu, at his house, January 22, 2016

⁴ At the FMPMA meeting, June 16, 2013.

Court of Surabaya, and the Supreme Court are the optimization of the *Lor Brantas* character. Also, it is easier to make people aware of the condition and mobilize them.

The framing process faces the problem, namely, political intervention. This agrarian culture is not entirely homogenous because of political intervention from both local elites and the government. In some cases, this intervention is valid through the conception of pragmatism in decision-making. Apathy emerged among government officials or those who are close to the hotel group and the Bulukerto village head. Some of them even opposed the movement by influencing people not to be active in it.

10.2 Framing Process through Islamic Institutions: *Tahlil*, *Pengajian*, *Slametan*, and *Istighosah*

***Tahlil*: the formation of collective identity by Islamic ritual.**

Tahlil is an essential gathering for the community in Java and Madura. It is different from *jagongan* or any other gathering that this movement used since *tahlil* has always been organized once a week and people came without personal invitations. *Tahlil* is an event in which the participants recite *tahliil* (Arabic language) prayer, i.e., “*la ilāha illā Allāh*” (there is no God except Allah). Some chapters of the Qur’an are also recited such as the Al Iklash, the Al Falaq, the An Naas chapter, the verse of Qursi, and five beginning verses of Al Baqarah chapter.⁵

Joko SP, a member of FMPMA from Banaran hamlet, Bumiaji village, states that the purpose of *tahlil* is threefold: (1) a reminder that every single person will die and that people will recite *tahlil* for him, (2) to obtain God’s blessing, and (3) to get valuable information, whether it is information from the government or from the participants of *tahlil* themselves. It can thus be concluded that *tahlil* is a community activity that has supernatural, religious, and social dimensions.

Unlike *slametan*, which must be held at a particular place and time, the procedure for *tahlil* is more flexible. *Tahlil* recitations can be done anywhere. The primary purpose of *tahlil* is to pray for the ancestral spirits and to pray to and praise Allah Almighty. Even though the root of *tahlil* derives from Islamic teachings, non-Muslim can join this event. Whoever lives in this community must participate in this event.

Most of the *tahlil* events in Bumiaji village, Cangar hamlet, Bulukerto village and Sidomulyo village consist not only of reciting *tahlil* but also of *arisan*. In the *arisan* activity, the residents pool their money, which is then reserved for one person who is entitled so it. The amount of money that is pooled depends on the residents’ consensus.⁶ *Tahlil* as a

⁵ For Muslims, *tahlil* was not simply used to send prayers for the deceased, but also to praise Allah SWT. In addition, *tahlil* could also be used to mobilize people who could not read Arabic writing but wanted to get God’s reward. *Tahlil* as a public mobilizing medium was easier to be held because of its closeness with Javanese tradition. For the reformists, *tahlil* which was held for the deceased was allowed with the condition that this *tahlil* was held to ask for God’s forgiveness for the deceased.

⁶ *Arisan* was another form of mutual help in the form of voluntary credit union (Grobßmann 2006:10). People would meet in certain intervals of time (for example, once a week), and each of them had to collect a certain

regular community activity is associated with community matters. *Tahlil* is not only a religious forum. As for *tahlil* organized in Banaran hamlet, Bumiaji village, this could be a time for many other activities such as product advertisements or political campaign.

It can be said that *tahlil* refers more to a regular community gathering rather than a purely religious event. For instance, in the *tahlil* event at RT 2 of Cangar hamlet, some Christians or non-Muslims actively participated. Every week they participated in *tahlil*, even they got a turn to organize *tahlil* in their houses. Despite their initial purposes to pray for to the deceased, in *tahlil* events provide another community activity.

For this movement, *tahlil* had an important function. As a ritual, *tahlil* was recited three times at the rallies of FMPMA in the Batu city government office. It was also done between the speeches at the FMPMA rallies and when FMPMA staged a rally at Brawijaya University. *Tahlil* was recited together with *sholawat badr*⁷ to calm down to the people rallying so they would not be destructive or anarchic. Also, *tahlil* was also recited before the first trial of the lawsuit filed by the hotel.



Fig. 10.1 *Tahlilan* in Cangar

Furthermore, if it is seen as a community gathering, *tahlil* is a useful event to promote the movement, to raise funds, to distribute information, and to do *niteni*.⁸ There are different functions of *tahlil* between the beginning of the movement and time that the movement has developed. At the beginning of the movement, *tahlil* is used for socializing

sum of money which was agreed before. The amount of money usually was in accordance with participants' prosperity. In this *arisan* association, all of residents could take a part, including the poorest ones.

⁷A verse in Arabic, meaning the blessing for the prophet Muhammad SAW and his followers, especially the warriors in the *Badr War* (624). *Sholawat badr* is more familiar to members of Nahdlatul Ulama.

⁸*Niteni* (Javanese word) is a way the society uses to judge which people are active and which ones are not or who support the movement and who do not. In its extreme form, this judgment will categorize people into two categories: in-group and out-group.

the actions. For example, Wagiman used *tahlil* to raise support. During every *tahlil*, he provided information about the movement. Despite the lack of attention that Wagiman received at the beginning, he continued to inform *tahlil* participants about the hotel's construction planning so that, little by little, he could win sympathy for the movement from more and more people. Heran Tri received information about the movement for the first time during *tahlil* when board members of the HIPPAM of Bumiaji village revealed that the Gemulo water source was under threat.

Furthermore, in some instances, *tahlil* was used to persuade the public to participate in the movement. Untung stated that if only one in ten of the people in the *tahlil* supported the movement, it was likely that the others would join the movement.⁹

After that, *tahlil* developed to cover other functions such as providing information. In Sidomulyo village, Zaenal relates all the results and progress of the movement during *tahlil*. As Zaenal said, after he had lobbied an official in Jakarta, he also explained the results of his lobbying during a *tahlil* event. In addition to that, when FMPMA was about to attend a trial, *tahlil* was used to notify those in attendance about the schedule of the trial and to inform them of the trial's progress. This was implemented in the Cangar hamlet and the Bumiaji village, as well as the Sidomulyo village.

In the Cangar hamlet, there were many public gathering topics in the *tahlil* after the emergence of the movement. News or information on the environment was considered less often before; however, after the movement's emergence, these kinds of news were hot topics of discussion in the society. In the *tahlil* event, the public sought and selected as much information as possible about the movement, including discussing Article 66 of Law No. 32/2009, which states, "Every person who struggles for the right of a good and healthy environment could not be criminally prosecuted and civilly accused."

As for the area where there were more movement supporters, the *tahlil* was also used for *niteni* (marking) the ones who took part in the movement and who did not. To do the marking, people can judge from their reaction. Those who support this movement would be enthusiastic to know the movement progress informed in the *tahlil*. Meanwhile, the ones who were not interested in hearing this progress information would tend to be apathetic by asking to leave one by one. *Niteni* played an essential role since their disagreement would never be voiced out loud. *Niteni* functions make a boundary work of the movement. They know who was and was not a friend; finally, the collective identity was constructed.

The problems of the functions of *tahlil* for the framing process occur in this movement. In Cangar hamlet where there were still both the movement supporter groups and opposing groups, *tahlil*'s role varied. In the RT area where many people were not movement supporters, *tahlil* was less effective in organizing the movement. Eventually, the actors of this movement selected which information was confidential and which was open to the public. This *tahlil* was done considering not all of the participants supported the movement. *Tahlil* could be attended by the accomplices of a head as well as the residents who supported the hotel construction. To cover these *tahlil* forum weaknesses, the actors of movement utilized other gatherings such as *jagongan* or FMPMA meetings.

For conveying information regarding the movement, the chief of RT who supported the

⁹ Interview with Untung at his house, September 26, 2015.

movement, had to consider many things. Sometimes, the chief of RT did not pass on the information about the movement to participants; and even if he did, he would do it in a less formal meeting or gathering and wait for people who did not support the movement to go home.

Pengajian: the formation of collective identity by Qur'an learning circle and Islamic lecture.¹⁰

Pengajian is a broad term for learning Islamic teachings and usually listening to sermons in a circle. The circle is also called *pengajian*. *Pengajian* is used as a means to communicate the issues of the conservation of the water source because the actors of FMPMA from Bumiaji village have a strong religious background. The first coordinator of FMPMA, Supi'i, also has a religious background; he had finished his study in *Pendidikan Guru Agama* (School of Religion Teacher) and State *Madrasah Aliyah*¹¹ of Batu. Also, he often gave a Friday sermon in some mosques in the Bumiaji village and the Malang district. As a Muslim, he connected with some *kyai* (an Islamic teacher/leader) because all of the movement actors were Muslim.¹²

The other members, for example, Jumadi, have an Islamic teacher. Meanwhile, both Harjito and H. Rudi often visited *kyai*. They also often discussed their life problems with the *kyai*. The central role of *kyai* is a place to ask about particular problems of life, including the water source conservation movement. Both of them talked about the Gemulo water source problem to obtain some essential advice from each of their *kyai*.

Different *kyai* were referred to by most of the members. In other words, some of the actors had their *kyais*. Harjito often visited and learned Islamic teachings from KH Nurkholis, whereas H. Rudi consulted with *kyai* Munir Faktullah, whom he visited every Friday. On the other hand, there's Supi'i, who often attended *pengajian* Jama'ah Riyadul Jannah led by Gus Rohim. However, he did not refer to only one *kyai*. He also often consulted on religious matters with whomever he believed to have more religious knowledge. Meanwhile, Jumadi often attended Quran recitations by KH Musyrifin in Banaran hamlet, Bumiaji village.

The members of the movement assessed these *kyais* by means of the content of their discourses and the members' experience in interacting with them. By examining the content of their discourses, the members could decide whether the *kyais* were reliable or not. The

¹⁰ Etymologically, the word *pengajian* originates from the word *kaji* (to study in Indonesian). It refers to all activities that are related to learning, either religious or secular. See Bambang Pranowo (2011)

¹¹ *Madrasah Aliyah* is Islamic middle school at the same level as senior high school. This school applies national curriculum and provides more religious subjects

¹² According to the origin, there are three different meanings of the word *kyai*. 1) It is an honorific title for things considered sacred such as Kyai Garuda Kencana for the Golden Carriage of Yogyakarta Court. 2) An honorific title for elderly in general. 3) An honorific title given by the public to a religious Muslim cleric who has, or is, a chief of an Islamic boarding school and teaches classic Islamic literature to his students. In addition to being addressed as *kyai*, this person is usually also named as *ulama*, a person of profound Islamic knowledge (Dhofier 2011: 93). In this context, *kyai* is used in the third definition. *Kyai* hold a higher social status because people always refer to them for problems related to Islam. Islamic law is not simply a regulation that rules the relation between human beings and God, but all personal and social relations. It can be concluded that *kyai* have a great power in the society.

same applied to the *kyais'* credibility, which could be summed up from the information gathered and discussed among the movement's members. By using these assessments, the members were able to make decisions about which *kyais* could be trusted and which ones could not be.

The close relationships between the movement's members and the *kyais* encouraged the organization of a *pengajian*, a place to promote the movement. A *pengajian* was held at the beginning when FMPMA was still trying to get support from as many people as possible. Thus, at the April 4, 2012, FMPMA meeting at the Malang Corruption Watch (MCW) office, in Malang, the coordinator of FMPMA, Supi'i, proposed to hold a *pengajian* about water source conservation.¹³



Fig 10.2 The members of FMPMA and a *kyai*.

From left to right: Nugroho, H.Rudi, Harjito, and the *kyai* (photo by the researcher).

Meanwhile, Supi'i thought that the mayor would pay more attention to FMPMA's demand if the orator were a *kyai* who had keen analysis on the government. His consideration at the moment was about the need for a large mass gathering, broadcast by television stations covering a wide area. Thus, it was broadcast by Batu TV, a private local TV in Batu, as Supi'i wished that this *pengajian* would press the mayor to revoke the hotel construction permits soon. In his point of view, a *pengajian* event was a media event that helps to seek for morale supports.¹⁴ A morale strategy is referred to as a strategy to raise awareness among all parties of the importance of the spring saving action. This event would not have a short-term impact, but a long-term one.

At the same time, Lutfi regarded what Supi'i proposed as suitable with the characteristic of an agrarian society in which there was a need for an event or activity

¹³ Interview with Lutfi at MCW Office, September 22, 2015.

¹⁴ Interview with Supi'i at his house, September 2, 2015.

which involved the public so that information about the movement could be passed along. In a society united by similarities, a strategic *pengajian* was used to pass the information about the movement.¹⁵

The *pengajian* was eventually held at Bumiaji Village Hall on April 18, 2012. About 5,000 people were attending this *pengajian*. This event could even attract officials of Bumiaji Village Government. This could be seen from the involvement of the Chief of Public Welfare Affairs of Bumiaji Village Government (*Urusan Kesejahteraan Rakyat Pemerintah Desa*), the coordinator and head of Bumiaji Village to give a welcome speech. Meanwhile, the HIPPAM of Bumiaji Village and the residents of the Cangar hamlet took apart in funding. The *Riyadul Jannah* congregation from the Malang city, Malang district, and Batu city were invited to participate, as were officials of Bumiaji Village and FMPMA actors. Even though some members of local parliament (DPRD) were also invited, none of them came.

Some actors that were in attendance were Jumadi, Supa'at, Chamim, and Bambang Parianom. The residents—from children to adults and men to women—all wore white attire and flooded the place. Related to *Jama'ah Ta'lim Riyadul Jannah*, this *jama'ah* is no longer unfamiliar to most of the residents of Bumiaji village because the *jama'ah* themselves often organized *pengajian* in Mbah Batu's grave, located in this village. For this *pengajian*, the theme addressed was about the conservation of the water source.

Unlike the *pengajian* that is often held in some villages of Batu in which a *kyai* directly gives the discourse of *pengajian*, the *pengajian* this time was opened by reciting *Shalawat Nabi* together, led by more than one *kyai*, and KH Munir Fatkhullah delivered the main topic of this *pengajian*.¹⁶ Other than that, KH Munir Fatkhullah often took part in a regular *pengajian* at mosques in Batu, by giving a sermon in a mosque in Cangar hamlet every Tuesday night. Furthermore, he is a member of the advisory board for Ulama.¹⁷ Council in Batu (*Penasehat Majelis Ulama Batu*). The relation between the *kyai* and the BPD member was one between a *kyai* and his disciple, in which the disciple always paid a visit to the *kyai*. This BPD member was considered as such because KH Munir Fatkhullah is one of the *kyais* who still dared to criticize the government.

Some messages delivered in this *pengajian* were:

- 1) He complimented the background of this *pengajian* topic selection; he later touched the subject of the dwindling of the springs in Batu. He then advised the head of Bumiaji Village to save the water source.
- 2) By citing Chapter 95 At-Tin of the Qur'an, he reminded us of the importance of trees and mountains. He talked about the message of Allah Almighty about the important of trees and the dominance of mountains, which can be seen in this chapter.¹⁸

¹⁵ Interview with Lutfi J. Kurniawan, September 27, 2015.

¹⁶ Selecting KH Munir Fatkhullah was not a spontaneous idea because Supi'i had contacted some *kyais* in Batu. He had contacted religious figures either from NU or Muhammadiyah, yet he got less attention. Then he consulted to Gus Rohim in a *pengajian* forum. Eventually, Gus Rohim himself selected KH Munir Fatkhullah. Interview with Supi'i on December 23, 2015.

¹⁷ *Ulama* is an Islamic scholar, including *kyai*.

¹⁸ KH Munir Fatkhullah cited a verse of sura Ar-Rum, Qur'an (Q30:41). See Chapter 5-4. *Ibadat: Responsibility to Allah*.

- 3) He criticized the construction of the Jambu Luwuk hotel resort, located on Banyak Mountain because of the damage it caused to the environment.
- 4) He regretted the construction of the housing complex and villa on Panderman Mountain.
- 5) He mentioned the importance of water.
- 6) He stated that this understanding has to be accompanied by an understanding of the Quran and Hadith (Traditions of the Prophet Muhammad).

In this *pengajian* event, some of the FMPMA members, especially those who came from Bumiaji village, paid attention to the selected theme. They became determined to struggle for the spring because they had support from the *kyai*. Thus, the influence of this *pengajian* was more in providing motivation and encouragement so that the members became more determined to save the water source.



Fig. 10.3 KH Munir Fatkhullah at *pengajian*.
This *pengajian* was broadcast on local television (photo by FMPMA)

With a *pengajian* as a tool for the framing process, the role of the *kyai* is vital because he adds legitimacy to the community's beliefs. Bearing in mind that many people still do not understand the connection between the aims of the conservation movement and Islamic values, he can explain it to them. In this instance, the *kyai* succeeded in explaining the conservation movement by using Islamic teachings, and with the *kyai* blessing the movement, the members believed that the movement's actions were religious actions; therefore the members became more determined to initiate the movement. The influence of the *pengajian* had an indirect influence that could be seen in some events that involved the masses.

***Slametan*: the formation of collective identity through a Javanese Muslim ceremony.**

Slametan is derived from the Javanese word *slamet* (from Arabic *sālama*), which means sobriety, peace of mind, and having no problems. *Slametan* could be said to be an effort to seek calmness (Woodwork 2001: 117). It is a ritual in the form of a communal meal that is

attended by men, family members, neighbors, and some public figures within a village (Robson 1991: 634). For particular people, *slametan* is similar to *sedekah* alms (in Arabic *shadaqa*). In this case, *slametan* is to provide a meal to many people, disregarding social level. It is usual that all people who live in a particular community participate in this event.

Some functions of *slametan* serve 1) as a tool to get a *slamet* (safe) condition, 2) as a tool to get the blessing (*berkah*), and 3) as a medium to be grateful. *Slametan* is a sign of gratitude from the people for the gifts of Almighty God. This ritual is a form of gratitude for God's bounty such as water and other natural resources provided for the people. The goal of *slametan* is prayed to God so that people will easily get blissful water and luck.

Some forms of *slametan* organized in Bumiaji, Bulukerto, and Sidomulyo villages are *slametan Bulan Sura/barikan* (the first month of Islamic/Javanese calendar), *bulan Ruwah/sedekah desa* (8th month of Islamic calendar), *megengan* (before Ramadhan, the fasting month for Muslim), and *malam selikur* (21st night of Ramadhan), at the 29th night of Ramadhan, and at Idul Fitri (after Ramadhan).

Slametan bulan Sura/barikan is organized to commemorate the hamlet anniversary, whereas *slametan bulan Ruwah/sedekah desa* is organized to commemorate the village anniversary. As for *megengan*, *malam selikur*, and the 29th night of Ramadhan, they are organized to commemorate the coming of Ramadhan, the fasting month, as a sacred time for Muslims. The last *slametan* organized on Ied Fitr is a sign of the end of Ramadhan.

Collectively, *slametan* was held at least once a year. The form of *slametan* was *barikan/slametan dusun* and *bersih desa/gadeso*. Furthermore, the place for *slametan* should be *punden* and the water resource. They prayed so that the water would flow abundantly. Compared to other rituals, some essential aspects of *slametan* consist of three elements, namely, having a meal together, opening remarks with a statement of intent (in Javanese, *ujub*), and prayer (in Javanese, *donga*).

Slametan has a strong relationship with the water conservation program. Agus, an actor from Cangar hamlet, explained that *slametan* had an essential meaning for water resource preservation. He said that a water source which has never been given a *slametan*, would have its water flow decrease.

Our water reservoir was the smallest one compared to other villages, yet its water supply at Gemulo water source was the largest. Ours was 1m x 2m, whereas the Binangun hamlet reservoir was more than enough to directly accommodate the water flow into the reservoir, yet their water flow was the smallest one. We were the ones who regularly held *slametan* so that our water was always flowing smoothly and abundantly.¹⁹

The same thing was stated by Sumartono, the chief of RW1, Cangar hamlet. He said that since the *slametan* was regularly organized in Cangar hamlet, the flowing of water into the hamlet was never reduced; therefore, he always tried to arrange *slametan* with residents.²⁰ For the *slametan* organized in Cangar hamlet, it was often merged or combined

¹⁹ Interview with Agus at his house, Movement Actors from Cangar hamlet, November 4, 2014.

²⁰ Interview with Sumartono at his house, Chief of RW 1, October 18, 2015.

with other activities. Sumartono stated that the *slametan* event was divided into two parts: a sacred or mandatory component and an additional one. The sacred component was praying at the water resource, while the additional one an entertainment element which aimed at livening the *slametan*. For instance, besides the praying and eating *tumpeng*²¹ together, *slametan* was also livened up by *arak tumpeng* (*tumpeng* parade). For the *slametan* in 2015, every RT had to submit *tumpeng*, so eventually there were various *tumpengs*.

Other than that, to enliven the *slametan* event, the *ogoh-ogoh* was paraded. For the society itself, the *ogoh-ogoh* which had the shape of a bull-headed man, was a satire about a leader who ignored his/her people's welfare. In the most public conception, *slametan* is an excellent event or activity. Through the *slametan* event, it is shown that Muslim Javanese people are *benih* (good) people. *Benih* people are people that present themselves as a caring people to one another.



Fig. 10.4 Slametan at Gemulo water source, praying for Allah



Fig. 10.5 Parade of *ogoh-ogoh* floats in the *slametan* in Cangar

Because of the emergence of this movement, the Cangar hamlet held a *slametan* at least twice a year; it was held three times after being merged with the World Water Day commemoration. Sumartono and Aris stated that the more often the *slametan* was held, the better it was.

There are two functions of the *slametan*, namely:

- a. Giving peace of mind to actors because the conflict with the local government sometimes makes the actors stressed; therefore, the *slametan* is one of the ways to deal with this worsening condition.
- b. The *slametan* is also used for criticizing the policy of the government. There are many symbols in these rituals, like praying and offerings. These symbols represent the collective knowledge of the community. Based on this knowledge, they recognize the similar values of kindness and the opponents of the social movement. Then, by gathering members of the movement together, the collective identity is constructed. After that, the movement is sustained.

²¹ A ceremonial dish of yellow rice served in a cone shape.

***Istighosah*: the formation of collective identity through a Javanese Islamic prayer ceremony.**

Istighosah has a long tradition in Batu City. In some mosques, the people of Batu often organize this ritual. This activity consists of reciting a prayer together and is led by a *kyai*. It had to be led by a *kyai* because the prayers are specific prayers that are dedicated only to *istighosah*. In fact, certain similarities exist between *tahlil* and *istighosah*. They both consist of the same basic activity, and the only difference is in the prayers that are selected.

Istighosah is derived from an Arabic word, *istighāthah*, which means an activity to ask for God's help in a tight or dangerous situation (Umar Hadi and Abdul Mu'ti, 2009: 32). It is usually a prayer activity in which many people participate. For the water resource saving movement, *istighosah* was the second activity to be taken from Islamic teachings, in addition to the *pengajian* that was organized in the Bumiaji Village Hall.

Istighosah is conducted as one of the movement's tactics. This idea of *istighosah* was proposed for the first time at an FMPMA meeting a week before the verdict announcement scheduled on July 6, 2014, at Mbah Batu's grave. As it was Ramadhan, *istighosah* was held after *tarawih* prayer at 8.00 p.m. local time. All FMPMA members from the three villages (Cangar hamlet of Bulukerto village, Bumiaji village, and Sidomulyo village), the associates of the movement, the Bumiaji village head, the secretary of Bumiaji village, a member of BPD Bumiaji village named Muji, and all of the HIPPAM Board Members of Bumiaji village and Cangar hamlet were in attendance. The chief of RW also joined the event; he had even prepared a barrel of water he had taken from Gemulo water source, which he later put near the grave gate. All of the participants were expected to drink the prepared water. The chief of RW then expressed that his intention behind bringing that water was to remind all of them of their struggle to save the Gemulo water source.

All of the movement associates attended the event, such as Lutfi J. Kurniawan, Akmal, Purnawan D. Negara, Rere Christiyanto, and Ony Mahardika. In this event, two people were appointed to give a welcome speech: H. Rudi and Muhnur Satyaprabu stated that all of the movement supporters have to unite to save the Gemulo water source. They also stated that this Gemulo water source saving movement did save not only this water source but also the surrounding nature and environment.

H. Rudi affirmed that this *istighosah* event was to give new morale and that they would accept whatever the verdict from the District Court of Malang was, and FMPMA would always struggle for the water source.

Muhnur Satyaprabu in his speech expressed his gratitude to God for the opportunity to gather and for this struggle. He felt the same friendly atmosphere as the year before. He later stated that in a social movement, everyone is a coordinator. Thus, each has the right to propose any ideas for the continuity of this struggle. The content of Muhnur Satyaprabu's speech can be concluded that there was no primary actor for this movement, so all of the activists could give their contributions to this movement.

He expressed his gratitude that through this movement, he could gain a brotherhood. He later stated that to defend the environment was to defend the rights of the next generation. He reminded that in 2030, there would be a war for water. Thus, we have to pass clean water down to our grandchildren. He also emphasized that WALHI and all branches in Indonesia support this movement. Other than that, this struggle to save the

water resource and water in Batu has already been discussed in some environmental forums in the Philippines, Brazil, and Germany. Therefore, the issues of FMPMA were an official agenda for WALHI that would be promoted everywhere. Afterward, he closed his speech by saying that cleansing our souls and hearts was one of the requirements to struggle for this water source.

The next session was prayer recitation in *istighosah* led by a *kyai*, KH. M. Musyrfin Panatagama Reksa Budaya who was the head (*khadimul ummat*) of Bengkel Akhlaq, Dzikir dan Ta'lim, and Bumiaji Panatagama. He emphasized that fate is not an absolute decision, but it can be changed by praying in advance. He said so by quoting Sura Al-Zumar (Q 39: 53-54)²² and the hadith of Prophet Muhammad PBUH which reads as,

Prophet Muhammad PBUH said that nothing could refuse the destiny (provision) of Allah but prayer. Nothing can add (extend) the life of a person but good deeds (Hadith narrated by al Tirmidhi).

KH. M. Musyrfin Panatagama Reksa Budaya also delivered other hadiths of Prophet Muhammad PBUH that advised people to always pray for being given enough livelihood, winning, and success. Also, he also prayed for four things: to be rich in knowledge, to be rich in wealth, to be of high status, and to survive every disaster. The *istighosah* event in Mbah Batu's grave made Darmanto happy because the presence of movement members at Mbah Batu's grave would please her.



Fig. 10.6 Istighosah at Mbah Batu grave

²²“Say, My servants who have harmed yourselves by your own excess, do not despair of God’s mercy. God forgives all sins: He is truly the Most Forgiving, the Most Merciful. Turn to your Lord. Submit to Him before the punishment overtakes you and you can no longer be helped.”(Q 39:53-54)

Wagiman also stated that the role of *istighosah* was to unify the supporters of the movement and it could not be used as mass recruitment because the influence of *istighosah* was to unify the opinions or, in other words, to motivate the participants to continue the movement and its struggle. In Jumadi's understanding, the effect of *istighosah* was the movement actors being more determined and dedicated to saving the Gemulo water source²³.

The speech of H. Rudi, Muhnur, and the *kyai* amplify the one issue of the conservation movement that the movement must be continued until the aims are reached. The three speeches have meaningful messages that caused the united commitment of the members. The spirit of the movement is high, and they will not surrender until the goal is reached. This commitment contributes to the collective framing that constructs the collective identity.

10.3 Framing Process through Javanese Institutions: *Wayang*, *Bantengan*, and *Jagongan*

Wayang

The Batu people love the *Wayang Kulit* Shadow Puppet Theater, the Javanese traditional performing arts. Both government and communities conduct *Wayang*. For most of the villages in Batu, *Wayang* has essential roles in the society. *Wayang* shows are a media to deliver some advice or goodness (*pitutur becik*) in which its story (*lakon*) and its plot represent some people in the society. *Wayang* provides a set of moral and behavioral quality standards of social behavior (Hatley 1971: 89, Poedjawijatna 1982: 124). In addition to good and bad stories, the consequences of the behaviors of each character are also shown by *dhalang* (*Wayang* performer) (Suwardi Endraswara 2006: 93-94). Meanwhile, for the latter, those who view *Wayang* by relating it to mystical factors, the success in holding *Wayang* shows will be considered either good or bad luck for the future society; therefore, the *lakon* selection is crucial. Its role is defined as an entertainment and a prerequisite for some ceremonials or *slametan* (festivity). It is proven that villages in Batu hold the performance of *Wayang* at least once a year on average for *gadeso* (village cleaning).²⁴ The *wayang* show was a separate event in that *slametan*.

Actors of the movement realize that *wayang* contributes to the success of the social movement. The actors of movement fully understand the contribution of *wayang* for gathering mass. For instance, Agus, Untung, Aris, Supardi, Harjito, Supi'I, and Basuki know much about *wayang* stories and the symbolism of those stories; they can even connect *wayang* with Islamic teachings and the symbolism of life.

Their knowledge about *wayang* is pictured below. Aris knew Pandawa and Kurawa stories; he also knew about the story of the Baratayuda war. Aris explained that the conflict in the water conservation movement is illustrated in *wayang* because the parties involved in

²³Interview with Jumadi at Rumah Makan Bambu (restaurant), Batu on August 28, 2015

²⁴ Sunarto (2013) states that community rituals organized in the form of show performances are associated with agrarian society life which was a society that wanted a bountiful harvest and to show their gratitude. Two rituals have been done regularly using *wayang* shows namely, *ruwat sukerta* and *bersih desa*.

the conflict are still brothers; they were separated only because of individual interests. Some people have an interest in preserving water resources while other parties are loyal to the head of the village.²⁵

Zaenal knows about *wayang* and its stories like the Baratayudha war between Pandawa and Kurawa, Punakawan, Bima, Wisanggeni, and Arjuna. Related to this, he told the story about Wisanggeni, who was an ambassador of Pandawa, to claim their rights.²⁶ Untung knows more about the Baratayudha war in which Pandawa had claimed their rights from Kurawa. Why should the right people always be oppressed? Pandawa was right, yet they were still disturbed. Wisanggeni protested the gods' treatment toward his father. He protested on why the right society was still challenged. He could relate *wayang* stories with daily life.²⁷

Actors of movement realize that *wayang* is vital as a tool to attract public attention or to gather the public. Moreover, this cultural event is still useful as an attractive form of public entertainment so that more people would be aware of this issue.

In addition to the *wayang* show in Bumiaji village, the second *wayang* show was held in the Cangar hamlet, Bulukerto village, on December 2, 2013. This *wayang* show marked the completion of the construction of the Cangar hamlet hall named Tirta Sari. A *wayang* show was held as a form of gratitude for the construction completion and as a reminder of their hard work. In fact, when the *wayang* show was held, the struggle for water conservation has not yet ended. The case has just entered a new stage of a court trial for the lawsuit filed by the hotel party against one of the movement's actors, H. Rudi.

In this event, all of the involved actors in the movements were invited, such as community figures from three villages, partners, and some people like a member of the Indonesian assembly, Totok Daryanto, who had sympathy for the movement. Thus, all of the movement actors reunited in this *wayang* show.

In the gathering, the framing of movement is constructed among actors strengthening the motivation of the movement. Sumartono, the committee chief of *wayangan* (wayang show), explained that the *wayang* show events would be regularly held because these events were said to pay homage to the water resources²⁸.

The last *wayang* show was held in Cangar hamlet, Bulukerto village, on November 7, 2014. This *wayang* show was held concurrently with the Water Festival, which featured many events, such as the Living Environment Workshop, the Cultural Workshop, *Tumpeng*, the Culture Carnival, the Mass Painting Competition, and *Teriakan Bumi* (Earth Shouts). At that moment, the struggle for saving the water resources had won the trial at the District Court of Malang, and the trial was escalated to the appeals court (high court) in Surabaya.

This time, the chosen *lakon* (story) was *Pendawa Gugat* (Pendawa Claims). This story was about Bima, who sought for *wahyu* (supernatural power given by God) by clearing forest. It can be said that the *wahyu* was not directly given by God, but Bima himself pursued it. With hard work, Bima eventually got what he sought. Regarding the chosen

²⁵ Interview with Aris, Bowo at Aris' House, Desember 9, 2015.

²⁶ Interview with Zaenal at his House, Nopember 1, 2015.

²⁷ Chatting at Aris's house on September 11, 2015

²⁸ Interview with Sumartono, January 17, 2015 via cell phone.

character, Supardi expressed that Bima as the main character could be compared with the social activists who struggled for the water resource.²⁹ In this event, not all members involved in the movement actors at the community level; some were also associates and people who were sympathetic toward this movement.



Fig. 10.7 Wayangan in Cangar



Fig. 10.8 Invitation for wayang kulit show in Water Source Festival

The next chosen story was *Sumantri Duta*, telling about Bambang Sumantri who reclaimed Hastina Pura which belonged to Pandawa. This story illustrated how Sumantri faced ups and downs in carrying out the task. Sumartono and Ony Mahardika said that the story demonstrated the steps of the movement by which the hotel sued the public. Then, when the time came, FMPMA had to sue the government and the hotel in return. It could be said that the story of wayang symbolized their position and steps.³⁰

The story, such as *Pendawa Tani*, was to deliver a message for framing that water was a basic necessity, which has to be supplied; therefore, it had to be preserved and to be striving. Next, *Wahyu Tirtomoyo* explained the story of Semar, who challenged the heaven's authority, which was taken as being identical with the local government. Another story, *Pendawa Gugat*, explained about the hard work of Bima to clean a forest. It was expected that Bima's characteristic, which was simple-hearted and could not be bribed, would also be the character of FMPMA members.

The contribution of wayang to the movement was to promote some issues primarily targeted to those who did not know nor had no awareness of the importance of this water resource conservation movement. Meanwhile, for the movement actors, the wayang show had a role in keeping the morale of the movement actors.

²⁹ Interview with Supardi, September 9, 2015.

³⁰ Interview with Ony, October 23, 2015 at Cangar Hamlet Hall.

Through this performance, the actors of movement shared information and built the same awareness. This occurred because the actors designed these performances differently from *wayang* in general. The performance of *wayang kulit*, organized by FMPMA, was not the same as most usual performances of *wayang*; mainly if it was viewed for management, story, or *wayang* packaging. As for the *wayang* purpose itself, it was as a form of gratitude and public entertainment. In addition to it, the narrated stories were sometimes compatible and incompatible with the normative stories, yet *dhalang* was asked to perform a story in line with the struggle of the movement context. It can be regarded in the choice of the story that teaches the rewards of people who are struggling for conservation. This awareness raises the actors' spirit, and as a consequence, the collective identity is constructed.

***Bantengan*: the formation of collective identity by Javanese traditional dance entertainment**

Bantengan is a local dance that is institutionalized by most villages in Batu city. There were 44 groups of *bantengan* registered in 2013 and 91 groups registered in 2014 (Sulistyo Debora 2014: 123-134). This dance combines dance, *olah kanuragan* (supernatural power), music, and magical lyrics or mantras. The communities have a close relationship with this tradition; they mostly always participate in this performance because there are no particular skills for performing this dance; besides, the invited groups of *Bantengan* are free of charge, and the *Bantengan* easily invites people massively.

This dance is more intense and attractive when the dancer reaches the trance part, which is the part where the dancer who holds the *Bantengan* mask is possessed by an ancestral bull spirit (*dhayangan*).³¹ Like *wayang kulit*, *bantengan* is regularly held at some *bersih desa* (village cleansing) events.³² This *bantengan* dance, usually performed in two formations, is first performed in procession format, which is organized in the afternoon whereas the second formation is performed steadily in one place, which is organized in the evening. Recently, *bantengan* has started to be favored by the youth of Batu for the togetherness of the dance moves.

Then, during the performance of *bantengan*, actors deliver pamphlets to socialize the issue and the demands of actors of movement; therefore, *bantengan* is used to mobilize both actors and the audience. While enjoying the performance of *bantengan*, informally, the actors coordinate, gather, and chat, discussing the strategies of FMPMA and the response of the government. They also socialize their demands for the annulment of hotel construction to other communities and mass media: the consequence is a collective identity among actors, and bystanders of a social movement are created.

The *Bantengan* parade was initiated and organized by the youth in Cangar hamlet who were members of *Pemuda Peduli Lingkungan* (PPL; Association of Youth Caring for Environment). PPL is a subordinate organization of FMPMA formed as a strategic step to

³¹ Source: bantengannuswantoro.wordpress.com (accessed January 27, 2016).

³² Some particular areas organize *bantengan* performances for some occasions, such as Independence Day celebration, *Slametan Desa* (*slametan* for the village), *Slametan Dusun* (*slametan* for the hamlet), and public ceremonials (weddings, circumcision, and the birth of a baby). Interview with Zaenal on January 6, 2016

balance FMPMA weaknesses.³³ This *bantengan* parade was entitled *Aksi Simpati Damai Selamatan Umbul Gemulo dan Pawai Bantengan. Aksi Simpati Damai* (Sympathetic Peaceful Action) was selected since it was expected to show that this activity was far from violence but a cultural activity, as written on the banner “*Pelestarian Lingkungan sebagai Bagian Budaya dan Jati Diri Bangsa Indonesia* (Environment Preservation as Part of Culture and Identity of Indonesians).”



Fig. 10.9 *Bantengan* performance in front of the Gemulo water source

For some *bantengan* groups who were personally invited, their performance was meant for offering (*suguh* or *slametan*) in the Gemulo water source. Meanwhile, the PPL's interest was in promoting the water resource-saving movement. This was because, despite the revocation of the hotel permit by the mayor, the decision had no effect. There were no changes in the area of the hotel. Furthermore, the hotel still kept constructing, and there was neither follow up to the permit revocation nor actions from the mayor. So, the *bantengan* parade was used as a campaign and protest against the ongoing hotel construction.

This event was held on December 27, 2012, and was a form of insinuation that the government's mentality was *kadonyan* (materialistic), or easily bribed by the investors. The *bantengan* parade started from Cangar hamlet, Bulukerto village (in front of the house of Wagiman, a member of the movement), then went back to Bulukerto, after going down the main road outside the village. After the parade passed down the street near to the Gemulo water source, *slametan* (the ceremony) at the Gemulo water source eventually began. It opened with communal prayer, and afterward, they ate the *tumpeng* (rice cones) together. At the completion of this event, the committee set up a banner near the hotel reading "*Bantengan Malang Raya Menolak dan Mengancam Pembangunan Hotel*" (the Bantengan

³³ In general, the objective of *bantengan* is to promote environment issues. This event was also used for fund raising for the movement. Yunanto stated that it would not be ethical if FMPMA initiated a rally and at the same time raised fund. Thus, it was necessary to establish an organization that engaged in fundraising for the movement. Interview with Yunanto at his house on November 3, 2014.

community in Malang Raya rejects and condemns the hotel construction).

This dance had made the actors proud because it was followed by a massive amount of people. Aside from 77 groups of *bantengan*, which each consisted of 10 people, this activity was also followed by some actors from the Bumiaji and Sidomulyo villages. Then, the parade was conducted deliberately along the main road, causing a long traffic jam. In this circumstance, the campaign could be voiced louder. Also, technically, it would be a lot easier to invite the *bantengan* group since they did not need to be paid.

Initially, we had planned another thing, but it came out differently. *Bantengan* consisted of many people. However, our budget was limited. So, what we could do was provide them a meal, without any snacks or dessert. We did not even set a *terop* (shelter); we just set a stage, and the rest of our budget was used to buy *menyan* (frankincense).³⁴ In relation to *bantengan*'s purpose, which was hotel license revocation, FMPMA actor, Imam Yunanto, stated:

If our demands are not granted, and the government just gives us empty promises, we will rage as the bull does. This construction violated Local Regulation No. 7/2011 about the Spatial Planning (*Rencana Tata Ruang Wilayah*) of Batu City. Komnas HAM had already done meditation, yet the municipality government backed suddenly.³⁵

It means that this *Bantengan* event had achieved a result, mainly to show that the movement to save the Gemulo water source is going on; it even got some support from many people and had never really ended. As usual, the events, organized by the FMPMA, were attended by journalists, and so was this *bantengan* event. The reporters were informed about the details of this event in advance. So, when the parade stopped at the main road, some actors of movement and the head of WALHI Malang, were interviewed by the media. Their questions were related to the hotel construction. Yunanto explained the rules that were violated during the construction of the hotel. Meanwhile, Purnawan D. Negara explained the weakness of the hotel's UKL-UPL documents. The press release documents, made by FMPMA and Purnawan D. Negara, were also distributed. This new information made the actors perceive that they had similar thoughts; they felt that they belonged to one group; finally, the collective identity was constructed.

***Jagongan*: the formation of collective identity by the informal communal gathering**

The habit of movement actors is to visit their colleagues and families living either in the same village or neighboring villages. They visited *jagongan* to talk about their works, discuss village issues, or even just to kill time together.

Jagongan was derived from the word *jagongan* which means to sit down. Some people say that *jagongan* is chatting. Some people, young or old, men or women, gather and are chatting warmly. The meeting, gathering, and conversation mentioned can be either done

³⁴ Interview with Yunanto at his house, Friday, September 11, 2015.

³⁵ Surya, December 28, 2012, 700 "Bantengan Protes Tolak Pembangunan Hotel The Rayja Sepakat Tolak Hotel The Rayja" (Bantengan Protests and Rejects The Costruction of Hotel), *SURYA*, December 27, 2012.

deliberately or accidentally.

People who are getting involved in *jagongan* are usually neighbors, members of family or people from the adjacent villages. They are attached to each other because of community bond or family ties. There are numerous purposes of *jagongan* such as seeking for information, having a conversation and discussion about the current happenings, or even just killing time. They talk about any issues with some themes being discussed informally with a more relaxed atmosphere.

Usually, the host will serve some snacks or drinks, such as *gorengan* (fried snacks), coffee and cigarettes. Thus, by *jagongan*, it is possible to exchange much information. Some of the ideas of public facilities construction, such as the bridge to waterways construction in Cangar hamlet of Bulukerto village and Tonggolari hamlet, Sidomulyo village, occurred because of this *jagongan* which was initiated by the people. *Jagongan* themes would be talked about and discussed at a meeting of RT or a village meeting. Untung stated that the tradition of *jagongan* in Batu was a tradition of *Lor Brantas*.³⁶

Related to the importance of *jagongan*, Wagiman explained that people who never joined in a *jagongan* would never know any essential information. H. Rudi, for instance, got a lot of information about the construction and political cases in Batu through *jagongan*. He joined with some people in his bike repair shop. *Jagongan* conveyed any information related to the movement and news in Batu. For instance, Basuki knew information about the change of the Batu Police Chief through *jagongan* at Bakso (meatball) stall. H. Rudi also got much information about the change of important officers in Batu through *jagongan* at his bike workshop. While he kept his bike workshop, some of his customers gave him lots of information. Some guests of Cangar hamlet were often welcome in a *jagongan* at Aris's house.

The shared information within *jagongan* was varied. All of the information related to the community was shared and discussed on this forum as well as some information from the village government, rabbit breeder groups, farmer groups, and the Water Cooperative Association (HIPPAM). Zaenal was often asked by the residents of Tonggolari hamlet when FMPMA would organize another demonstration or offer any latest information related to the judgment and trial.³⁷ Moreover, when the formal community forum was less favored, *jagongan* was an alternative to discuss the movement strategies. From this *jagongan* forum, some of the youths joined the movement.

Related to the place, initially, the place where *jagongan* was held was chosen by some actors of movement such as Hadi Warikun's (a key person of HIPPAM of Cangar hamlet) warehouse or Mr. Wagiman's hut or house. These places were intentionally chosen to avoid "espionage" from the opposing groups that support hotel construction. Meanwhile, in Bumiaji Village, there were *jagongan* held in houses of movement actors such as Pardi, Joko SP, and Jumadi. The places for *jagongan* were not always convenient. Instinctively, movement actors knew where they would hold *jagongan*.

³⁶ This statement of Untung was given in a *jagongan* forum at Aris's house on September 14, 2015.

³⁷ Interview with Zaenal, October 18, 2015.

Meanwhile, in Sidomulyo village, the people organized *jagongan* at the front of Hari's (a leader of the movement from Sidomulyo village) place, Omah Munir³⁸ and meat-ball stall (*warung bakso*) in Bendo. After the *isya'* (approximately at 19.00 local time), every day, the youth of Tonggolari Hamlet would come to the front of Hari's place where there was a large field. They discussed many things, such as paving construction, *Kurban* (sacrificed animals) to celebrate Idul Adha³⁹ and other issues. Zaenal stated that basically the topics discussed were topics that would not invite arguments. Some topics considered as such would be avoided because this kind of topic was estimated to create a quarrel or heated arguments.⁴⁰



Fig. 10.10 *Jagongan* of youths in Aris's house

Hari, Zaenal and Basuki sometimes participated in *jagongan* at Omah Munir. Zaenal had worked at that museum where some youths worked as security staff, so that night was spent for chatting. Some of the conversation topics included the latest information about their village government. *Jagongan* at Omah Munir was an exciting conversation since it was supported by a comfortable atmosphere where there were some tables set on the terrace of the museum. Those tables were free to use. Besides doing *jagongan*, some people were

³⁸ Omah munir is derived from "omah" and "munir." "Omah" means house and, in this context, "museum." Dan "Munir (Said Thalib)" is a human rights figure born in Batu. He was credited with struggling for human rights in Indonesia; he later died in 2004. He was poisoned to death on his way to the Netherlands. The suspect has not been found to date. The Museum Munir was built, in his memory, in the Sidomulyo Village, and Batu named it Omah Munir. This is the first museum in Indonesia that takes the human rights problem as its theme. This museum was started as an agenda to transform Munir Said Thalib (1965-2004) into a model figure as a human rights educator in Indonesia (see Omah Munir.com). One of the activities that is held in this museum, every year, is the commemoration of Munir's death. In this commemoration, some elements in the civil society of Malang City, Batu City and of the Malang district are invited.

³⁹ A major feast day, every 10th day of the month of the Zulhijjah in Islamic calendar, celebrating the pilgrimage. Every family and community (including offices, schools and so on) are expected to sacrifice animals and share it with the poor. Also known as *Idul Kurban* in Indonesia. In Arabic, *īd al-aḍḥā*.

⁴⁰ Interview with Zaenal on October 18, 2015 at Warung Bambu

there just to sit and kill time with their laptops or just enjoy their coffees and cigarettes. These kinds of circumstance were the reason why Omah Munir was suitable for *jagongan*. Sometimes this *jagongan* finished at 1:00 or 2:00 A.M.

Jagongan is used for succeeding this movement. In the first time of movement, *jagongan* is informal selection ways of people who support and do not support the movement. Since the beginning of the movement, *jagongan* has been a vital forum for making decisions about the movement's strategies. Through SMS, the movement's members invited each other to hold meetings at specially designated locations.

The movement's initiators and supporters also used this perception synchronization. At the time, their perceptions about the movement were not exactly the same. Even though they realized the importance of water, not all of them dared to speak up. Thus, *jagongan* served as a forum for building their courage. Even though not all of the participants of this *jagongan* joined the movement, the *jagongan* was still useful in encouraging people who were already sympathetic but did not have the courage to express it.

Then, when the movement was in progress, some announcements about court rulings were also conveyed during *jagongan*. For instance, when H. Rudi coincidentally received information about a ruling of the High Court of Surabaya, he immediately went to Aris' house to inform the others about the court ruling. H. Rudi did the same thing at *jagongan* at the circumcision ceremony of the son of Anto (the chief of RT). When they were about to perform an action or go to the police station in response to a police summons, some preparations were discussed in *jagongan*. Before appearing in the police station, some of the actors contacted a lawyer, and other actors were also invited. Similarly, after their actions or activities were done, the actors of FMPMA and some associates gathered at H. Rudi or Nugroho's house to discuss the day's actions. The discussion was held informally.

10.4 Framing Process through Slogans and Humor: *Sastra* and *Guyon-Guyon*

***Sastra*: Rhetoric of slogan in demonstration**

Cultural resources in this conservation movement also occurred in the form of rhetoric slogans used in some rallies, including the ones in front of the mayor's office or at the front of the court house. These slogans express a goal or an aim that is used for political purposes (Al-Haq 2009: 3). These slogans were taken from the actors' capital resources. In the following part, the slogans are discussed one by one.

At the first rally staged in front of the mayor's office on April 15, 2012, the slogans were about the importance of water for the public, which read:

Mata Air Jangan Jadikan Air Mata. Jangan Ganggu Mata Air Kami.

(Do not make our water to be our tears. Do not disturb our water source.)

Jangan Ganggu Mata Air Kami. Sumber Air Minum, Bukan Sumber Air Mata.

(Do not disturb our water source. Source of our drinking water is not source of our tear).

These two slogans are rhymed pleasantly to Javanese. They use two words, *mata air* (water source) and *air mata* (tear, literally, “water from the eye”), effectively. Javanese people love rhyme verses, so-called *sastra* (literature), not only in particular ceremonial occasions or formal ceremonies but daily life. A person who can use skilled and beautiful rhyme verses, like as a good *dhalang* (*wayang* puppet master) or a good *kyai* (Islamic leader), must be highly respected among Javanese society. So, if they can use fine *sastra* in their slogans, they certainly get attention from lots of Javanese people including actors inside the movements. To the contrary, if not, they may be despised.

At the second rally staged in the front of Mayor’s office and district office of Bumiaji on May 1, 2012, a slogan said;

Tinggalilah anak cucumu mata air, jangan tinggali dengan air mata.

Do leave water source for our next generations, do not leave with tears (do not let cry).

In this slogan, also *mata air* and *air mata* were used effectively by rhyming. If ordinary Javanese people happen to see this slogan, most of them may easily understand the essence of this slogan and sympathize with the movement.

For the third demonstration on June 17, 2013, held in front of the mayor’s office, the slogans were about a protest over water source conditions. Some criticism of the government was illustrated as follows:

Mata air lebih menyejukkan dari mata uang sogokan.

The water source can make a cooler atmosphere than a bribe.

Pancasila: 1) Keuangan yang maha kuasa; 2) Korupsi yang adil dan merata; 3) Persatuan mafia hukum Indonesia; 4) Kekuasaan yang dipimpin dalam nafsu kebejatan dalam persengkongkolan; dan 5) Kenyamanan sosial bagi investor perusak lingkungan

Pancasila Five Principles: 1) Belief in the one and only money; 2) Just and equal corruption; 3) The unity of Indonesian legal mafia; 4) Authority with corruption and conspiracy; and 5) Social security for investors, the environment destroyers.

These slogans criticized the government’s attitude as being corrupted. In the first slogan, they used words, *mata air* and *mata uang sogokan*, by rhyming. Then, in the second one, they made a parody of Pancasila. Pancasila is the fundamental Indonesian five principles. Namely, they are (1) belief in the one and only God, (2) a just and civilized humanity, (3) the national unity of Indonesia, (4) democracy predicated on the inherent wisdom of unanimity arising from deliberation among representatives, and (5) social justice for all Indonesian people⁴¹.

⁴¹ In Indonesian, it is (1) *Ketuhanan Yang Maha Esa*, (2) *Kemanusiaan Yang Adil dan Beradab*, (3) *Persatuan Indonesia*, (4) *Kerakyatan Yang Dipimpin oleh Hikmat Kebijaksanaan, Dalam Permusyawaratan Perwakilan*, and (5) *Keadilan Sosial bagi seluruh Rakyat Indonesia*.

Slogans with fine *sastra* as I described above, may attract lots of Javanese people both inside and outside the movement. Furthermore, through those slogans, actors can share their understanding of the movement, and formulate their collective identity. Hence, their solidarity is further strengthened.



Fig. 10.11 Slogans in a demonstration at Brawijaya University



Fig. 10.12 *Guyon-guyon* in the bus to the Supreme Court Jakarta

Guyon-Guyon: Javanese humor

As some sociologists like Berger (2014: 53, 64-65) and Willis (1977: 29) consider, humor (or laff) has the boundary-making function, besides the relaxation function. If we can enjoy humor together, we may get a feeling of fellowship. To the contrary, if we cannot laugh, we may feel isolated. In another word, we can say that humor (laff) has the framing function to formulate collective identity. In this section, I try to describe some example *guyon-guyon* as a framing process for collective identity.

In a night, Nugroho had a chat with his friends at a stall. Suddenly his wife called him, then immediately went back home. Chamim made a joke of Nugroho: “His wife may call him for sleeping together. So, now there’s no doubt that he forgets about our struggle!”

When actors visited the head office of the ministry of environment in Jakarta, they can find no space to park in the parking arena. So, they tried to park outside the allowed area and leave their car. After that, a security guard tried to approach their cars with his scary face. However, with a glance at Zaenal, one of the accompanied actors, the security guard turn back. All of the accompanied members laughed. They guessed that the security guard turned back because he feared Zaenal's appearance with his long hair, a black shirt, black pants, and a "dragon" designed wristband. He usually looks like this. Thus, if actors may face some similar problems, they always ask Zaenal to join their activities with a humorous tone. However, they do not have to ask Zainal, because he is always willing to join their activities with his "frightening" appearance proudly.

The next example of *guyon-guyon* is an inside joke. During the trial for the lawsuit of the hotel, Zaenal was called as a witness. He received many questions from the hotel attorneys, including questions regarding hotel construction rules. He was asked about the

distance between the water sources and the hotel. In a loud voice and with a stern face, Zaenal spontaneously replied, "That is not my business." The people attending the trial laughed out loud. After that, the sentence "that is not my business" has become a phrase in fashion between actors in the movement as an in-group jokes (Berger, 2014: 531).⁴²

There were some *guyon-guyons* with people outside their movement. One day, in a demonstration that had gone on for hours, a police officer went close and asked Basuki, "When are the demonstrators going home? I am so tired. I want to go home." Then, they laughed together. Basuki had felt that this police officer was honest and gave him some sympathy. We cannot be sure if the police officer had asked Basuki as *guyon-guyon*. However, at least, Basuki had considered the question as *guyon-guyon* and, by laughing together, they made the question a *guyon-guyon*.

On 25 September, 2014, 21 actors of the movement were called to answer a police interview because the hotel management group had filed a suit against the actors for their obstruction of business. They went to the Batu police office and were interviewed one by one. Interviews are conducted from 12:30 to the night. 21 actors waited to finish all the interviews in front of the police station, backed by some supporters like hamlet heads or NGO members. Also, around 150 women went to help them, bringing food, beverages, and things for sleeping (mats, blankets, pillows, and so on), too. Also, because there was a gathering crowd in front of the police station, around 20 police officers went out of the office to guard them. At 20:00, a member of an NGO came closer and joked with a police officer in front of the police station: "Because we can manage by ourselves, and we will follow the rules, you do not have to guard us. You should go home and care for your wife!" They laughed together; then the police officers went back to the office. Perhaps because the police officers had some sympathy, they trusted the actors. We might say that *guyon-guyon* does not encourage opposition but rather integrates people with each other flexibly and moderately. It seems to extend their boundaries.

Most of the movement's members enjoy *guyon-guyon* during their activities. In the bus on the way to the Supreme Court for the trial in Jakarta, they also took pleasure in *guyon-guyon* and performing karaoke. *Guyon-guyon* is not something that dominates all the movements' activities. Not all opportunities were used for *guyon-guyon*, and there were times when it was necessary to be serious. The members of the movement knew with whom, when, and where they had to be severe and where they could add *guyon-guyon*. *Guyon-guyon* enables spiritual bonds and solidarity united by shared experiences as a framing tool for collective identity. They retold their enjoyable experiences over and over, but they never felt bored.

⁴² Discussion with Aris, Mulyanto, and Bowo, January 4, 2016

Chapter 11 Policy Implication

As mentioned in previous chapters, the crucial character of this movement is that the actors can develop their movement rationally based on their unique collective identity and finally can make a shift of the possible local government policy of development. Their protest against the local government development policy is not emotional. And they never use any force. They make full use of the legal system and the government policy for their movement so that they do not face a rigid binary opposition between the government and the residents. In this chapter, we will discuss the policy implication of the movement in Batu.

11.1 To Make Full Use of Regulations

This movement makes full use of everything from local to national-level regulations. For the first step, the actors use HIPPAM; they understand that HIPPAM has authority concerning water drinking distribution in the community. By the instruction of the governor of East Java, the year 1989 marked the formation of the cooperative water association, *Himpunan Penduduk Pemakai Air Minum* (HIPPAM). The governor supported this. Because the movement aimed at conserving the Gemulo water source, the members asked the committee of HIPPAM to use the water sources—namely, HIPPAM Cangar hamlet, Bulukerto village, HIPPAM Bumiaji village, and Sidomulyo village. The members of HIPPAMs invited the participation of local NGOs like the Pusaka Foundation (Yayasan Pusaka), MCW, Konservasi Brantas, and WALHI, Malang City.

From the members of these NGOs, the movement's members first learned about national and local regulations concerning hotel construction and environmental conservation. Bambang Parianom, the director of Yayasan Pusaka (the Pusaka Foundation), was the first actor to ask the movement's members who came from Cangar hamlet to visit the Environmental Board and the Irrigation and Road Maintenance Agency, East Java province, on January 14, 2012. Both Bambang Parianom and the members reported the case and invited the intervention of these agencies to cancel the hotel's construction. However, the heads of these two departments stated that the issue was under the authority of the Batu city government because, in regional autonomy, environmental and natural resource management are the responsibility of the town or district government.

Therefore, the members of the movement developed an even stronger desire to prevent the construction of the hotel. After visiting the government offices for the first time as part of the movement, Wagiman adamantly wanted to protect the Gemulo water source based on Local Regulation No. 7 regarding Spatial Planning, which regulates the protection of water sources. Bambang Parianom then proposed asking the Pusaka Foundation to send letters to the Batu city government. They were concerned that the Batu city government would not accept their written request because FMPMA was not a formal organization. However, the Pusaka Foundation is a registered foundation as stated in Article 92 Law No. 32/2009 regarding Environmental Protection and Management.

On January 20, 2012, Yayasan Pusaka sent letters to the Batu city government, Hotel Purnama, and the universities containing the following points:

- (1) The preservation of water sources in Batu City, especially in the Bumiaji sub-district, is essential and strategic, and therefore, we should maintain the water sources during the city's development process.
- (2) The plan for the construction of Hotel Purnama near the Umbul Gemulo water source has resulted in some worries and anxieties among the people.
- (3) What development policies have the mayor and the Batu city government made to preserve the water source?

Moreover, the members learned more about the regulations governing the construction of the hotel, environmental rights, the protection of water sources, and the documents and environmental license. There are some regulations relating to the construction of the hotel as Batu City Local Regulations No. 7/2011, which are concerned with the Planning of Spatial Area. Article 17 (5), states that the environment center in BWK III (the zone area) is decided on according to 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) is completed by the facilities of tourism supporting services, such as villas, a local traditional trade center, and the facilities of basic and advanced education.

The actors of movement also learned that some laws state human rights lead to a better life and healthier environments. For example, the 1945 Constitution says that every person shall have the right to live and to defend his or her life and living (Article 28A). Moreover, the constitution also states that every person shall have the right to lead a physically and mentally prosperous life, to have a residence, and to obtain a proper and healthy living environment as well as health services (Article 28H). Also, Law No. 39/1999 on human rights states that every person shall have the right to be protected by his or her human rights without any discrimination (Article 3, verse 3). Moreover, Law No. 32/2009 on environmental protection and management states that every person has the right to a good and healthy environment as part of his or her human rights (Article 65, verse 1).

Related to the regulations concerning protection of water source, article 53 and 62, Government Regulation No. 26/2008 concerning on National Spatial Plan. Article 53 verse 3 says that the protection area for groundwater is including boundary area of the water source. Moreover, article 62 verse 2 states that the area of the border of the water source is the area around the water sources that have benefits to maintain the function of the water sources and the area with a distance of at least 200 (two hundred) meter from the water source.

Also Article 8 Government Regulation No. 38/2011 concerning on river explains the line of boundary that is determined by a water source. Then, Article 15 states:

... the line of water source boundary as intended in article 8 verse (2) letter g is determined by surrounding water source at least 200 meters from the water source.

The above regulations are essential because in field fact the distance of the hotel location from Gemulo water source is 150 meter; therefore, the actors of FMPMA state that there is the violating of regulations executed by the local government and the hotel. The logic of distance is most natural understanding for actors because it is exact indicator that does not open many interpretations; therefore, actors of FMPMA like Wagiman and Tubi always use these regulations when they explain why they initiated and developed this movement.

The regulations affecting the environmental license are Articles 34 and 36 of Law No. 32/2009, concerning the protection and management of the environment.

Article 34

1. Any undertakings and activities that are not included in the criteria and are subject to the preparation of AMDAL as cited in Article 23 paragraph (1) shall be obliged to possess UKL-UPL.
2. The Governor or Regent/Mayor shall determine the types of undertakings and activities for which UKL-UPL is required.

Article 36

1. Any of the undertaking and activities that are required to possess AMDAL or UKL-UPL shall be obliged to obtain an environmental permit.
2. The Environmental permit as cited in paragraph (1) shall be issued based on the determination of environmental feasibility as cited in Article 31 or based on the recommendation of UKL-UPL.
3. The environmental permit as cited in paragraph (1) shall obligatorily include the requirements based on the determination of environmental feasibility or the recommendation of UKL-UPL.
4. The environmental permit shall be issued by the Minister, Governor, or Regent/Mayor based on their authority.

Based on the above regulations, all of the hotel's activities must have a document of UKL-UPL as a proof of environmental assessment. After they have completed UKL-UPL documentation, they can obtain their licenses from the government. Therefore, to continue the struggle of saving the Gemulo water source, the actors of FMPMA to the documents of UPL and UKL of the Hotel construction from the Department of Environment of Batu City. Both Purnawan D. Negara, an actor of WALHI, and Yunanto, an actor coming from Junrejo village, considered that one of the construction's weaknesses that needs to be studied was the process to get the permit. Therefore the actors of FMPMA attempted to get this permit document first. Then, Yunanto asked Chamim, an actor from Bumiaji village to request the document of UKL-UPL at Living Environment Department (*Kantor Lingkungan Hidup*), Batu City. This document has an essential role as it was one of the conditions that were required to get the construction permit. Even when they found it difficult to get, yet, they persuade the officers of the office, and finally, FMPMA should study the document. Yunanto, Purnawan D. Negara, and Nugroho learned about the document, and they found some strange facts, i.e.:

(1) The building was a 3-star hotel, with four floors and basements, and 112 rooms. It was not a *cottage* like Batu BAPPEDA (Development Planning Board) and the permit stated.

(2) A well would be drilled on the hotel site to fulfill the daily needs of clean water as the part of the hotel operation.

(3) The statement that there was information sharing in Kertasari Restaurant (*Rumah Makan Kertasari*) was a false claim. In fact, the meeting ended in a deadlock (without any result).

(4) The hotel would be using piles that might damage the water source.¹

The issue that was sounded by FMPMA in the media was the violation of the regulation verse 111, Law No. 32/2009. Purnawan D Negara stated that the document IMB of *The Rayja* had finished on January 30, 2012. In fact, until March 2012, the document of UPL-UKL had not been finished. According to the regulation, the construction permits should be finished last.²

It means that FMPMA concluded that the construction of the hotel violated the regulations, especially concerning the environmental documents and license. This issue is used for negotiation and campaigning for the public. In the meeting with the head of KPPT (license office), January 30, 2013, H. Rudi used this violated regulation to push the head to cancel the hotel construction permit. However, the head defended his decision by stating that it is an exception in Batu as a tourism city.

The actors did not give up; the next strategy was to lobby the vice mayor of Batu City. The vice mayor supported the decision of the head KPPT by stating that the permit procedure was appropriate. He also rejected the worry of FMPMA that the construction of the hotel will damage the Gemulo water source. In fact, he quoted the research of the center for environmental studies, Brawijaya University, stating that there is no adverse risk related to the construction of the hotel.

Responding to the situation, the actors of FMPMA did not give up. They looked for an alternative strategy, and then, on February 1, 2013, in the meeting of FMPMA, the members decided to report this case to the Ombudsman of the Indonesian Republic. The reports concern the poor administration executed by the local government. To accelerate the works of the institution, the members contacted the institution and visited the commissioners in Jakarta to monitor and enforce the severe work of the institution.

Meanwhile, the other full use regulation was executed by members of the movement in the lobby of actors such as the Bumiaji village head, BPD (*Badan Permusyawaratan Desa*; Village Consultative Council), Bumiaji, and Bulukerto villages. The members of the movement know about Law No. 32/2004 concerning local government that states the authorized owners must accommodate the demands and problems of the community. The policy concerning the authority of BPDs is described in Article 209 of Law No. 32/2004, concerning local government. This article states that a BPD's function is to decide the village head and to receive and channel the people's

¹ The chronology of Umbul Gemulo Water Resource, FMPMA, no year

² The daily *Seputar Indonesia (SINDO)*, February 1, 2013, *Warga Minta Pembangunan Hotel Dihentikan* (Citizens demand the construction of the hotel be halted).

aspirations. Because of their understanding of this regulation, the movement succeeded in collecting a mass of signatures to reject the hotel's construction from Cangar hamlet, Bulukerto Bumiaji, and Sidomulyo village.

Because of this use of the roles of the BPD, the movement's members could use the function of the mayor and the local parliament. According to Article 42 of Law No. 32/2004, concerning local government, the role of the regional head is to manage local government and execute local regulations, and the role of the local parliament is to monitor the implementation of local regulations.

This understanding of the regulation contributed toward two actions. The first was the meeting between the local parliament and FMPMA on April 5, 2012. Those who attended the meeting were the members of parliament, Batu government officers, the Bulukerto village head, the Bumiaji sub-district head, and members of FMPMA. The meeting was intended to facilitate the conveyance of the aspirations of the conflicting parties.³ In the meeting they decided to review the permit for the construction of the Rayja Hotel. Second, the use of this policy brings movement to the lobbies of the governmental offices. In a meeting held by the mayor, the members always offered an alternative policy for obtaining solutions to the mayor's office.

The way members make full use of regulations is they learn together and cooperate with actors of movement. Then, their understandings about regulations are used to negotiate with the mayor, the parliament members, and state institutions through many opportunities both formal and informal in meeting. They are always open for discussion. For instance, when the local government asked for alternative solutions, the actors always gave alternative solutions. Also, in the meetings with the mayor, which started March 20, 2013, the actors gave the mayor the solution of buying the hotel's location with the local government's budget. Finally, on April 2, 2013, the mayor decided to go with the plan to buy the land at the hotel's location.

In short, the use of regulations as the basis for alternative solutions to solve the problems makes the strategies of movement, patient, consistent, far from emotional, and anarchic.

11.2 To Make Full Use of National Institutions

After initiating many strategies on the local level, the actions did not get the expected results, as explained in Chapter 6; finally, they used alternative strategies by taking advantage of the roles of national institutions like the National Commission on Human Rights; Komnas HAM, Ombudsman, Republic of Indonesia (ORI); and Kementerian Negara Lingkungan Hidup.

These opportunities can be accessed based on regulations such as the following: the task of (Komnas HAM) as stated in Article 1 (Verse 7) Law No. 39/1999, concerning human rights. Komnas HAM, who works on human rights protection, assumed that

³ The elements that form the local government operators are the local head and the local assembly. The government is the implementer of any policies that the local head and parliament have made, while the local assembly does the controlling function. Law No. 9/2015, stipulates that there are three basic functions in the local assembly: the making of local regulations, budgeting, and supervising. The base of the supervision is local regulation.

access to fresh water was included as a part of human rights the state must fulfill. Article 9, Law No. 39/1999, states this point as follows:

- 1) Every person has rights to live, to defend his/her life, and to improve his/her life level.
- 2) Every person has rights to live serenely, safely, peacefully, happily, and prosperously.
- 3) Every person has rights to have a good and healthy environment.

ORI works based Law No. 37/2008, on the Ombudsman of the Republic of Indonesia. The function of ORI is to supervise any public services made by the state apparatus and the government either in the central or local ones, including those given by state- or local-owned companies and private or individual institutions assigned by the state to give specific public services.

KPP (The Commission of Public Service) works based on the Local Regulation No.8/2011, on the Public Services. The regulation states that the local government formulates the Commission of Public Services of East Java to implement the public services for the regional autonomy.

The ministry of the Environment works based on Law No. 32/2009 and Government Regulations No. 38/2007. For instance, Article 63 Law No. 32/2009, on the obligatory and authority of government to protect and manage the environment, including to monitor the implementation environmental document and licenses.

The above state institutions played mediating roles that communicated the demands of FMPMA, and the interests of local government and the hotel party. The involvement of state institutions contributes to the search many alternatives to solve the problems. Besides, it makes the local government pay high attention to the demands of FMPMA and hotels. It can occur because each conflicting party openly states their interests in meetings.

However, the hotel group also lobbied national institutions through its lawyers. Similar to FMPMA, both the government and the hotel tried to take advantage of the institution by reporting the case from the perspective of their interests. The lawyer of the hotel also lobbied the commissioners of the state institutions.

Responding to these strategies of the hotel, the FMPMA uses its national level networks; the actors of WALHI and its alliances regularly lobbied the commissioners in Jakarta, and the actors of FMPMA routinely contacted the commissioners. Also, for monitoring the works of institutions, the actors of FMPMA visited two of the offices of the institution in Jakarta. Finally, the efforts of FMPMA succeeded; the institutions had finished their works and published the recommendations that contained the instructions for the mayor and the hotel.

The first recommendation was published by the Ministry of Environment. After that came the recommendation from the Ombudsman of the Republic of Indonesian, and last, the recommendation of the commission of human rights (Komnas HAM). The recommendation of KPP (The Commission of Public Service) did not give benefit to FMPMA because the content stated that the permit procedure of the hotel was appropriate.

However, not all the parties obeyed and followed the recommendations. Therefore, the movement's members pressed the mayor and the local parliament, and they entered into broader discussions with the members of FMPMA. In relation to this, the media also published the issue. Finally, the movement got the public, the local government, the local parliament, the hotel, and other parties concerned with environmental issues to pay more attention to this problem by searching for alternative solutions. As a result, the

movement continues. This sustainable situation supports FMPMA because it is taking a long time to persuade the local government to stop the hotel's construction and to annul the hotel's construction permit.

11.3 To Make Full Use of a Court Trial

At first, the movement's members did not want to take the hotel company and the Batu city government to court because they believed that a trial in the courts would be expensive, drawn out, and the result was uncertain. They did not believe in Indonesia's legal system. According to them, ordinary people usually lose their cases against the government and business enterprises in Indonesia.

However, the hotel company took one of the movement's leading members, H. Rudi, to court. Then, although the members did not want to take the hotel company to court, they made full use of a trial in court. The hotel company mainly demanded a declaration of the validity of the hotel's construction permission by Batu City, and to pay compensation for losses and moral injury equaling 30,025,000,000 rupiahs because the movement caused a delay in the hotel's construction. This legal procedure continued up to the Supreme Court (MA).

For FMPMA, the prosecution of the hotel was a disturbance of the movement. For the hotel, this prosecution was an efficient way to stop the movement; in fact, the amount of compensation as a consequence of actions was 30 billion. However, the members of FMPMA believed that these actions did not violate the laws. According to Law No. 32/2009, Article 66, they understand that "Every people who struggle for the right of good and healthy environment could not be prosecuted in criminal and accused in civil." Through this article, they were ready to face the prosecution of the court. The FMPMA stated that because the examination process done by Batu City for the hotel's construction permission was not appropriate, and there were recommendation letters from the Ministry of Environment, the National Commission on Human Rights, and the Ombudsman of the Republic of Indonesia stated that FMPMA had no responsibility for the delay of the hotel's construction.

They next made full use of the trial at court by demanding that the judge have an environmental certificate. The Decree of The Indonesian Supreme Court/*Mahkamah Agung Republik Indonesia* No. 134/KMA/SK/IX/2011, concerning a judge who has an environmental certificate (verse 21), supported these actions. The consideration is that the problem of the hotel's construction is an environmental case (concerning the protection of the water source) and not (as stated by the hotel) a criminal case. Because it is an environmental case, the judge who officiates over the trial must have an environmental certificate.

The actors always monitored the works of the judge during the trials. When the actors found strange behavior, they reported to the Judicial Commission (*Komisi Yudisial*), which has the authority to monitor the work of judges in Indonesia (Article 20 of Law No. 22/2004). This understanding resulted in the planned condition of movement. In fact, the head judge did not have environmental certification, and the actors demanded that the head of the District Court of Malang change the judge. At last, from the intermediate stage of the trial until the end, the trial was supervised by a judge

who had an environmental certificate. These efforts contribute to FMPMA's victory in the District Court of Malang.

The actors then argued the use of regulations in the trials by appointing an excellent lawyer who came especially from an NGO to criticize the hotel for violating the environmental document and the permit license. The recommendations of state institutions are used for supporting the argument; meanwhile, inside the mass Bumiaji and Sidomulyo villages, as the case witnesses and to support the public, FMPMA mobilizes its mass to visit courts voluntarily both in the District Court of Malang, the High Court of Surabaya, and the Supreme Court.

Sending masses of FMPMA to the court is the other strategy, so 100-200 people from three villages routinely visited the court; a large number of these people were Bumiaji village officials, and the people of the village visited the court. They fully supported their leaders. During court proceedings, the visit of the mass was systematized, spontaneous, and voluntary. With the information that was announced in the traditional gatherings (*tahlil*), both men and women visited the court from 08:00 a.m. until 01:00 p.m every Monday. The citizens who had a car loaned their vehicles out; meanwhile, those who had a motorbike went by the motor ride. They expressed their aspirations with peaceful actions.

Although in the trials, on February 4, 2014, the hotel company had about 25 people for supporting the hotel construction, the masses for the FMPMA remained consistent and patient. They were not emotional and avoided conflict with the "hotel." Also, when the actors of FMPMA heard about the elder people of Bulukerto village (*tokoh masyarakat*) conveying their support of the hotel construction by visiting vice mayor in Batu city government office on February 4, 2014, the actors of FMPMA were not emotional.

Also, when the actors of FMPMA worried fully about the verdict of the court that will be decided in the following days, the central actor, H. Rudi, stated that whatever the decision of the verdict, FMPMA must be ready to accept all consequences. His statement was delivered one day before the last trial of the District Court of Malang in *istighosah* conducted at Mbah Batu's grave on July 6, 2014. As a result, the actors of FMPMA focused on the effort to win the courts by avoiding the destructive actions and searching many alternative solutions. The strategies contributed to the judge deciding the verdict that led to the stop of the hotel construction. Then, the movement carefully avoids falling into the stiffened binary opposition between government and people to reach possible policy change.

Finally, the Supreme Court issued the judgment on 21 July, 2014. In short, the Supreme Court rejected the request of the hotel. In the judgment, the judge stated as follows (Mahkamah Agung Republik Indonesia 2014).⁴

(The judge) has concluded that the licensing document for the construction of the Ryja hotel, which done by the defendant, did not fulfill the obligation of the environmental assessment. Therefore, permission by the integrated licensing office (No. 180/550/IBM/422.208/2012 dated August 13, 2012) on Permission for the Construction of the hotel by PT Panggon Sarkarya Sukses Mandiri, is not valid.

⁴ See also Appendix 1, Indonesian original judgment and Appendix 2, English summary.

The defendant has proven that the construction of the Rajya Hotel, a resort in the conservation area of the Gemulo water source, was an illegal act because it did not have valid permission. The hotel's construction must be stopped because it has the potential to harm the Gemulo water source that community members use.

Then, in the judgment, the judge added his opinion as follows.

Before the judgment, we need to remind all elements of society that as the present generation we must love the country and maintain the good quality of the environment. So we must minimize the threat of ecological disaster and water crisis by bringing mercy to nature and the next generations. Do not leave our country suffered and next generations with tears (*air mata*), but leave our country and offspring with water sources (*mata air*), because water is the source of our life.

The judge used similar rhyme verses with an FMPMA's slogan. As mentioned in Chapter 10, they stated in their demonstration, "Do leave water source (*mata air*) for our next generations, and do not leave with tears (*air mata*)." I suppose that their excellent rhyme verse helps the judge to sympathize and agree with actors of the movement.

As mentioned above, although actors of the movement did not want to utilize the trial, they utilized the lawsuit by the hotel as a good opportunity.

Chapter 12 Conclusion

From the end of the twentieth century to the beginning of the twenty-first century in Indonesia, the reformation movements, from the centralized authoritarian rule to the decentralized democratic system, have made progress. As a result, local governments nowadays can manage environments and natural resources in their local area without the central government's intervention. Ironically, this decentralization process caused a new type of environmental problem all over Indonesia. Specifically, Indonesia experienced a rash of environmental destruction which was not caused by the central government's development policy, but by the local governments'. On the other hand, the reformation movements promoted the democratization of Indonesia, then extended a right to object. So, after the reformation people can make their civil movement against the local government's rough development policy. In this dissertation, I focus on a water resource problem in Batu city, East Java, as a typical example of these new types of environmental problems.

As a case study, I consider the dynamic condition of the ongoing interaction between the local government and the residents' movement on water resources in Batu. The reason why I take this case is that the Batu case is a rare case in which they can continue their movement and also make a change in the local government's development policy. Why can the movement in Batu be maintained and affect the local government development policy although lots of water source conservation movements cannot?

Based on ethnographical data from the fieldwork I conducted during the ongoing process of the movement, this dissertation concludes that there are three reasons for the uniqueness and sustainability of the movement in Batu. Namely, (1) all members of the movement have rich and various social capitals and cultural resources; (2) they connect those flexibly and tactfully, forming a flexible social network; (3) their own indigenous collective identity make this social network sustainable.

First, a leader of the movement who is a retired local government officer can utilize his experiences and social network to negotiate with the local government, which promotes the tourism development policy. There is an actor who has his social network with the local government. Moreover, various actors have diverse backgrounds, including an artist (painter), people who worked at a leading large Indonesian company, people who have higher academic backgrounds like graduates of universities or Islamic schools, farmers, crop brokers, owners of small businesses, and so on. They come together in the movement and utilize their various social capitals to expand their network for the movement of academic persons, culture persons, business persons, religious leaders, and so on. As a result, through their movement, they can rationally and flexibly intervene in various local and national-level policy-making processes. In their movement, they utilized their cooperation with the local government, the central government (especially the Ministry of Environment, the National Commission on Human Rights, and so on), national-level NGOs, experts on environments and law out of power, and Islamic leaders.

The second point is the reason why various networks of diverse actors who have diverse social backgrounds and motivations can be integrated into the more multilayered network through their water source conservation movement. We may

explain that they can do it because they share the same cultural values. In this movement, they mixed flexibly global (Western) values, Islamic teachings, traditional Javanese values, and their indigenous cultural identity as the northern Brantas River people. Then, this mixture directed actors with diverse cultural values toward the common target, water source conservation. Actors stress our responsibility for the next generation. Another actor stresses an Islamic concept, *ibadat*, which states that we have to protect water sources as our responsibility to the God, and by fulfilling our responsibilities, we can go to Heaven in the afterlife. Also, we can find other actors who stress traditional Javanese values such as justice (*keadilan*), honesty (*kejujuran*), and fighting through self-sacrifice for the public good (*perjuangan*) and who stress their tradition and cultural values as the northern Brantas River people. In short, these flexibly connected varied cultural resources can make the water protection movement sustainable and extensive.

The third and most important point is that my intensive participant observation and interviews at many movement meetings and events clarifies the fundamental factor which makes the Batu movement sustainable, extensive, and different from other cases. The prominent character of the movement in Batu is that its members formulated their own collective identity during the development of the movement. A collective identity is an interactive and shared trait produced from the interactions of individuals who are concerned about the orientation of their actions as well as the field of opportunities and constraints in which their activity takes place. For example, *tahlil* (Islamic group prayer), *pengajian* (Qu'ran learning circle), *istighosah* (Islamic ritual), *slamaten* (Javanese ritual), *jagongan* (informal meeting), slogans for the movement, and Javanese humor (*guyon-guyon*) are elements that add a particular atmosphere to group meetings. These activities are part of the formulation of the collective identity, igniting the group's cognitive frame in the arena of purposes, measures, and activities. This collective identity makes the movement sustainable and extensive. In other words, for the purpose of discussing practical and political issues such as the water crisis created by the resort hotel construction, actors in Batu utilize recitation of the Quran, prayer, Javanese gathering rituals, and exquisite Javanese humor to formulate a collective identity for their movement.

On the basis of my discussion above, and as I mentioned in Chapter 11 from the case of the water source conservation movement in Batu, we can find policy implications on problems of environment and natural resources. In Indonesia, environmental problems intensify and are thrown into increasing confusion because of regional autonomy through the reformation movement. The most prominent character of the Batu case --- different from other, similar cases --- is that they do not protest the local government's development policy emotionally and also do not use force. Instead, they develop their movement rationally through their deep understanding of the legal system. As a result, they can shift the government development policy substantially. In Batu, actors of the movement, by making full use of the legal system and of policies rationally based on that system, carefully avoid falling into a stiffened binary opposition between government and people. This strategy can foster potential policy changes. We may say that this Batu case offers us a vital and essential suggestion for future environmental policy and environmental movements in Indonesia.

In this dissertation, I focused on the dynamics inside the movement. For this reason, I cannot sufficiently analyze the interactions among the movement, the hotel, and the Batu city government. This point is my future task. However, in the last part of this dissertation, I would like to try to imagine this interaction.

The fundamental opposition of opinions is probably due to which is more important for the public good: economic development or environmental protection. With leading members of the movement, I facilitated a focus group discussion at Sidomulyo Village Hall in September 2016. In this discussion meeting, members of the movement and some related Batu City governance officers participated and stated their opinions. At that time, the difference with both sides' opinions remained far apart regarding the hotel construction issue. Members of the movement stressed that the hotel construction could result in severe damage to the Gemulo water source. In contrast, Batu City government officers repeated the official statement of the Batu city government; the hotel construction has only a slight influence on the Gemulo water source. Some members stressed their opinions and severely criticized the attitudes of the Batu city government.

However, after the meeting, some members and some Batu City government officers continued their discussion for about an hour with a laugh. An officer stated that he had some new information and ideas which improved his understanding of the case from the discussion with members of the movement. They seemed to begin to share some understanding about the Gemulo water source issue. Although before the discussion, they already shared Javanese Muslim's values, they had different opinions about the hotel's construction. However, through a formal discussion and a friendly chat, they seemed to reach some agreement.

As mentioned in Chapters 10 and 11, through the process of collective identity formation, the actors succeeded in getting the sympathy of the people in Batu, including police officers, government officers, and judge in the Supreme Court. Although cultural values affect the people, a cultural value does not always make the same sentiment and attitude a priori. People can and have to interpret cultural values to adapt to new conditions. Actors in the movement have tried to interpret and utilize their cultural values to reach their aim, the conservation of the Gemulo water source, with formal institutions, regulations, and trials in the court. We may say that this is an essential point of their movement.

As the background of the Batu case, we should pay attention to the influence of Reformation movement in Indonesia. Lots of studies showed that Reformation promoted the regional autonomy of water resource management (for example, Hariadi Kartodiharjo and Hira Jhamtani 2009: 33-43). Regional autonomy implies various meanings such as the autonomy of the local government, the autonomy of the local business, and the autonomy of the local community. However, conflicts among these entities have often occurred. In my opinion, the case of Batu is a typical instance of a conflict between the local government's autonomy and local business or between "autonomy of development" and autonomy of the local community or "autonomy of environmental conservation."

Before Reformation in Indonesia, for ordinary people it was difficult to accuse in court and to win a trial as mentioned in Chapters 7 and 11. Thus, generally, until now, people could not believe in the legal system so that they did not want to utilize a trial as a solution to a conflict. However, actors of the movement were accused by the hotel developer, and the judge rejected that accusation. Through this experience, they seemed

to recognize that they could utilize a court trial for their movement. I suppose that we will see many similar upcoming cases. The Batu case can provide us with a strong lesson regarding the coming conflicts on environmental conservation.

The Batu case is currently in progress. Actors must continue their movement to protect the Gemulo water source. As such, it is difficult to analyze everything. I intend to focus future research on processes of interaction between actors of the movement and the government concerning the conservation of water sources.

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Statement against Judgment of the High Court of Surabaya no. 701/PDT/2014/PT SBY dated 05 Februari 2015 in connection to Judgment of District Court of Malang No. No.177/Pdt.G/2013/PN Malang dated 21 July 2014 between Willy Suhartanto (cassation appellant (formerly appellant/respondent in counterclaim/claimant) vs. H. Rudy (Cassation Respondent (formerly appellee/claimant in counterclaim/respondent))

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- Penjelasan Pemerintah Atas Peraturan Pemerintah Nomor 16 tahun 2005 Tentang Pengembangan Sistem Penyediaan Air Minum.* (Government's explanation about the Government Regulation No. 16 the Year 2005 on Drinking Water Supply System Development)
- Sekretaris Daerah Kota Batu, Surat Nomor: 730/287/422.400/2013 tentang Penghentian Aktivitas Kegiatan Pembangunan Pendirian Hotel* (Batu Municipal Secretary, Letter No.: 730/287/422.400/2013 on Ceasing of Hotel Construction Activities)
- Tim Hukum Pembela Sumber Air, 2013, '*Media Briefing Konflik Sumber Umbul Gemulo Kota Batu*' (Spring Defender Lawyer Team, 2013, Media Briefing on Gemulo Spring Conflict in Batu)
- Tim Hukum Pembela Sumber Air, 2013, *Melawan Pembungkaman Aktivistis Lingkungan: Jawaban Tergugat/ Eksepsi dan Gugatan Rekonvensi dalam Perkara Perdata*

- Nomor: 177/Pdt.G/2013/PN.Mlg'* (Spring Defender Lawyer Team, 2013, Against the Silencing of Environment Activists: Reply of the Respondent/Motion to Dismiss and Claim in Counterclaim of Civil Case No.: 177/Pdt.G/2013/PN.Mlg')
- Tim Hukum Pembela Sumber Air, 2014, '*Kesimpulan Perkara Perdata Nomor: 177/Pdt.G/2013/PN. Mlgantara Willy Suhartanto sebagai Penggugat dan H. Rudi selaku Tergugat*' (Spring Defender Lawyer Team, 2014, 'Conclusion on Civil Case No.: 177/Pdt.G/2013/PN.Mlg between Willy Suhartanto as Claimant and H. Rudy as Respondent)
- Tim Hukum Pembela Sumber Air, 2014, '*Duplik Tergugat/Penggugat Rekonvensi dalam Perkara Perdata Nomor: 177/Pdt.G/2013/PN.Mlg*' (Water Resouce Protector Lawyer Team, 2014, 'Rejoinder of Respondent/Claimant in Counterclaim in Civil Case No.: 177/Pdt.G/2013/PN.Mlg')
- The Rayja Batu Resort Kota Wisata Batu, 2013, 'Surat Klarifikasi Nomor AA-2410/DU/13* (The Rayja Batu Resort of Kota Wisata Batu, 2013, 'Clarification Letter No. AA-2410/DU/13)
- Notulensi Rapat HIPPAM Desa Bumiaji 3 Maret 2012* (Minutes of Meeting of Bumiaji Village HIPPAM, March 3, 2012)
- Peraturan Pemerintah Nomor 26 Tahun 2008 tentang Rencana Tata Ruang Wilayah Nasional* (Government Regulation No. 26 the Year 2008 on national Spatial Planning)
- Peraturan Pemerintah Nomor 73 Tahun 2005 tentang Kelurahan* (Government Regulation No. 73 the Year 2005 on Kelurahan)
- Peraturan Pemerintah Republik Indonesia Nomor 38 tahun 2011 tentang Sungai* (Regulation of the Republic of Indonesia, Government No. 38 the Year 2011 on Rivers)
- Peraturan Daerah Kota Batu Nomor 16 tahun 2011 tentang Perlindungan, Pelestarian, dan Pengelolaan Lingkungan Hidup di Kota Batu* (Batu Municipality Regulation No. 16 the Year 2011 on Environment Protection, Preservation and management in Batu)
- Peraturan Daerah Nomor 7 Tahun 2011 tentang Rencana Tata Ruang Wilayah Kota Batu Tahun 2010-2030* (Batu Municipality Regulation No. 7 the Year 2011 on Spatial Planning for Batu 2010-2030)
- Peraturan Daerah Provinsi Jawa Timur Nomor 5 tahun 2011 tentang Pengelolaan Sumber Daya Air* (Regulation of East Java Governor No. 5 the Year 2011 on Water Resource Management)
- Peraturan Daerah Kota Batu nomor 6 tahun 2005 tentang Perlindungan dan Pengelolaan Air Bawah Tanah dan Air Permukaan* (Batu Municipal Regulation No. 6 the Year 2005 on Protection of Management of Ground Water and Surface Water)
- Undang-Undang Dasar Republik Indonesia 1945* (The 1945 Constitution of Republic of Indonesia)
- Undang Undang No. 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria* (Law of the Republic of Indonesia No. 5 the Year 1960 on Basic Regulation for Agrarian Affairs)
- Undang-Undang RI Nomor 5 Tahun 1962 Tentang Perusahaan Daerah* (Law of the Republic of Indoensia No. 5 the Year of 1962 on Local Company)

Undang-Undang RI Nomor 5 Tahun 1974 tentang Pokok-Pokok Pemerintah Daerah
(Law of the Republic of Indonesia No. 5 the Year 1974 on Basic Principles of Local Government)

Undang-Undang RI Nomor 11 Tahun 1974 Tentang Pengairan (Law of the Republic of Indonesia No. 11 the Year 1974 on Water Resource)

Undang-Undang RI Nomor 22 Tahun 1999 tentang Pemerintah Daerah (Law of the Republic of Indonesia No. 22 the Year 1999 on Local Government)

Undang-Undang RI Nomor 39 Tahun 1999 tentang Hak Asasi Manusia (Law of the Republic of Indonesia No. 39 the Year 1999 on Human Rights)

Undang-Undang RI Nomor 7 Tahun 2004 tentang Sumber Daya Air (Law of the Republic of Indonesia No. 7 the Year 2004 on Water Resources)

Undang-Undang RI Nomor 19 tahun 2004 tentang Kehutanan (Law of the Republic of Indonesia No. 19 the Year 2004 on Forestry)

Undang-Undang RI Nomor 37 tahun 2008 tentang Ombudsman Republik Indonesia (Law of the Republic of Indonesia No. 37 the Year 2008 on Ombudsman of the Republic of Indonesia)

Undang-Undang RI No 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup (Law of the Republic of Indonesia No. 32 the Year 2009 on Environment Protection and Management)

Undang-Undang RI No.32 Tahun 2004 tentang Pemerintah Daerah (Law of the Republic of Indonesia No. 32 the Year 2004 on Local Government)

Undang-Undang RI No 10 Tahun 2009 tentang Kepariwisataaan (Law of the Republic of Indonesia No. 10 the Year 2009 on Tourism)

Undang-Undang RI No 6 Tahun 2014 tentang Desa (Law of the Republic of Indonesia No. 6 Year 2014 on Village Government)

Glossary

Ind. = Indonesian

Jv. = Javanese

- AMSU (Ind.) : *Aliansi Masyarakat Sumber Umbulan*; “Water Resource Peoples' Alliance”; Gemulo Water Resource saving/preservation organization established in January 2012
- AMDAL (Ind.) : *Analisis Mengenai Dampak Lingkungan*; Environmental Impact Assessment
- bantengan (Jv.) : wooden bull mask trance dance.
- BAPPEDA (Ind.) : *Badan Perencanaan Pembangunan Daerah*; Regional Planning Board
- Barnas (Ind.) : name of a political party in Indonesia; *Partai Barisan Nasional*; National Front Party; founded by Vence Rumangkang, a former member of the Democratic Party advisory board
- BPD (Ind.) : *Badan Permusyawaratan Desa*; Village Consultative Council.
- danyang (Jv.) : the highest rank spirits believed to reside in trees, mountains, springs, villages, cardinal directions, or hills
- DPR (Ind.) : *Dewan Perwakilan Rakyat*; Indonesian Parliament
- DPRD (Ind.) : *Dewan Perwakilan Rakyat Daerah*; Local Assembly
- FMPMA (Ind.) : *Forum Masyarakat Peduli Mata Air*; “Community Forum of Concern about Water Source”; To protest the hotel construction plan nearby the Gemulo water source, some members of HIPPMAs who are using the Gemulo water source formulated this ad-hoc organization on March 5, 2012.
- gotong-royong (Ind.) : a tradition shown in mutual-help without expecting a material reward in return
- GP ANSHOR (Ind.) : *Gerakan Pemuda Anshor*; “Anshor Youth Movement,” a youth wing of Nahdhatul Ulama (NU) officially founded as part of the NU on April 24, 1934.
- Golkar (Ind.) : name of a political party in Indonesia; *Partai Golkar = Partai Golongan Karya*; Workers Organization Party; the ruling party from 1973 to 1999 under Suharto's New Order regime (1966-98) and the brief presidency of B. J. Habibie (1998-99)
- guyon-guyon (Jv.) : telling jokes in informal interactions

Hadith	: records of the sayings and deeds of the Prophet Muhammad
Haji (Ind.)	: the title for Muslim who had made the pilgrimage to Mecca.
Hanura (Ind.)	: a political party in Indonesia; <i>Partai Hati Nurani Rakyat</i> ; The People's Conscience Party; established in Jakarta in December 2006 and headed by former Indonesian Military commander Wiranto
HIPPAM (Ind.)	: <i>Himpunan Penduduk Pemakai Air Minum</i> ; the cooperative association of water; a community-based organization to manage water sources and water supply system to community members
ibadat (Jv.):	: the relationship between humans and the God manifested in the form of rituals and social activities which are done to get blessings from the God
istighosah (Jv.)	: Javanese Islamic praying ceremony
jagongan (Jv.)	: informal communal gathering
KH (Ind.)	: <i>Kyai Haji</i> ; a title an individual obtained after a Muslim makes a pilgrimage to Mecca and teaches the teachings of Islam.
KLH (Ind.)	: <i>Kementerian Lingkungan Hidup</i> ; Ministry of Environment.
Komnas HAM (Ind.)	: <i>Komisi Nasional Hak Asasi Manusia</i> ; National Commission on Human Rights
KPP (Ind.)	: <i>Komisi Pelayanan Publik</i> ; Public Service Committee
KPPT (Ind.)	: <i>Kantor Pelayanan Perijinan Terpadu</i> ; General Permits and Licenses Office
KWB (Ind.)	: <i>Kota Wisata Batu</i> ; “Tourism City Batu”, a nickname and slogan of Batu by Batu government
Kyai (Jv.)	: the title for a learned man in Islam, <i>ulama</i> , often, the head of <i>pondok pesantren</i> Islamic boarding school; abbreviated as “K.”
Konservasi Brantas (Ind.)	: “Brantas Conservation”; an environmental NGO, having its domicile in Batu, being more activities in social media.
KPP (Ind.)	: <i>Komisi Pelayanan Publik</i> ; Public Service Committee
LBH (Ind.)	: <i>Lembaga Bantuan Hukum</i> ; Legal Aid Institute, or <i>YLBHI = Yayasan Lembaga Bantuan Hukum</i> ; Legal Aid Association; Indonesian NGO providing legal aid for the poor, law illiteracy and suppressed people
LMDH (Ind.)	: <i>Lembaga Masyarakat Desa Hutan</i> ; Forest Village Community Council

Lor Brantas (Jv.)	:	“North Brantas”; the identity as people living in the northern part of Brantas River basin in Batu
LPMD (Ind.)	:	<i>Lembaga Pemberdayaan Masyarakat Desa</i> ; Village Council for Development Planning and Guidance
Mbah Batu (Jv.)	:	(? - 1535); a local Islam saint in Batu, in Majapahit Empire (1293-1500?) period; her real name is Syarifah Raden Ayu Dewi Condro Asmoro; her tomb is in Bumiaji Village, Bumiaji District, Batu
MCW	:	Malang Corruption Watch; an NGO active in the issues of bureaucracy, politics, economy and legal affairs free of corruption, collusion, and nepotism; established in 1998 in Malang.
Muhammadiyah (Ind.)	:	“followers of the Prophet Muhammad”; one of the oldest Muslim organization in Indonesia; founded in 1912, by Ahmad Dahlan in Yogyakarta, as a reformist socio-religious movement
NasDem (Ind.)	:	a political party in Indonesia; <i>Partai Nasional Demokrat</i> ; National Democrats Party; partly funded by media mogul Surya Paloh
Nawakalam Gemulo(Ind.)	:	Youth organization in Cangar hamlet under FMPMA, working on the environmental and social-community issues; established in January 2015.
NU (Ind.)	:	<i>Nahdlatul Ulama</i> ; “Awakening of Muslim Scholars”; the largest Islamic traditionalist grassroots social organization in Indonesia, established in Surabaya in 1926 by KH Hsyim Asy’ar
Omah Munir	:	“Munir’s House”; a museum to commemorate Indonesian human rights figure Munir (1965-2004), in his birthplace, Sidomulyo Village, Batu
ORI (Ind.)	:	<i>Ombudsman Republik Indonesia</i> ; Ombudsman Republic of Indonesia
PAD (Ind.)	:	<i>Pendapatan Asli Daerah</i> ; local government revenue
PAN (Ind.)	:	<i>Partai Amanat Nasional</i> ; National Mandate Party; a political reformist party in Indonesia; founded by Muhammadiyah’s members, including Amien Rais, chairman of the Muhammadiyah (1995-2000)
Partai Demokrat (Ind.)	:	Democratic Party; the political party of the former president of Indonesia, Susilo Bambang Yudhoyono (2004 - 2014)
PDAM (Ind.)	:	<i>Perusahaan Daerah Air Minum</i> ; Local Government-owned Water Company

PDI-P (Ind.)	:	<i>Partai Demokrasi Indonesia Perjuangan</i> ; Indonesian Democratic Party of Struggle; the party of the current president of Indonesia, Joko Widodo
pejuang (Jv.)	:	the title for a person who severely struggles for particular ideas or activities that sometimes have to sacrifice his/her wealth, time, or even life.
Pengajian (Jv., Ind.):	:	the learning of Islam usually attended by specific groups
PERADI (Ind.)	:	<i>Perhimpunan Advokat Indonesia</i> ; Indonesian Advocates (Lawyer) Association
Perhutani (Ind.)	:	<i>Perusahaan Hutan Republik Indonesia</i> ; Indonesian State Forestry Company
Perda (Ind.)	:	<i>Peraturan Daerah</i> - Local Government Regulation
PHBM (Ind.)	:	<i>Pengelolaan Hutan Bersama Masyarakat</i> ; Forest Development in Collaboration with the Community
PKB (Ind.)	:	<i>Partai Kebangkitan Bangsa</i> ; Nation Awakening Party; moderate Muslim-based political party in Indonesia; founded in 1998 by Abdurrahman Wahid, the fourth President of Indonesia (1999-2001), the head of Nahdhatul Ulama (NU) (1984-1999)
pondok pesantren (Ind.)	:	Islamic boarding school
PPL (Ind.)	:	<i>Pemuda Peduli Lingkungan</i> ; Youth Group for the Environment
PPLH UB (Ind.)	:	<i>Pusat Penelitian Lingkungan Hidup, Universitas Brawijaya, Universitas Brawijaya</i> ; Center for the Environmental Studies, Brawijaya University of Brawijaya, in Malang
PPP (Ind.)	:	<i>Partai Persatuan Pembangunan</i> ; Development Unity Party; an Islamic political party in Indonesia; with encouragement by the Suharto's government, merged the four Islamic parties in Indonesia into the Development Unity Party on 5 January 1973
RT (Ind.)	:	<i>Rukun Tetangga</i> ; neighborhood associations, the lowest administrative unit in Indonesia
RW (Ind.)	:	<i>Rukun Warga</i> ; administrative unit at the next-to-lowest level, consisting of several RTs
SKPD (Ind.)	:	<i>Satuan Kerja Perangkat Daerah</i> ; Regional Task Force Units
SLAPP	:	Strategic Lawsuit Against Public Participation; lawsuits against individuals or groups in response to political activities such as circulating a petition, writing a letter to the editor, testifying at a public

hearing, reporting violations of law, lobbying for legislation, peacefully demonstrating, or otherwise attempting to influence government action. A majority of these lawsuits claim slander or business interference to mask their real purpose, which is to silence citizens. In the 1980s, a legal scholar Pring and a sociologist Canan, from the University of Denver, coined the name SLAPP to call attention to these new type litigations in America.

- suguh (Jv.) : giving offerings to the spirits believed to stay in certain places which are considered sacred
- tokoh masyarakat (Ind.) : informal community leader
- WALHI (Ind.): : *Wacana Lingkungan Hidup Indonesia*; “Indonesian Forum for Environment”; national level NGO on Environmental issues in Indonesia, established on October 15, 1980 in Jakarta.
- UKL (Ind.) : *Upaya Pengelolaan Lingkungan*; “Environment Management Efforts”
- UPL (Ind.) : *Upaya Pemantauan Lingkungan*; “Environment Monitoring Efforts”; UKL and UPL pertain to the management and monitoring efforts by the company of its business and activities that have no significant impacts on the environment, which is necessary for the process of the decision making regarding the running of the business and business activities
- yasin-tahlil (Jv.) : a communal activity in the form of reading aloud *Yasin* chapter of the Qur’an and reciting a particular prayer called *tahlil*, whether it is an incidental or routine activity
- Yayasan Pusaka : “Pusaka Foundation,” a local NGO domiciled in Malang established on October 31, 2005

Appendix 1: Judgment of the Supreme Court (Original)



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PUTUSAN

Nomor 177/Pdt.G/2013/PN.Mlg

DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA

Pengadilan Negeri Malang yang memeriksa dan memutus perkara perdata pada tingkat pertama, telah menjatuhkan putusan sebagai berikut dalam perkara gugatan antara:

WILLY SUHARTANTO, bertempat tinggal di Jalan Raya Punten No.01 RT.OI/RW.OI Desa Punten, Kecamatan Bumiaji, Kota Batu, dalam hal ini memberikan kuasa kepada Ismail Modal, S.H., M.H. dan Sumardhan, S.H., para Advokat, beralamat di Jalan Veteran No.2 Kav.23 Malang, berdasarkan Surat Kuasa Khusus tanggal 16 Agustus 2013, selanjutnya disebut sebagai Penggugat Konvensi /Tergugat Rekonvensi;

Lawan

H. RUDY, bertempat tinggal di Dusun Cangar RT.02/RW.01 Desa Bulukerto, Kecamatan Bumiaji, Kota batu, dalam hal ini memberikan kuasa kepada H. Setyo Eko Cahyono, S.H., Henru Purnomo, S.H., M.H., Husain Tarang, S.H., Muhnur, S.H., Abdul Rohman, S.H., Hosnan, S.H., Moh. Alfaris, S.H., Subagyo, S.H., M.H., Budi Siswanto, S.H., Khoirul Anwar, S.H. dan Asfinawati, S.H., para Advokat, beralamat di Wisma Kalimetro, jalan Joyo Suko Metro 42 A, Kelurahan Merjosari, Kecamatan Lowokwaru, Kota Malang, berdasarkan Surat Kuasa Khusus tanggal 10 September 2013 dan 03 Maret 2014, selanjutnya disebut sebagai Tergugat Konvensi / Penggugat Rekonvensi;

Pengadilan Negeri tersebut;

Setelah membaca berkas perkara;

Setelah mendengar kedua belah pihak yang berperkara;

TENTANG DUDUK PERKARA

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Halaman 1



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Menimbang, bahwa Penggugat dengan surat gugatan tanggal 19 Agustus 2013 yang diterima dan didaftarkan di Kepaniteraan Pengadilan Negeri Malang pada tanggal 19 Agustus 2013 dalam Register Nomor 177/Pdt.G/2013/PN.Mlg, telah mengajukan gugatan sebagai berikut:

1. Bahwa Penggugat sebagai badan hukum yaitu Direktur PT. Panggon Sarkarya Sukses Mandiri, berkedudukan di Kota Batu Jalan Raya Punten No.01 RT.01/RW.02 Desa Punten, Kecamatan Bumiaji, Kota Batu yang bergerak dalam bidang pembangunan Hotel, Villa/Rumah Peristirahatan/Cottage dll;

2. Bahwa Penggugat bermaksud membangun Villa / Rumah Peristirahatan / Cottage diatas tanahnya sendiri seluas 9.358 M2 yang terletak di Jalan Raya Punten No.01 RT.01/RW.02 Desa Punten, Kecamatan Bumiaji, Kota Batu dengan sertipikat hak milik masing-masing tersebut di bawah ini :

- Sertipikat Hak Milik No.00655/Desa Punten, Luas tanah 299 M2 Surat Ukur tanggal 08-03-2005 No.00008/2005.
- Sertipikat Hak Milik No.512/Desa Bulukerto, Luas tanah 500 M2 Surat Ukur tanggal 17-03-1997 No.1462.
- Sertipikat Hak Milik No.00625/Desa Bulukerto, Luas tanah 6.892 M2 Surat Ukur tanggal 18-05-1998 No.00003/1998.
- Sertipikat Hak Milik No.733/Desa Bulukerto, Luas tanah 517 M2 Surat Ukur tanggal 8-08-1998 No.00006/1998.
- Sertipikat Hak Milik No.00965/Desa Bulukerto, Luas tanah 400 M2 Surat Ukur tanggal 24-01-2012 No.00008/Bulukerto/2012.
- Sertipikat Hak Milik No.00963/Desa Bulukerto, Luas tanah 750 M2 Surat Ukur tanggal 24-01-2012 No.00007/Bulukerto/2012.
- Semua Sertipikat Hak Milik atas nama terakhir Willy Boenardi Koesnadinata;

3. Bahwa pada tanggal 09 Januari 2012 Penggugat telah mengurus semua syarat yang terkait dengan pembangunan tersebut dan Pemerintah Kota Batu telah menerbitkan surat-surat ijin pembangunan yaitu sebagai berikut:

- a. Surat Rekomendasi Tata Ruang Villa/Rumah Peristirahatan /Cottage No.050/038/422.202/2012 tanggal 5 Januari 2012 yang diterbitkan oleh Kepala Badan Perencanaan Pembangunan Daerah.
- b. Surat Risalah Pertimbangan Teknis Pertanahan dalam Penerbitan Ijin Perubahan Penggunaan Tanah No.01 tanggal 11

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Januari 2012 yang diterbitkan oleh Kepala Kantor Pertanahan Kota Batu.

c. Surat Ijin Peruntukan Penggunaan Tanah (IPPT) No.648/02/DPPT /422.208/2012, tanggal 11 Januari 2012 Rekomendasi yang diterbitkan oleh Kepala Kantor Pelayanan Perijinan Terpadu Kota Batu.

d. Surat Rekomendasi Dokumen UKL-UPL The Rayja Batu Resort No.660/784/422.206/2012 tanggal 30 Maret 2012 yang terbitkan oleh Sekretaris Daerah Kota Batu selaku Ketua Pengarahan UKL-UPL Kota Batu

e. Surat Keputusan Kepala Kantor Pelayanan Perijinan Terpadu Nomor: 180/550/IMB/422.208/2012 tanggal 13 Agustus 2012 tentang Ijin Mendirikan Bangunan Atas Nama PT. Panggon Sarkarya Sukses Mandiri.

f. Surat Keputusan Kepala, Kantor Pelayanan Perijinan Terpadu Nomor: 530.08/118/HO/422.208/2012 tanggal 19 Nopember 2012 tentang Ijin Gangguan (HO);

4. Bahwa disamping Penggugat telah mengurus semua ijin pembangunan, Penggugat juga telah mendapat surat persetujuan dari Desa Punten, Desa Bulukerto sola surat pernyataan dari tetangga-tetangga yang berhimpitan atau bersebelahan langsung dengan pembangunan tersebut;

5. Bahwa dengan sudah lengkapnya semua persyaratan tentang pembangunan maka seharusnya Penggugat sebagai warga negara dapat melaksanakan pekerjaan pembangunan dengan baik tanpa tekanan dan ancaman dari pihak manapun sesuai dengan ketentuan hukum yang berlaku. Namun dengan tanpa hak dan melawan hukum Tergugat baik secara bersama-sama maupun sendiri-sendiri telah bersekutu melakukan perbuatan melawan hukum masing-masing dengan cara sebagai berikut:

Tergugat telah mengirim surat kepada:

- Kementerian Pendidikan dan Kebudayaan Republik Indonesia
- Kementerian Lingkungan Hidup Republik Indonesia
- Ombudsmen
- Komnas Ham
- Anggota Komisi VII DPR RI Totok Daryanto

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Halaman 3



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- Dirjen Dikti Kementerian Pendidikan dan Kebudayaan
- DPRD Kota Batu
- BEM Universitas Brawijaya Malang

Isi suratnya tentang keberatan terhadap pembangunan The Raya Batu Resort yang akan berdampak terhadap kerusakan sumber mata air Gemulo dan pencemaran lingkungan;

6. Bahwa perbuatan Tergugat pada tanggal 24 April 2012 telah melakukan pengancaman dan tekanan kepada Warga sekitar pembangunan yang tidak bersalah sebagaimana isi ancamannya *yaitu bagi warga yang tidak berpartisipasi dan tidak peduli terhadap kebutuhan Air mendapat konsekuensi sesuai kesepakatan warga;*

7. Bahwa disamping Tergugat mengirim surat kepada Instansi Pemerintah yang terkait dan melakukan pengancaman, Tergugat telah melakukan perbuatan memfitnah dengan menyatakan:

Pembangunan dilakukan di Sumber Mata Air Gemulo padahal dari fakta hukum bahwa antara pembangunan dengan Sumber Mata Air Gemulo berjarak sangat jauh dan bahkan masih dibatasi oleh rumah warga dan hotel-hotel lainnya.

Pembangunan akan mencemarkan Sumber Mata Air Gemulo. Padahal sampai sekarang tidak ada hasil penelitian yang menyatakan bahwa mata air Gemulo telah tercemar.

- Tergugat juga pada tanggal 31 Januari 2013 telah melakukan aksi demo dengan pengrusakan, pembongkaran pagar-pegar, direksikeet serta mengambil barang-barang (materialan) milik Penggugat;

8. Bahwa atas aksi demo dengan pengrusakan, pembongkaran pagar-pegar, direksikeet serta mengambil barang-barang (materialan) yang dilakukan oleh Tergugat sebagai ketua penggerak demo bersama dengan para pendemo lainnya, maka Penggugat telah melaporkan Tergugat kepada Kepolisian sebagaimana bukti tanda terima laporan Polisi Nomor: STTLP/16.a/III/2013/JATIM/TES BATU tanggal 02 Februari 2013 ;

9. Bahwa semua perbuatan Tergugat tidak didasarkan pada fakta hukum di lapangan akan tetapi telah memfitnah dan memprovokasi warga masyarakat yang jauh dari pembangunan. Karena berdasarkan bukti yang dimiliki oleh

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Penggugat tidak terdapat pelanggaran apapun sebagaimana dimaksud dalam pengaduan dan provokasi yang dilakukan Tergugat;

10. Bahwa jelas perbuatan Tergugat yang memfitnah dan memprovokasi masyarakat, mengambil materialan Penggugat sehingga berujung pada terbit surat penghentian pekerjaan dari Pemerintah Kota Batu adalah perbuatan melawan hukum sebagaimana dimaksud dalam pasal 1365 Hukum Perdata. Pasal 1365 KUHPerdata berbunyi: *Tiap perbuatan melanggar hukum, yang membawa kerugian kepada orang lain, mewajibkan orang karena kesalahannya menerbitkan kerugian itu, maka orang tersebut wajib memberikan ganti rugi;*

11. Bahwa akibat dari perbuatan melawan hukum oleh Tergugat, Penggugat menderita kerugian materiel yaitu:

- a. Perbuatan Tergugat yang mengirim surat kemana-mana dan melakukan aksi demo dengan pengrusakan, pembongkaran pagar-pagar, direksikeet serta mengambil barang-barang (materialan) milik Penggugat yang berujung pada terbitnya surat penghentian pekerjaan, Penggugat tidak dapat melanjutkan pekerjaan pembangunan sehingga mendatangkan kerugian materiel sebesar Rp.10.000.000.000,00 (sepuluh milyar rupiah);
- b. Biaya yang timbul akibat pengurusan perkara ini sebesar Rp.25.000.000,00 (dua puluh lima juta rupiah) ;

12. Bahwa disamping kerugian materiel, Penggugat juga menderita kerugian immateriil atau beban batin karena selalu memikirkan perbuatan Tergugat yang berdemo, memprovokasi dan menteror Penggugat baik secara langsung yang dilakukan oleh para pendemo yang diketuai oleh Tergugat maupun melalui sms, email dll, tentu kerugian immateriil ini tidak ternilai harganya akan tetapi Penggugat menetapkan nilainya sebesar Rp.20.000.000.000,00 (dua puluh milyar rupiah) ;

13. Bahwa Penggugat selain menuntut Tergugat agar memberikan ganti kerugian materiel dan immateriil berupa uang secara tunai tersebut diatas, Penggugat juga menuntut kepada Tergugat agar meminta maaf melalui media massa baik cetak maupun elektronik selama 3 (tiga) hari berturut-turut;

14. Bahwa oleh karena gugatan ini mengenai hak-hak Penggugat maka wajar apabila Penggugat menuntut uang paksa (*dwangsom*) kepada Tergugat sebesar

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Rp.5.000.000,00 (lima juta rupiah) setiap hari keterlambatan pemenuhan isi putusan sejak perkara ini memperoleh kekuatan hukum tetap (*inckraht*);

15. Bahwa mengingat perbuatan Tergugat selama ini sangat membahayakan dan merugikan Peggugat maka Peggugat mohon kepada Pengadilan Negeri Malang agar meletakkan sita jaminan (*conservatoir beslag*) terhadap:

1. Sebidang tanah dan bangunan rumah luas \pm 1.000 M2 milik Tergugat yang terletak di Dusun Cangar RT.02/RW.01, Desa Bulukerto, Kecamatan Bumiaji, Kota Batu dengan batas-batas :

Sebelah Utara : Jalan Desa

Sebelah Timur : Jalan Kampung

Sebelah Selatan : Tanah sawah ganjaran

Sebelah Barat : Sekolah Dasar Negeri No.03 Desa Bulukerto;

2. Sidang tanah diatasnya berdiri bangunan Bengkel Sumber Jaya luas \pm 150 M2 yang terletak di Jalan Bukit Berbunga Desa Sidomulyo, Kecamatan Bumiaji, Kota Batu dengan batas-batas :

Sebelah Utara : Rumah Ibu Dauni

Sebelah Timur : Jalan Bukit Berbunga

Sebelah Selatan : Masjid

Sebelah Barat : Rumah Ibu Emi;

16. Bahwa agar kerugian Peggugat tidak semakin bertambah akibat perbuatan melawan hukum yang dilakukan oleh Tergugat oleh karena gugatan ini didasarkan pada bukti yang kuat dan meyakinkan, sehingga berdasarkan pasal 180 HIR, maka putusan dalam perkara ini dapat dilaksanakan terlebih dahulu walaupun ada perlawanan, banding, kasasi dan upaya hukum lainnya (*uitvoerbaar bij voorraad*).

Berdasarkan fakta-fakta tersebut diatas, maka dengan ini Peggugat mohon kepada Pengadilan Negeri Malang agar mengadili dan memberikan putusan sebagai berikut:

1. Mengabulkan gugatan Peggugat seluruhnya;
2. Menyatakan sah dan berharga sita jaminan yang telah diletakkan oleh Pengadilan Negeri Malang pada posita 15 diatas;
3. Menyatakan surat-surat ijin Pembangunan yang diterbitkan oleh Pemerintah Kota Batu yaitu :

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1. Surat Rekomendasi Tata Ruang Villa/Rumah Peristirahatan/Cottage No.050/038/422.202/2012 tanggal 5 Januari 2012 yang diterbitkan oleh Kepala Badan Perencanaan Pembangunan Daerah.
2. Surat Risalah Pertimbangan Teknis Pertanahan dalam Penerbitan Ijin Perubahan Penggunaan Tanah No.01 tanggal 11 Januari 2012 yang diterbitkan oleh Kepala Kantor Pertanahan Kota Batu.
3. Surat Ijin Peruntukan Penggunaan Tanah (IPPT) No.648/02/IPPT/422.208/2012, tanggal 11 Januari 2012 Rekomendasi yang diterbitkan oleh Kepala Kantor Pelayanan Perijinan Terpadu Kota Batu.
4. Surat Rekomendasi Dokumen UKL-UPL The Rayja Batu Resort No.660/784/422.206/2012 tanggal 30 Maret 2012 yang terbitkan oleh Sekretaris Daerah Kota Batu selaku Ketua Pengarahan UKL-UPL Kota Batu;
5. Surat Keputusan Kepala Kantor Pelayanan Perijinan Terpadu Nomor: 180/550/IMB/422.208/2012 tanggal 13 Agustus 2012 tentang Ijin Mendirikan Bangunan Atas Nama PT. Panggon Sarkarya Sukses Mandiri.
6. Surat Keputusan Kepala Kantor Pelayanan Perijinan Terpadu Nomor: 530.08/118/HO/422.208/2012 tanggal 19 Nopember 2012 tentang Ijin Gangguan (HO);

Adalah sah dan mempunyai kekuatan hukum mengikat;

4. Menyatakan pembangunan yang dikerjakan oleh Penggugat adalah sah dan mempunyai kekuatan mengikat secara hukum;
5. Menyatakan perbuatan Tergugat yang mengirim surat kepada instansi pemerintah dan melakukan aksi demo di lokasi pembangunan, pembongkaran pagar-pagar, direksikeet serta mengambil barang-barang (materialan) milik Penggugat adalah perbuatan melawan hukum;
6. Menghukum Tergugat untuk membayar kerugian materiel dan immaterial kepada Penggugat sebesar Rp.30.25.000.000,00 (tiga puluh milyar dua puluh lima juta rupiah);
7. Menghukum Tergugat untuk membayar uang paksa (*dwangsom*) kepada Penggugat sebesar Rp.5.000.000,00 (lima juta rupiah) setiap hari keterlambatan pemenuhan isi putusan sejak perkara ini memperoleh kekuatan hukum tetap (*inckraht*);

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8. Menghukum Tergugat untuk membayar semua biaya yang timbul dalam perkara ini;

9. Menyatakan putusan dalam perkara ini dapat dilaksanakan terlebih dahulu walaupun ada perlawanan, banding, kasasi dan upaya hukum lainnya (*uitvoerbaar bij voorraad*);

Atau:

Apabila Pengadilan Negeri Malang berpendapat lain mohon putusan yang seadil-adilnya

Menimbang, bahwa pada hari persidangan yang telah ditentukan, untuk Penggugat Konvensi/Tergugat Rekonvensi dan Tergugat Konvensi/Penggugat Rekonvensi masing-masing menghadapi kuasanya tersebut;

Menimbang, bahwa Majelis Hakim telah mengupayakan perdamaian antara para pihak melalui mediasi sebagaimana diatur dalam Perma Nomor 1 Tahun 2008 tentang Prosedur Mediasi di Pengadilan dengan menunjuk Gede Sunarjana, S.H., Hakim pada Pengadilan Negeri Malang, sebagai Mediator;

Menimbang, bahwa berdasarkan laporan Mediator tanggal 8 Nopember 2013, upaya perdamaian tersebut tidak berhasil;

Menimbang, bahwa oleh karena itu pemeriksaan perkara dilanjutkan dengan pembacaan surat gugatan yang isinya tetap dipertahankan oleh Penggugat Konvensi/Tergugat Rekonvensi;

Menimbang, bahwa terhadap gugatan Penggugat Konvensi/Tergugat Rekonvensi tersebut, Tergugat Konvensi/Penggugat Rekonvensi memberikan jawaban sekaligus mengajukan gugatan rekonvensi pada pokoknya sebagai berikut:

Bahwa penolakan warga terhadap pembangunan The Rayja harusnya dimaknai sebagai satu ruang pengembangan partisipasi dan bukan sebagai satu ancaman investasi, karena secara prinsip masyarakat termasuk Tergugat tidak menolak pembangunan dan investasi tetapi tegas menolak pembangunan dan investasi yang tidak pro terhadap kelestarian lingkungan; SLAPP merupakan tindakan dengan menggunakan mekanisme pengadilan untuk menghilangkan partisipasi publik dengan mendiamkan, mengganggu, dan menghalangi lawan politik. Saat ini belum ada pengertian yang baku mengenai SLAPP, sehingga akan lebih mudah mengenali SLAPP melalui 4 kriteria yang disampaikan oleh George W.Pring, yaitu:

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- 1) Adanya keluhan, pengaduan, tuntutan dari masyarakat atas dampak kerusakan yang terjadi
- 2) Dilakukan terhadap masyarakat secara kolektif, individual, dan organisasi non pemerintah
- 3) Adanya komunikasi yang dilakukan kepada pemerintah atau pejabat yang berwenang
- 4) Dilakukan terhadap issue yang menyangkut kepentingan umum atau perhatian publik

Bahwa kriteria kelima yang dapat ditambahkan bahwa SLAPP dilakukan dengan tidak berdasar dan mengandung motif politik atau ekonomi tersembunyi. James A Wells memberikan beberapa tipe yang menjadi dasar dilakukannya SLAPP, yaitu:

- 1) Adanya fitnah
- 2) Adanya gangguan yang mempengaruhi aktivitas sehari-hari
- 3) Adanya gangguan yang dilakukan terhadap pribadi (*privat*)
- 4) Adanya tindakan yang berbahaya
- 5) Adanya tindakan yang menimbulkan kerugian

Bahwa kasus SLAPP sangat dimungkinkan akan banyak terjadi pada kasus terkait dengan lingkungan hidup. Hal ini menjadi salah satu dasar mengapa akhirnya ketentuan mengenai Anti-SLAPP diatur dalam UU No. 32 Tahun 2009 tentang PPLH khususnya dalam pasal 66;

Bahwa apa yang terjadi saat ini adalah bukti upaya pembungkaman aktivis lingkungan, dengan menggunakan cara-cara formal dan legal dan terkesan normatif akan tetapi jika dilihat perkara ini secara holistik maka motif sebenarnya adalah ekonomi dan politik.

Terakhir bahwa kami memohon kepada Majelis hakim pemeriksa perkara *a quo* untuk lebih teliti dan memahami perjuangan hak masyarakat termasuk Tergugat sebagai satu hak yang dilindungi oleh Konstitusi;

Eksepsi;

Bahwa pada prinsipnya Tergugat menolak seluruh dalil-dalil yang diajukan Penggugat dalam gugatannya tertanggal 19 Agustus 2013, kecuali yang diakui secara tegas kebenarannya oleh Tergugat;

1. Penggugat Tidak Mempunyai Kedudukan Sebagai Penggugat (*Eksepsi Disqualifikatoir*) atau Cacat Formil;

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- 1.1. Bahwa Penggugat dalam mengajukan gugatannya, sebagaimana dalam gugatannya telah menyatakan bahwa Penggugat adalah Willy Suhartanto, alamat di Jalan Raya Punten No.1 RT.01/RW.01 Desa Punten, Kecamatan Bumiaji, Kota Batu, Pekerjaan Direktur PT. Panggon Sarkarya Sukses Mandiri, selanjutnya disebut sebagai Penggugat;
- 1.2. Bahwa jika dibaca secara seksama diperoleh fakta yang membingungkan, ini terlihat dalam gugatan Penggugat apakah merupakan gugatan perwakilan yang dilakukan oleh PT. Panggon Sarkarya Sukses Mandiri melalui Direksinya sdr Willy Suhartanto atau gugatan diajukan oleh sdr Willy Suhartanto secara langsung kepada Tergugat;
- 1.3. Bahwa karena gugatan tersebut tidak secara jelas diajukan oleh siapa (*principal*), maka Tergugat dengan tegas meragukan kapasitas Penggugat mengajukan gugatan *a quo*, untuk itu mohon kepada majelis hakim untuk mempertimbangkan kejelasan posisi Penggugat;
- 1.4. Bahwa ketidakjelasan ini terlihat dari struktur gugatan Penggugat, dalam halaman 1 (satu) dinyatakan sebagai berikut :
"Ismail Modal, SH., MH dan Sumardhan, SH., Advokat & Konsultan Hukum pada kantor Ismail Modal & Partners ... bertindak untuk dan atas nama Willy Suhartanto dengan alamat Jalan Raya Punten No. 01. RT.01/RW. 01 Desa Punten Kecamatan Bumiaji, Kota Batu...."
Apakah yang dimaksud dalam subyek Penggugat ini adalah saudara Willy Suhartanto atau PT. Panggon Sarkarya Sukses Mandiri.
- 1.5. Bahwa jika saudara Willy Suhartanto selaku Penggugat perwakilan mewakili PT. Panggon Sarkarya Sukses Mandiri, maka ada terdapat kesalahan fatal dalam pengajuan gugatan tersebut. Karena didalam gugatan sama sekali tidak dicantumkan kalimat mewakili. Dalam hal ini saudara Willy Suhartanto mewakili kepentingan hukum PT. Panggon Sarkarya Sukses Mandiri;
- 1.6. Bahwa Gugatan perwakilan perseroan ini dengan jelas diterangkan dan diatur dalam pasal 98 Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas. Dimana dalam pasal 98 ayat (1)

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dinyatakan : *"Direksi mewakili Perseroan baik di dalam maupun diluar pengadilan."*

- 1.7. Bahwa selanjutnya kewenangan Direksi termasuk hak untuk mengkuasakan kepada kuasa hukum ini diatur lebih lanjut pada Pasal 103 Undang-undang Perseroan terbatas, sebagai berikut :

"Direksi dapat memberikan kuasa tertulis kepada 1 (satu) orang karyawan Perseroan atau lebih atau kepada orang lain untuk dan atas nama Perseroan melakukan Perbuatan Hukum tertentu sebagaimana yang diuraikan dalam surat kuasa"

- 1.8. Bahwa kedua Pasal tersebut yaitu Pasal 98 dan Pasal 103 Undang-Undang Nomor 40 tahun 2007 tentang Perseroan Terbatas tersebut sudah jelas mengatur tentang perwakilan hukum perusahaan, sehingga jelas dibedakan antara tindakan Direksi secara Pribadi dan tindakan Direksi yang mewakili kepentingan Perseroan;
- 1.9. Bahwa jika dilihat format gugatan Penggugat tersebut sama sekali tidak jelas apakah tindakan tersebut adalah tindakan perseroan yang diwakili oleh saudara Willy Suhartanto atau tindakan pribadi saudara Willy Suhartanto selaku Direksi PT. Panggon Sarkarya Sukses Mandiri;
- 1.10. Bahwa jika kita melihat dengan lebih teliti maka Tergugat pastikan juga ada kesalahan dalam Pemberian Surat Kuasa Penggugat. Karena Penggugat bertindak atas nama sendiri bukan atas nama Perseroan – sehingga kapasitas Penggugat tidak terpenuhi sebagai Penggugat karena hubungan hukum antara Penggugat dan Tergugat sama sekali tidak ada;
- 1.11. Bahwa M. Yahya Harahap, SH didalam bukunya Hukum Acara Perdata (halaman. 111-136) mengatakan bahwa yang bertindak sebagai Penggugat harus orang yang benar-benar memiliki kedudukan dan kapasitas yang tepat menurut hukum. Keliru dan salah bertindak sebagai Penggugat mengakibatkan gugatan mengandung cacat formil. cacat formil yang timbul atas kekeliruan atau kesalahan bertindak sebagai penggugat inilah yang dikatakan *error in persona*;

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- 1.12. Bahwa ketidakjelasan penggugat mengakibatkan gugatan tidak jelas dan kabur, untuk itu Tergugat memohon kepada Majelis Hakim untuk menolak dalil – dalil yang Penggugat sampaikan dalam gugatan karena Penggugat tidak mempunyai kapasitas mengajukan gugatan;
2. Gugatan Salah Menentukan Subyek/ Tergugat;
 - 2.1. Bahwa gugatan Penggugat kepada Tergugat tidak disertai dengan penjelasan tentang kedudukan hukum Tergugat, apakah selaku organisasi ataukah secara pribadi. Jika Penggugat bermaksud menggugat Tergugat selaku organisasi, maka hal itu bertolak belakang dengan permintaan sita jaminan yang diajukan Penggugat, yakni memintakan sita jaminan terhadap kekayaan pribadi Tergugat, sebagaimana disebutkannya dalam posita gugatan angka 15 dan 16 (halaman 4 – 5 gugatan). Dengan demikian gugatan Penggugat adalah kabur;
 - 2.2. Bahwa Forum Masyarakat Peduli Mata Air (FMPMA) – selanjutnya disebut FMPMA merupakan forum yang melibatkan di beberapa desa, yakni Desa Bulukerto Dusun Cangar, Desa Bumiaji, Desa Sidomulyo dan Desa Pandanrejo Dusun Pandan, yang masuk dalam 2 (dua) kecamatan yaitu kecamatan Batu dan Kecamatan Bumiaji Kota Batu;
 - 2.3. Bahwa FMPMA, bukan merupakan organisasi berbadan hukum seperti organisasi berbentuk perkumpulan atau organisasi berbentuk yayasan. Sehingga tidak dapat dijadikan subyek hukum. Dalam teori subyek hukum hanya dikenal 2 (dua) jenis subyek hukum, yakni *natuurlijk persoon* dan *rechts persoon*. Guna menggugat sebuah perkumpulan yang bukan merupakan badan hukum (bukan *rechts persoon*) maka harus diajukan gugatan kepada para keseluruhan pengurus dan anggota perkumpulan tersebut;
 - 2.4. Bahwa status hukum FMPMA tidak diatur di dalam KUHPerdata. Namun sebagai analoginya, karena para anggota forum tersebut tidak mengadakan perjanjian untuk bagaimana mengurus dan sistem pertanggungjawabannya terhadap pihak ketiga, maka berlaku sistem sebagaimana seperti Pasal 1639 KUHPerdata yang menentukan:
“Bila pada waktu perseroan dibentuk tidak dibuat perjanjian-perjanjian tertentu mengenai cara mengurus perseroan itu, maka

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wajib diindahkan aturan-aturan berikut: (1). para peserta dianggap telah memberi kuasa satu sama lain untuk mengurus perseroan itu; Apa yang dibuat oleh masing-masing peserta sekalipun tanpa izin dari peserta lain, mengikat mereka, tanpa mengurangi hak mereka atau salah seorang dari mereka untuk melawan perbuatan tersebut selama perbuatan itu belum ditutup”.

Berdasarkan hal tersebut maka Penggugat seharusnya menggugat seluruh anggota Forum Masyarakat Peduli Mata Air (FMPMA) tersebut. Namun, karena jumlah forum tersebut adalah ribuan orang, dan tidak efektif diajukan gugatan langsung (*direct action*), sehingga gugatan dapat diajukan dengan cara menggugat perwakilan perkumpulan, yakni menggugat wakil para Tergugat sebagai suatu kelompok (*defendant class action*);

2.5. Namun, dalam gugatan Penggugat tidak menyebutkan dan menggunakan mekanisme gugatan terhadap perwakilan kelompok Tergugat bahwa orang bernama RUDI dianggap mewakili kelompok forum tersebut. Jika mekanisme itu ditempuh, maka dipergunakan tatacara seperti yang diatur dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2002. Oleh sebab itulah, gugatan Penggugat yang bersifat *direct action*, padahal Tergugat bukan sebuah badan hukum, sehingga gugatan dalam perkara ini adalah kurang pihak, keliru dan tidak jelas.

2.6. Bahwa berdasarkan fakta-fakta diatas Tergugat mohon kepada Majelis Hakim pemeriksa perkara *aquo* untuk menyatakan bahwa gugatan ini batal demi hukum atau setidaknya tidaknya gugatan dinyatakan tidak dapat diterima;

3. Para Pihak Tidak Lengkap (*plurium litis consortium*)

3.1. Bahwa gugatan Penggugat dalam halaman 3 -4 yang menyatakan pada intinya adalah perbuatan Tergugat melakukan perbuatan melawan hukum sehingga mengakibatkan kerugian materiil maupun immateriil;

3.2. Bahwa yang dimaksud Perbuatan melawan hukum menurut Penggugat adalah Tergugat mengirimkan surat ke Kementerian Pendidikan dan Kebudayaan RI, Kementerian Lingkungan Hidup RI,

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Ombudsman, Komnas HAM, Anggota Komisi VII DPR RI, Dirjen Dikti Kementerian Pendidikan dan Kebudayaan, DPRD Kota Batu, BEM Universitas Brawijaya Malang (vide posita gugatan Penggugat);

- 3.3. Bahwa selanjutnya dalam gugatan Penggugat dinyatakan akibat dari perbuatan Tergugat tersebut dalam point di atas sehingga berujung pada terbitnya surat penghentian pekerjaan dari Pemerintah Kota Batu (vide gugatan nomor 10, hal. 4);
- 3.4. Bahwa jika dilihat dalil-dalil dalam gugatan Penggugat maka dapat disimpulkan bahwa dasar kerugian yang diderita oleh Penggugat sesuai dengan isi gugatan tersebut adalah keluarnya surat dari pemerintah Kota Batu yang isinya memerintahkan dihentikannya pekerjaan pembangunan;
- 3.5. Bahwa dengan demikian sumber dari kerugian Penggugat adalah dikeluarkannya surat penghentian sementara pekerjaan dari pemerintah Kota Batu, bukan pada perbuatan Tergugat yang mengirimkan surat ke berbagai lembaga negara seperti dalam point 3.2 jawaban ini. Dengan demikian, maka seharusnya ada pihak lain yang ditarik Penggugat sebagai Tergugat dalam gugatannya, yaitu Pemerintah Kota Batu, tetapi oleh Penggugat tidak ditarik sebagai Tergugat. Hal tersebut adalah suatu kesalahan dalam surat gugatan Penggugat yaitu tidak lengkapnya pihak-pihak yang seharusnya digugat;
- 3.6. Bahwa Atas dasar fakta yang disampaikan diatas jelas gugatan Penggugat adalah kurang pihak atau tidak lengkap sehingga berakibat cacat formil (*prulium litis consortium*);
4. Gugatan Penggugat Kabur (*Exceptio Obscuur Libel*) dan tidak memenuhi Pasal 1365 KUH Perdata;
Bahwa Penggugat dalam gugatannya telah mendalilkan atau menjadikan dasar gugatannya yang pokoknya sebagai berikut :
 - 4.1. Bahwa dalam point 9 gugatan Penggugat dinyatakan "*bahwa semua perbuatan Tergugat tidak didasarkan pada fakta hukum di lapangan akan tetapi telah memfitnah dan memprovokasi warga masyarakat yang jauh dari pembangunan. Karena berdasarkan bukti yang dimiliki*

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oleh Penggugat tidak terdapat pelanggaran apapun sebagaimana dimaksud dalam pengaduan dan provokasi yang dilakukan”.

Selanjutnya dalam poin 10 *“bahwa jelas perbuatan Tergugat yang memfitnah dan memprovokasi masyarakat sehingga berujung pada terbit surat penghentian pekerjaan dari pemerintah Kota Batu adalah perbuatan melawan hukum sebagaimana dimaksud dalam pasal 1365 Hukum Perdata;*

- 4.2. Bahwa gugatan Penggugat ini adalah gugatan perbuatan melawan hukum (*onrechmatige daad*), sebagai dasar gugatan ini adalah pasal 1365 KUH Perdata yang berbunyi :

“Tiap perbuatan melanggar hukum yang membawa kerugian kepada seorang lain, mewajibkan orang yang karena salahnya menerbitkan kerugian itu, mengganti kerugian tersebut”

- 4.3. Bahwa menurut *Mariam Darulzaman* mengatakan bahwa syarat-syarat yang harus ada untuk menentukan perbuatan sebagai perbuatan melawan hukum adalah sebagai berikut:

1. Harus ada perbuatan – yang dimaksud dengan perbuatan ini baik yang bersifat positif maupun yang bersifat negatif, artinya setiap tingkah laku berbuat atau tidak berbuat;
2. Perbuatan itu harus melawan hukum;
3. Ada kerugian;
4. Ada hubungan sebab akibat antara perbuatan melawan hukum itu dengan kerugian;
5. Ada kesalahan;

Berikut ini penjelasan bagi masing-masing unsur dari perbuatan melawan hukum tersebut, yaitu sebagai berikut :

1. *Adanya suatu perbuatan :*

Suatu perbuatan melawan hukum diawali oleh perbuatan dari si pelakunya. Umumnya diterima anggapan bahwa dengan perbuatan di sini dimaksudkan, baik berbuat sesuatu (aktif) maupun tidak berbuat sesuatu (pasif). Perbuatan tersebut melawan hukum;

2. *Perbuatan tersebut melawan hukum :*

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Perbuatan yang dilakukan tersebut haruslah melawan hukum sejak tahun 1919, unsur melawan hukum ini diartikan dalam arti yang seluas-luasnya, yakni meliputi hal-hal sebagai berikut :

- a. *Perbuatan yang melanggar undang-undang yang berlaku;*
 - b. *Yang dilanggar hak orang lain yang dijamin oleh hukum si pelaku;*
 - c. *Perbuatan yang bertentangan dengan kewajiban hukum si pelaku;*
 - d. *Perbuatan yang bertentangan dengan kesesuaian (geode zeden)*
 - e. *Perbuatan yang bertentangan dengan sikap yang baik dalam bermasyarakat untuk memperhatikan kepentingan orang lain – (indruist tegen de zorgvuldigheid, welke in het maatschappelijk verkeer betaamt ten aanzien van ander person of goed)*
3. *Adanya kesalahan dari pihak pelaku :*

Perbuatan melawan hukum haruslah mengandung unsur kesalahan (schuldement) dalam melaksanakan perbuatan (Tergugat) tersebut. Secara hukum disebut sebagai adanya kesalahan jika memenuhi unsur. Pertama, unsur kesengajaan. Kedua, unsur kelalaian (negligence, culpa). Ketiga, tidak ada alasan pembenar atau alasan pemaaf (rechtvaardigingsgrond), seperti overmacht, membela diri, tidak waras dan lain-lain;

4. *Adanya kerugian bagi korban;*

Adanya kerugian (schade) bagi Penggugat/ korban juga merupakan syarat agar gugatan berdasarkan Pasal 1365 KUHPerdara dapat dipergunakan. Berbeda dengan kerugian karena wanprestasi yang hanya mengenal kerugian materil, maka kerugian karena perbuatan melawan hukum di samping kerugian materil, yurisprudensi juga mengakui konsep kerugian immaterial yang juga akan dinilai dengan uang.

5. *Adanya hubungan kausalitas antara perbuatan dengan kerugian;*

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Hubungan kausalitas ini antara perbuatan yang dilakukan oleh Tergugat dengan kerugian yang terjadi menimpa Penggugat adalah merupakan syarat dari suatu perbuatan melawan hukum;

4.1. Bahwa jelas dalam gugatan Perbuatan Melawan Hukum sebagaimana didasarkan oleh Penggugat harus memenuhi unsur dan syarat sebagaimana dalam penjelasan diatas;

4.2. Bahwa jika kita baca dan simak gugatan Penggugat dalam perkara *a quo*, gugatan Penggugat tidak menerangkan dengan jelas unsur dan syarat perbuatan Tergugat, gugatan ini hanya didasarkan pada asumsi – asumsi dan khayalan Penggugat, sehingga gugatan yang dimaksud dalam perkara ini tidak mampu menjelaskan dengan baik setiap unsurnya;

4.3. Bahwa dalil-dalil yang disampaikan oleh Penggugat tidak sesuai dengan fakta hukum yang terjadi, oleh karena itu Tergugat akan menyampaikan fakta-fakta hukum yang sebenarnya terjadi :

1. Bahwa pada tanggal 21 Juni 2013 Pemerintah Kota Batu melalui Sekretaris Daerah telah mengeluarkan surat nomor : 730/1287/422.400/2013 perihal Penghentian Aktivitas kegiatan Pembangunan Pendirian Hotel yang ditujukan kepada sdr Willy Suhartanto;

2. Bahwa setelah dikeluarkannya Surat Keputusan Pemerintah Kota Batu seperti disebutkan di atas, PT. Panggon Sarkarya Sukses Mandiri tidak pernah menghentikan kegiatan pembangunan seperti dalam perintah surat keputusan tersebut;

3. Bahwa selanjutnya Kementerian Lingkungan Hidup Indonesia pada tanggal 28 Agustus 2013 mengeluarkan surat Rekomendasi Tindak Lanjut Pembangunan Hotel The Rayja Batu Resort dengan Nomor : B-9430/Dep.V/LH/HK/08/2013 yang pada pokoknya menyatakan :

1) Untuk proses pembangunan dan usaha hotel The Rayja Batu Resort wajib memiliki dokumen Analisis Mengenai Dampak Lingkungan Hidup (AMDAL), tidak tepat hanya dengan dokumen upaya pengelolaan lingkungan hidup dan upaya pemantauan lingkungan hidup (UKL/UPL);

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- 2) Menyetujui penghentian sementara kegiatan pembangunan Hotel The Rayja Batu Resort, untuk selanjutnya terhadap penanggung jawab usaha pembangunan Hotel The Rayja Batu Resort diperintahkan untuk segera menyusun AMDAL sesuai dengan peraturan perundang-undangan;
4. Bahwa Penggugat juga tidak melaksanakan Rekomendasi dari Kementerian Lingkungan Hidup Indonesia, hal ini terlihat jelas bahwa sampai sekarang pembangunan Hotel The Rayja Resort oleh Penggugat masih terus berlangsung tanpa adanya dokumen Analisis Mengenai Dampak Lingkungan sebagaimana diperintahkan oleh Kementerian Lingkungan Hidup Indonesia;
5. Bahwa selanjutnya pada tanggal 17 Oktober 2013 Ombudsman Republik Indonesia menyampaikan surat rekomendasi atas kasus pembangunan Hotel The Rayja Batu Resort dengan nomor : 0679/SRT/0121.2013/PBP.24/ Tim.4/ X/ 2013 tentang penyampaian rekomendasi Ombudsman RI berkenaan dengan penyalahgunaan wewenang dalam pemberian IMB The Rayja Batu Cottage yang berlokasi di kawasan sumber mata air Gemulo. Pada pokoknya menyatakan sebagai berikut :

1. Mencabut IMB No: 180/550/IMB/422.208/2012 tertanggal 13 Agustus 2012, revisi IMB Nomor: 180/75/IMB/422.208/2012, tertanggal 30 Januari 2012 atas nama PT. Panggon Sarkarya Sukses Mandiri;
2. Menghentikan proses pembangunan rumah peristirahatan The Rayja sampai dengan diperoleh perijinan sesuai peraturan perundang-undangan yang berlaku;
3. Memberikan sanksi kepada kepala Kantor Pelayanan Perijinan Terpadu (KPPT) Kota Batu sesuai peraturan perundang-undangan yang berlaku atas kelalaian kewajiban hukum dalam proses penerbitan IMB;

Bahwa surat rekomendasi dari Ombudsman telah keluar akan tetapi Penggugat masih tetap tidak menjalankan perintah tersebut. Penggugat terus melakukan pembangunan Hotel The Rayja Resort sampai sekarang;

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- 4.1. Bahwa berdasarkan fakta dan penjelasan hukum diatas gugatan Penggugat tidak memenuhi rumusan pasal 1365 KUH Perdata dan juga tidak jelas menjelaskan setiap unsur dalam pasal tersebut, maka kami memohon kepada Majelis Hakim untuk menolak gugatan Penggugat;
5. Dasar Hukum Dalil Gugatan Tidak Jelas Dan Menyesatkan;
 - 5.1. Bahwa Gugatan Penggugat didasarkan pada fakta sebagai berikut:
 - 1) Tergugat mengirimkan surat ke Kementerian Pendidikan dan Kebudayaan RI, Kementerian Lingkungan Hidup RI, Ombudsman, Komnas HAM, Anggota Komisi VII DPR RI, Dirjen Dikti Kementerian Pendidikan dan Kebudayaan, DPRD Kota Batu, BEM Universitas Brawijaya Malang;
 - 2) Tergugat melakukan aksi demonstrasi;
 - 3) Akibat perbuatan Tergugat tersebut Pemerintah Kota Batu melalui Sekretaris Daerah mengeluarkan surat nomor : 730/1287/422.400/2013 perihal Penghentian Aktivitas kegiatan Pembangunan Pendirian Hotel yang ditujukan kepada sdr Willy Suhartanto;
 - 5.1. Bahwa Penggugat dalam gugatannya pada Posita atau *fundamentum petendi*, tidak menjelaskan dasar hukum (*rechts grond*) dan kejadian atau peristiwa yang mendasari gugatan Penggugat, sehingga dalil yang demikian tidak memenuhi syarat formil gugatan;
 - 5.2. Bahwa perbuatan Tergugat mengirimkan surat ke berbagai lembaga Negara, Tergugat melakukan aksi demonstrasi dan Pemerintah Kota Batu mengeluarkan surat perintah penghentian pekerjaan apakah merupakan perbuatan melawan hukum?
 - 5.3. Bahwa gugatan Penggugat sama sekali tidak ada landasan hukumnya. Sebaliknya apa yang dilakukan oleh Tergugat merupakan perbuatan yang diatur dalam Undang-Undang. *Pertama*, Tergugat mengirimkan surat ke berbagai lembaga negara supaya kasus/ konflik pembangunan Hotel The Rayja oleh PT. Panggon Sarkarya Sukses Mandiri yang tidak ada kajian lingkungan maupun UKL/UPL untuk segera diberhentikan. Upaya ini dilakukan bukan hanya pada Tergugat tetapi juga dilakukan pula oleh banyak orang yang

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bermaksud menyelamatkan sumber air Gemulo dan lingkungan hidup sekitarnya - upaya ini jelas dilindungi oleh Undang-undang Nomor 32 tahun 2009 tentang perlindungan dan pengelolaan lingkungan hidup, pada pasal 66 menyebutkan:

"Setiap orang yang memperjuangkan hak atas lingkungan hidup yang baik dan sehat tidak dapat dituntut secara pidana maupun digugat secara perdata"

Kedua, bahwa tindakan Tergugat melakukan aksi diatur dan/atau dilindungi oleh Undang-undang Nomor 9 Tahun 1998 tentang Kemerdekaan Menyampaikan Pendapat di muka Umum. Pasal 2 ayat (1) Undang-undang ini menyebutkan bahwa :

"Setiap warga negara, secara perorangan atau kelompok, bebas menyampaikan pendapat sebagai perwujudan hak dan tanggung jawab berdemokrasi dalam kehidupan bermasyarakat, berbangsa dan bernegara";

5.4. Bahwa apa yang dilakukan oleh Tergugat bukan suatu tindakan maupun perbuatan melawan hukum sebagaimana didalilkan oleh Penggugat. Karena tindakan Tergugat telah sesuai dengan hukum dan Undang-undang yang berlaku, sehingga kami mohon kepada Majelis Hakim untuk menolak gugatan Penggugat;

6. Petitem Penggugat Tidak Dapat Diterima;

6.1. Bahwa lagi – lagi Penggugat salah dalam menentukan Petitem atau tuntutan dalam gugatan *a quo*. Petitem angka 3 (tiga) yang memohon kepada Majelis Hakim agar dianggap sah produk Tata Usaha Negara adalah salah menentukan Pengadilan (*kewenangan absolute*);

6.2. Bahwa jika Penggugat bermaksud mengajukan gugatan untuk dinyatakan sah-nya surat-surat bukan di Pengadilan Negeri tetapi di Pengadilan Tata Usaha Negara (vide Petitem nomor 3 (tiga)) ;

6.3. Bahwa berdasarkan uraian dan alasan-alasan sebagaimana diatas bahwa Penggugat tidak mempunyai hak dan kualitas sebagai Penggugat dalam perkara *a quo*, dengan gugatan tidak jelas dan kabur (*obscuur libel*), maka dengan demikian Gugatan Penggugat telah tidak memenuhi persyaratan formil, sehingga Gugatan

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Penggugat haruslah Tidak Dapat Diterima (*Niet Onvankelijk verklaard*).

1. Bahwa pada dasarnya Tergugat membantah seluruh dalil gugatan yang diajukan oleh Penggugat, kecuali yang diakui secara tegas dalam jawaban ini;
2. Bahwa Tergugat sebagai forum atau perkumpulan orang anggota masyarakat yang didirikan dalam rangka aspirasi bersama untuk menjalankan perjuangan hak atas lingkungan hidup yang baik. Oleh sebab itu Tergugat dalam menjalankan upayanya tidak dapat dikategorikan sebagai perbuatan melawan hukum. Pasal 66 Undang-Undang 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup (disingkat UU No. 32 Tahun 2009) menentukan: "Setiap orang yang memperjuangkan hak atas lingkungan hidup yang baik dan sehat tidak dapat dituntut secara pidana maupun digugat secara perdata";
3. Bahwa perbuatan Tergugat yang berkirim surat kepada berbagai lembaga negara/pemerintah untuk meminta perlindungan hukum atau mengadukan perbuatan Penggugat yang melanggar hak atas lingkungan yang baik bagi Tergugat bukanlah merupakan perbuatan melawan hukum. Putusan Mahkamah Agung R.I. Nomor 1924 K/Pdt/2010 tanggal 23 Desember 2010 menyatakan dalam pertimbangan hukum bahwa perbuatan Tergugat melaporkan Penggugat ke Kepolisian adalah dalam rangka mempergunakan haknya yang dibenarkan undang-undang dan tidak dapat dikualifikasikan sebagai perbuatan fitnah (melawan hukum) walaupun Terlapor/Penggugat dibebaskan;
4. Bahwa dalil Penggugat yang menyatakan Tergugat telah memprovokasi masyarakat adalah tidak benar, sebab masyarakat itu sendiri merupakan para anggota Tergugat sebagai forum masyarakat di mana masyarakat mempunyai aspirasi bersama. Justru Penggugat yang memprovokasi warga masyarakat para anggota Tergugat sebagai forum warga, sebab dengan arogan melakukan tindakan-tindakan yang bersifat melawan hukum, melakukan kegiatan ilegal dengan tidak terpenuhinya persyaratan-persyaratan hukum, baik berupa kegiatan yang akan

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membahayakan kelestarian sumber mata air yang penting bagi kehidupan masyarakat, maupun melakukan langkah yang melanggar hukum dengan tidak mempunyai AMDAL. Hal itu akan dibuktikan oleh Tergugat dalam perkara ini dengan adanya rekomendasi-rekomendasi dari lembaga-lembaga pemerintah yang berwenang. Dengan demikian seluruh surat izin yang dijadikan dasar Tergugat melakukan kegiatan usahanya sebagaimana disebutkan dalam surat gugatannya itu adalah tidak sah atau tidak mempunyai kekuatan hukum;

5. Bahwa kegiatan unjuk rasa/demonstrasi yang dilakukan oleh warga anggota Tergugat sebagai forum masyarakat adalah bukan perbuatan melawan hukum, sebab perbuatan tersebut juga dilindungi oleh hukum, yakni oleh UU No. 32 Tahun 2009 tentang PPLH dan oleh Undang-Undang Nomor 8 Tahun 1998 tentang Kemerdekaan Menyampaikan Pendapat Di Muka Umum;
6. Bahwa Tergugat menolak seluruh gugatan Penggugat, termasuk menolak permohonan sita jaminan terhadap kekayaan pribadi H. Rudi yang bukan harta kekayaan Forum Masyarakat Peduli Mata Air (FMPMA). Hal itu juga akibat kekeliruan tatacara gugatan dalam perkara ini sebagaimana telah dijelaskan di bagian Eksepsi di depan, di mana uraian gugatan Penggugat tidak jelas membedakan antara Rudi sebagai pribadi dengan dirinya sebagai pengurus Forum Masyarakat Peduli Mata Air (FMPMA). Lagipula, hukum tidak akan bertindak tidak adil dengan cara melimpahkan tanggung jawab seluruh orang anggota Forum Masyarakat Peduli Mata Air (FMPMA) dengan jaminan kekayaan pribadi Rudi;

Dalam Rekonvensi

Bahwa dalam hal ini Tergugat Konvensi demi menyederhanakan proses serta sekaligus untuk menghemat biaya dan waktu. Sehingga Tergugat dalam ini bermaksud mengajukan gugatan rekonvensi. Oleh karena itu, agar tujuan yang diamanatkan dalam sistem rekonvensi ini (Pasal 132 huruf (a) HIR) tidak menyimpang dari arah yang dicita-citakan, sedapat mungkin gugatan rekonvensi mempunyai koneksitas yang substansial dan relevan dengan gugatan konvensi; Dasar Rekonvensi (*Rechtsgrond*) Dan Peristiwa Rekonvensi (*feiteljelkegrond*) :

Bahwa Pasal 132 huruf (a) Herzienne Inlandsch Reglement ("HIR") mendefinisikan rekonvensi adalah gugatan yang diajukan tergugat sebagai

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gugatan balasan terhadap gugatan yang diajukan penggugat kepadanya. Gugatan rekonsvansi tersebut diajukan tergugat kepada Pengadilan Negeri, pada saat berlangsung proses pemeriksaan gugatan yang diajukan penggugat. Pasal 224 Reglement op de Rechtsvordering ("Rv") juga memberikan definisi atas gugatan rekonsvansi. Gugatan rekonsvansi adalah gugatan balik yang diajukan Tergugat terhadap Penggugat dalam suatu proses perkara yang sedang berjalan;

Bahwa Tergugat berdasarkan fakta-fakta diatas dan juga bermaksud menyampaikan fakta di bawah ini bermaksud mengajukan gugatan Rekonsvansi kepada Penggugat – selanjutnya Tergugat mohon disebut sebagai Penggugat Rekonsvansi dan Penggugat disebut sebagai Tergugat Rekonsvansi :

1. Bahwa dalil-dalil yang dinyatakan dalam jawaban/ eksepsi menjadi bagian yang tidak terpisahkan dan dipergunakan seluruhnya dalam Konvensi;
2. Bahwa pada tanggal 5 Januari 2012 Kepala Badan Perencanaan Pembangunan Daerah, Kota Batu, Jawa Timur melalui surat dengan Nomor : 050/038/422.202/ 2012. Perihal Rekomendasi Tata Ruang Villa/ Rumah Peristirahatan/ Cottage;
3. Bahwa Surat Rekomendasi tersebut menindaklanjuti permohonan dari Sdr Willy Boenardi Koesnadinata yang beralamat Prapen Indah Timur AA/10 RT.001/RW.003, Kel. Prapen Kec. Tenggilis Mejoyo Kota Surabaya;
4. Bahwa Kesimpulan dan Rekomendasi Tata Ruang menyebutkan berdasarkan kondisi lokasi dan kajian tata ruang, maka secara teknis lokasi tersebut "*dapat dibangun Villa/ Rumah Peristirahatan/ Cottage*";
5. Bahwa surat sebagaimana dalam point 1 menyebutkan "kawasan di sekitarnya merupakan kawasan perumahan, perdagangan, jasa dan pelayanan umum". Padahal sebenarnya berjarak kurang dari 150 meter ada sumber mata air Gemulo;
6. Bahwa sumber mata air berdasarkan Perda Tata Ruang Kota Batu Nomor 7 Tahun 2011 tentang Rencana Tata Ruang Wilayah Kota Batu tahun 2010-2030 pasal 34 Jo.Pasal 37 ayat (1) Jo.Pasal 38 huruf b Jo. Pasal 70 ayat (5) huruf C menyatakan bahwa kawasan tersebut termasuk kawasan perlindungan setempat dan harus dilindungi karena berada

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- dalam kisaran radius sempadan mata air yang berjarak kurang dari 200 meter;
7. Bahwa diduga penerbitan surat dalam point 1 yang dikeluarkan oleh Kepala Badan Perencanaan Pembangunan Daerah, Kota Batu telah melanggar Peraturan Daerah Nomor 7 tahun 2012 tentang Rencana Tata Ruang Wilayah Kota Batu 2010-2030;
 8. Bahwa tanggal 11 Januari 2012 melalui surat nomor : 01 Badan Pertanahan Nasional Republik Indonesia Kantor Pertanahan Kota Batu Provinsi Jawa Timur mengeluarkan Risalah Pertimbangan Teknis Pertanahan Dalam Penerbitan Izin Perubahan Penggunaan Tanah;
 9. Bahwa Risalah Pertimbangan tersebut didasarkan pada permohonan tanggal 09 Januari 2012 yang diajukan oleh Pemohon Ir. Willy Suhartanto, alamat Jl. Raya Punten 01 RT. 001 RW.002 Desa Punten Kecamatan Bumiaji Kota Batu, Bertindak atas nama PT. Panggon Sarkarya Sukses Mandiri;
 10. Bahwa Risalah tersebut didasarkan Peraturan Daerah Kota Batu Nomor : 03 tahun 2004 tentang Rencana Tata Ruang Wilayah (RTRW) Kota Batu Tahun 2003-2013 dan Rekomendasi Tata Ruang pembangunan Villa/ Rumah Peristirahatan/ Cottage Nomor 050/038/422.202/2012 tanggal 5 Januari 2012 dari Badan Perencanaan Pembangunan Daerah (BAPPEDA) Pemerintahan Kota Batu atas Nama Willy Boenardi Koesnadinata;
 11. Bahwa jika dilihat dari Risalah seperti dalam point 4 (empat), maka dengan jelas ada kesalahan subyek hukum (*error in Persona*) dimana bisa dilihat dari surat dengan Nomor : 050/038/422.202/ 2012. Perihal Rekomendasi Tata Ruang Villa/ Rumah Peristirahatan/ Cottage, menjadi dasar terbitnya Risalah Badan Pertanahan Nasional nomor : 1 tanggal 11 Januari 2012 adalah Sdr Willy Boenardi Koesnadinata, sedangkan risalah Badan Pertanahan Nasional Kota Batu adalah sdr Ir. Willy Suhartanto;
 12. bahwa ada kesalahan dasar penerbitan dalam terbitnya risalah pertimbangan teknis yang dikeluarkan oleh Badan Pertanahan Nasional Kantor Pertanahan Kota Batu melalui risalah nomor : 1 tanggal 11 Januari 2012;

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13. Bahwa tanggal 11 Januari 2012 atas nama Walikota Batu Kepala Kantor Pelayanan Perijinan Terpadu M. Syamsul Bakri, S.Sos., MM melalui surat nomor:648/02/IPPT/422.208/2012 perihal Ijin Peruntukan Penggunaan Tanah (IPPT). Merekomendasikan: nama Pemohon Willy Boenardi Koesnadinata, alamat Prapen Indah Timur AA/10 Rt.01, RW.03 Kelurahan Prapen Kec. Tenggilis Mejoso Surabaya, jenis kegiatan Bangunan Villa/ Rumah Peristirahatan/ Cottage/Resort;
14. Bahwa surat sebagaimana dalam point 9 (sembilan) didasarkan pada surat dalam point 1 (satu) dan point 4 (empat) atas nama Willy Boenardi Koesnadinata. Padahal kedua surat baik dalam poin 1 maupun dalam point 4 mengatas namakan nama yang berbeda. Poin 1 atas nama Willy Boenardi Koesnadinata, alamat Prapen Indah Timur AA/10 RT.001/ RW.003, Kel. Prapen Kec. Tenggilis Mejoyo Kota Surabaya sedangkan point 4 mengatasnamakan Ir. Willy Suhartanto alamat Jl. Raya Punten 01 RT. 001 RW.002 Desa Punten Kecamatan Bumiaji Kota Batu, Bertindak atas nama PT. Panggon Sarkarya Sukses Mandiri;
15. Bahwa terdapat kesalahan yang sangat fatal dalam surat tersebut dalam point 12, dimana surat keputusan Ijin Peruntukan Penggunaan Tanah (IPPT) terbit lebih dahulu daripada surat permohonannya. Surat permohonan tanggal 12 Januari 2012 sedang surat ijinnya lebih cepat keluar yaitu tanggal 11 Januari 2012;
16. Bahwa selanjutnya dalam surat rekomendasi seperti dalam point 9 menyatakan bahwa Risalah pertimbangan teknis Perencanaan BPN Daerah Kota Batu nomor : 01 tanggal 11 Januari 2012. Menyatakan "Berdasarkan point (2) dan (3) diatas, secara teknis : "sesuai / tidak bertentangan dengan Rencana Tata Ruang Wilayah Kota Batu dan dapat diproses perijinannya sesuai dengan ketentuan yang berlaku";
17. Bahwa sekali lagi Kepala Kantor Pelayanan Perijinan Terpadu M. Syamsul Bakri, S.Sos., MM telah melakukan kebohongan dan diduga telah melakukan tindak pidana pemalsuan keterangan atas dokumen resmi Negara, sebagaimana diatur dalam Pasal 242 KUH Pidana Jo. Pasal 113 Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup. Hal mana bisa dilihat dengan jelas

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- bahwa tidak pernah ada dokumen risalah BPN Kota Batu dalam point 4 menyatakan sebagaimana dalam point 11;
18. Bahwa telah ada pemutar balikan fakta dan kewenangan karena BPN Kota Batu tidak berwenang menyatakan apakah pembangunan itu bertentangan dengan tata ruang atau tidak karena sejatinya yang menyatakan bertentangan dengan tata ruang atau tidak adalah jelas Kepala Dinas Tata Ruang yang sebagaimana tercantum dalam Perda Tata Ruang;
19. Bahwa pada tanggal 30 Januari 2012 atas nama Walikota Batu Kepala Kantor Pelayanan Perijinan Terpadu M. Syamsul Bakrie, S.Sos., MM mengeluarkan Surat Keputusan dengan Nomor : 180/ 75 /IMB/ 422.208/2012 tentang Ijin Mendirikan Bangunan atas nama PT. Panggon Sarkarya Sukses Mandiri, atas Permohonan Ir Willy Suhartanto dengan alamat Jalan Raya Punten No. 01 RT.001 RW.002 Desa Punten Kecamatan Bumiaji Kota Batu;
20. Bahwa pada tanggal 30 Maret 2012 Pemerintah Kota Batu melalui Sekretaris Daerah, telah mengeluarkan surat Nomor: 660/784/422.206/ 2012 Perihal Rekomendasi Dokumen UKL-UPL The Rayja Batu Resort;
21. Bahwa Surat Keputusan dengan Nomor : 180/ 75 /IMB/ 422.208/2012 tentang Ijin Mendirikan Bangunan atas nama PT. Panggon Sarkarya Sukses Mandiri, atas Permohonan Ir Willy Suhartanto dengan alamat Jalan Raya Punten No. 01 RT.001 RW.002 Desa Punten Kecamatan Bumiaji Kota Batu diterbitkan terlebih dahulu sebelum adanya pembahasan UKL-UPL;
22. Bahwa surat Keputusan Ijin mendirikan Bangunan (IMB) PT. Panggon Sarkarya Sukses Mandiri tidak didasari atas dokumen Lingkungan Hidup dan atau Izin Lingkungan ;
23. Bahwa Pembangunan PT. Panggon Sarkarya Sukses Mandiri merupakan jenis pembangunan yang wajib dokumen Lingkungan Hidup yaitu UKL-UPL;
24. Bahwa berdasarkan fakta keluarnya Surat Keputusan dengan Nomor : 180/ 75 /IMB/ 422.208/2012 tentang Ijin Mendirikan Bangunan atas nama PT. Panggon Sarkarya Sukses Mandiri tidak terlebih dahulu didasarkan pada pengesahan dokumen Lingkungan Hidup UKL-UPL, maka Kepala

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- Kantor Pelayanan Perijinan Terpadu M. Syamsul Bakri, S.Sos.,MM diduga telah melakukan kejahatan lingkungan sebagaimana diatur dalam UU Perlindungan dan Pengelolaan Lingkungan Hidup;
25. Bahwa pada tanggal 13 Agustus 2013 atas nama Wali Kota Batu Kepala Kantor Pelayanan Perijinan Terpadu mengeluarkan Keputusan Nomor : 180 / 550 / IMB/ 422.208 / 2012 tentang Ijin Mendirikan Bangunan Atas nama PT. Panggon Sarkarya Sukses Mandiri atas dasar surat Permohonan sdr Ir. Willy Suhartanto;
26. Bahwa didalam konsideran dan dasar terbitnya Ijin Mendirikan Bangunan tersebut tidak didasari pada dokumen Lingkungan Hidup seperti diamanatkan dalam Peraturan Menteri Nomor 3 Tahun 2010 tentang Upaya Pengelolaan Lingkungan Hidup dan Upaya Pemantauan Lingkungan Hidup dan Surat Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup, Peraturan Menteri Nomor 5 Tahun 2012 tentang Jenis Rencana Usaha dan/ atau yang wajib memiliki Analisis Mengenai Dampak Lingkungan Hidup, Peraturan Pemerintah Nomor 27 tahun 2009 tentang Izin Lingkungan dan Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup; Bahwa fakta-fakta diatas merupakan bagian kecil dari banyaknya pelanggaran administrasi dan dugaan pelanggaran pidana lingkungan atas terbitnya dua Ijin yaitu diantaranya: Surat Keputusan dengan Nomor: 180/ 75 /IMB/ 422.208/2012 serta Surat Nomor : 180 / 550 / IMB/ 422.208 / 2012 tentang Ijin Mendirikan Bangunan Atas nama PT. Panggon Sarkarya Sukses Mandiri;
27. Bahwa pada tanggal 21 Juni 2013 Pemerintah Kota Batu Sekretaris Daerah telah mengeluarkan surat nomor : 730/1287/422.400/2013 perihal Penghentian Aktivitas kegiatan Pembangunan Pendirian hotel yang ditujukan kepada sdr Willy Suhartanto;
28. Bahwa setelah dikeluarkannya SK Pemerintah Kota Batu seperti disebutkan diatas PT. Panggon Sarkarya Sukses Mandiri atau Penggugat Konvensi/Tergugat Rekonvensi tidak pernah menghentikan kegiatan pembangunan seperti dalam perintah surat keputusan tersebut;
29. Bahwa selanjutnya Kementerian Lingkungan Hidup Indonesia pada tanggal 28 Agustus 2013 mengeluarkan surat Rekomendasi Tindak

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Lanjut Pembangunan Hotel The Rayja Batu Resort dengan Nomor :
B-9430/Dep.V/LH/HK/08/2013 yang pada pokoknya menyatakan :

- 1) Untuk proses pembangunan dan usaha hotel The Rayja Batu Resort wajib memiliki dokumen Analisis mengenai dampak lingkungan hidup (AMDAL), tidak tepat hanya dengan dokumen upaya pengelolaan lingkungan hidup dan upaya pemantauan lingkungan hidup (UKL/UPL);
- 2) Menyetujui penghentian sementara kegiatan pembangunan Hotel The Rayja Batu Resort, untuk selanjutnya terhadap penanggung jawab usaha pembangunan Hotel The Rayja Batu Resort diperintahkan untuk segera menyusun AMDAL sesuai dengan peraturan perundang-undangan;

30. Bahwa Penggugat Konvensi/ Tergugat Rekonvensi juga tidak melaksanakan Rekomendasi dari Kementerian Lingkungan Hidup Indonesia, hal ini terlihat jelas bahwa sampai sekarang pembangunan Hotel The Rayja Resort oleh Penggugat Konvensi/Tergugat Rekonvensi masih terus berlangsung tanpa adanya dokumen Analisis Mengenai Dampak Lingkungan sebagaimana diperintahkan oleh Kementerian Lingkungan Hidup Indonesia;

31. Bahwa selanjutnya pada tanggal 17 Oktober 2013 Ombudsman Republik Indonesia menyampaikan surat rekomendasi atas kasus pembangunan Hotel The Rayja Batu Resort dengan nomor : 0679/SRT/0121.2013/PBP.24/ Tim.4/ X/ 2013 tentang penyampaian rekomendasi Ombudsman RI berkenaan dengan penyalahgunaan wewenang dalam pemberian IMB The Rayja Cottage yang berlokasi di kawasan Sumber Mata Air Gemulo. Pada pokoknya menyatakan sebagai berikut :

- 1) Mencabut IMB No: 180/550/IMB/422.208/2012 tertanggal 13 Agustus 2012, revisi IMB Nomor : 180/75/IMB/422.208/2012, tertanggal 30 Januari 2012 atas nama PT. Panggon Sarkarya Sukses Mandiri;
- 2) Menghentikan proses pembangunan rumah peristirahatan The Rayja sampai dengan diperoleh perijinan sesuai peraturan perundang-undangan yang berlaku;

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- 3) Memberikan sanksi kepada kepala Kantor Pelayanan Perijinan Terpadu (KPPT) Kota Batu sesuai peraturan perundang-undangan yang berlaku atas kelalaian kewajiban hukum dalam proses penerbitan IMB;
32. Bahwa surat rekomendasi dari Ombudsman telah keluar akan tetapi Penggugat Konvensi /Tergugat Rekonvensi masih tetap tidak menjalankan perintah tersebut. Penggugat Konvensi/Tergugat Rekonvensi terus melakukan pembangunan Hotel The Rayja Resort sampai sekarang;
33. Bahwa pembangkangan hukum Penggugat Konvensi /Tergugat Rekonvensi terhadap perintah hukum adalah merupakan wujud dari Perbuatan Melawan Hukum Tergugat Rekonvensi, sesuai dengan Pasal 1365 KUH Perdata yang mengakibatkan Penggugat Rekonvensi yang awalnya Tergugat dan masyarakat dirugikan secara material maupun immaterial;
34. Bahwa akibat pembangunan hotel/ resort/ cottage/ Rumah Peristirahatan PT. Panggon Sarkarya Sukses Mandiri yang terus dilakukan Tergugat Rekonvensi masyarakat menjadi semakin resah karena sumber air Gemulo yang menjadi satu-satunya sumber air yang menghidupi warga 4 (desa) menjadi terancam;
35. Bahwa oleh karena Penggugat Konvensi /Tergugat Rekonvensi tidak mau mentaati perintah hukum baik dari Pemerintah Kota batu, Kementerian Lingkungan Hidup dan Ombudsman, maka diduga kuat akan mengakibatkan kerusakan lingkungan terutama pada sumber air Gemulo yang juga dipastikan berdampak pada pengurangan hak masyarakat atas air bersih dan tercukupi;
36. Bahwa kerugian yang diderita oleh Penggugat Rekonvensi adalah kerugian materiil yang dipergunakan oleh Penggugat Rekonvensi untuk memperjuangkan hak atas lingkungan hidup yang baik, memperjuangkan transparansi perijinan bangunan di Kota Batu, memperjuangkan hak atas informasi dan juga Penggugat Rekonvensi aktif memperjuangkan tata kelola pemerintahan yang baik dan benar (*good governance*), atas semua kegiatan tersebut masyarakat 4 (empat) desa dan termasuk Penggugat Rekonvensi mengeluarkan biaya sendiri tanpa ada dukungan

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dari manapun. Jika dikalkulasikan dihitung dari sejak 2 (dua) dan hampir 3 (tiga) tahun yang lalu perjuangan ini telah menghabiskan uang Penggugat Rekonvensi dan masing-masing masyarakat sebesar Rp. 2.000.000,00 (dua juta rupiah) per orang;

37. Bahwa biaya yang dikeluarkan sebesar Rp. 2.000.000,00 (dua juta rupiah) per orang jika dikalikan setiap warga 4 (empat) desa yang sebanyak kira-kira 9.000 (sembilan ribu) orang adalah total kerugian Rp. 18.000.000.000 (delapan belas milyar rupiah);

38. Bahwa kerugian materiil tersebut belum termasuk kerugian yang immateriil. Kerugian immateriil adalah rasa resah, rasa khawatir atas kelangsungan pembangunan, Penggugat Rekonvensi masyarakat 4 (empat) desa ini tidak ternilai dengan apapun termasuk dinilai dengan uang, akan tetapi jika dihitung dan digantikan dengan materiil kira-kira berjumlah 9.000 (sembilan ribu) warga. Kerugian immaterial tersebut dikalkulasikan sebesar Rp. 300.000.000.000,00 (tiga ratus milyar rupiah);

Berdasarkan uraian-uraian, penjelasan-penjelasan hukum yang didukung dengan dalil-dalil hukum sebagaimana yang telah Tergugat jelaskan diatas, maka beralasan hukum jika Majelis Hakim Pengadilan Negeri Malang yang memeriksa dan mengadili perkara *a quo* untuk memberikan Putusan yang amarnya sebagai berikut :

Dalam Konvensi :

Menolak gugatan Penggugat untuk seluruhnya, atau setidaknya – tidaknya menyatakan gugatan Penggugat tidak dapat diterima (*Niet Onvankelijk Verklaard*)

Dalam Eksepsi:

1. Menerima Eksepsi Tergugat untuk seluruhnya;
2. Menyatakan gugatan Penggugat tidak memenuhi persyaratan formil;
3. Menolak gugatan Penggugat untuk seluruhnya, atau setidaknya-tidaknya menyatakan gugatan Penggugat tidak dapat diterima (*Niet Onvankelijk Verklaard*), atau tidak menerimanya;

Dalam Rekonvensi:

1. Menerima dan mengabulkan Gugatan Rekonvensi untuk seluruhnya;

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2. meminta agar Tergugat Rekonvensi / Penggugat Konvensi dinyatakan melakukan perbuatan melawan hukum sehingga merugikan Penggugat Rekonvensi/ Tergugat Konvensi;
3. Memerintahkan Tergugat Rekonvensi untuk menghentikan kegiatan pembangunan rumah peristirahatan The Rayja Resort;
4. Menghukum Tergugat Rekonvensi untuk membayar kerugian yang ditimbulkan Tergugat Rekonvensi sebesar Rp. 2.000.000,00 (dua juta rupiah) per orang jika dikalikan setiap warga 4 (empat) desa lebih kurang 9.000 (sembilan ribu) orang sehingga total kerugian sebesar Rp. 18.000.000.000,00 (delapan belas milyar rupiah);
5. Menghukum Tergugat Rekonvensi untuk membayar kerugian yang ditimbulkan Tergugat Rekonvensi dalam bentuk Kerugian immateriil adalah rasa resah, rasa khawatir atas kelangsungan pembangunan, Penggugat Rekonvensi masyarakat 4 (empat) desa ini tidak ternilai dengan apapun termasuk dinilai dengan uang, akan tetapi jika dihitung dan digantikan dengan materiil kurang lebih berjumlah 9.000 (sembilan ribu) warga. Sehingga kerugian immaterial tersebut jika dikalkulasikan sebesar Rp. 300.000.000.000,00 (tiga ratus milyar rupiah);
6. Menyatakan putusan dalam perkara ini dapat dilaksanakan terlebih dahulu walaupun ada perlawanan, banding, kasasi dan atau upaya hukum lainnya (*uitvoerbaar bij voorraad*);
7. Menghukum Tergugat Rekonvensi membayar seluruh biaya perkara;

Bilamana Majelis Hakim berpendapat lain, mohon putusan yang seadil-adilnya (*ex aequo et bono*).

Menimbang bahwa dalam Replik dan Duplik, pihak Penggugat tetap bertahan pada dalil gugatannya dan Tergugat Konvensi/Penggugat Rekonvensi tetap bertahan dengan dalil jawaban serta gugatan rekonvensi.

Menimbang, bahwa untuk memperoleh gambaran secara langsung kondisi riil dari obyek sengketa, maka Majelis telah melakukan pemeriksaan setempat di lokasi pembangunan the Rayja Resort Hotel dan sumber mata air Gemulo pada persidangan pemeriksaan setempat tanggal 28 April 2014.

Menimbang, bahwa dipersidangan baik Penggugat maupun Tergugat telah mengajukan kesimpulan masing-masing pada persidangan tanggal 16 Juni 2014.

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Menimbang, bahwa untuk menyingkat putusan, maka segala sesuatu yang termuat dalam berita acara persidangan, dianggap telah termuat dan menjadi bagian yang tak terpisahkan dari putusan ini;

Menimbang, bahwa akhirnya para pihak menyatakan tidak ada hal-hal yang diajukan lagi dan mohon putusan;

TENTANG PERTIMBANGAN HUKUM

DALAM KONVENSI

DALAM EKSEPSI

Menimbang, bahwa bersamaan dengan jawaban, Tergugat Konvensi/ Penggugat Rekonvensi mengajukan eksepsi tentang:

1. Penggugat tidak mempunyai kedudukan sebagai penggugat (*eksepsi disqualifikatoir*) atau cacat formil;
2. Gugatan salah menentukan subyek/ Tergugat;
3. Para pihak tidak lengkap (*plurium litis consortium*);
4. Gugatan Penggugat kabur (*exceptio obscur libel*) dan tidak memenuhi pasal 1365 KUH Perdata;
5. Dasar hukum dalil gugatan tidak jelas dan menyesatkan;
6. Petitum Penggugat tidak dapat diterima;

Menimbang, bahwa eksepsi pertama mengenai kedudukan Penggugat yang cacat formil tersebut telah dibantah oleh Penggugat dan terurai pula pada angka 1 (satu) posita Gugatan, serta bersesuaian pula dengan bukti bertanda P-3 dan P-4 yang menyebutkan bahwa Willy Suhartanto (Penggugat) adalah Direktur Utama PT. Panggon Sarkarya Sukses Mandiri, yang berkedudukan di Jalan Raya Punten No.01 RT.01/RW.02 Desa Punten, Kecamatan Bumiaji, Kota Batu yang bergerak dalam bidang pembangunan Hotel, Villa/Rumah Peristirahatan/Cottage. Demikian pula berkaitan dengan kedudukan Penggugat sebagai direktur perseroan terbatas, dalam eksepsi Tergugat telah mengakui dan menguraikan pertanggungjawaban direktur perseroan yang diatur dalam Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas, oleh karena itu telah jelas bahwa Penggugat sebagai Direktur PT. Panggon Sarkarya Sukses Mandiri berdasarkan pasal 1 butir 5 jo. Pasal 92 UU No. 40 Tahun 2007 tentang Perseroan Terbatas, adalah merupakan organ perseroan yang bertanggung jawab penuh atas pengurusan perseroan untuk kepentingan dan tujuan perseroan, serta mewakili perseroan baik di dalam maupun di luar



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pengadilan. Dengan demikian eksepsi tentang kedudukan Penggugat yang cacat formil tersebut harus ditolak;

Menimbang, bahwa eksepsi kedua tentang kesalahan menentukan subyek hukum Tergugat, apabila membaca dalil Penggugat dalam posita dan petitum gugatan serta dipertegas dalam Replik, telah terurai dengan jelas bahwa Tergugat dijadikan sebagai subyek hukum dalam perkara ini karena didalilkan bahwa Tergugat telah melakukan perbuatan melawan hukum dengan cara melakukan pengaduan kepada institusi pemerintah tanpa dasar hukum, memfitnah dan memprovokasi masyarakat, merusak dan mengambil materialan Penggugat sehingga berujung pada terbitnya Surat Penghentian Pekerjaan dari Pemerintah Kota Batu yang merugikan Penggugat. Walaupun dalam menentukan subyek Tergugat disebutkan bahwa pekerjaan Tergugat adalah swasta/Ketua Forum Masyarakat Peduli Mata Air (FMPMA), namun dalam posita maupun petitum gugatan sama sekali tidak diuraikan relevansi antara pekerjaan Tergugat dengan dalil perbuatan melawan hukum yang disebutkan oleh Penggugat, dengan demikian telah jelas bahwa kedudukan subyek hukum Tergugat adalah sebagai orang perorangan (*natuurlijk persoon*) dan bukan bertindak untuk mewakili badan hukum atau organisasi tertentu, oleh karena itu eksepsi tentang kesalahan menentukan subyek hukum Tergugat harus ditolak;

Menimbang, bahwa eksepsi ketiga adalah tentang Pihak Tidak Lengkap (*plurium litis consortium*) dalam hal ini Majelis mengutip pendapat Retnowulan Sutantio dan Iskandar Oeripkartawinata dalam bukunya "*Hukum Acara Perdata dalam Teori dan Praktek*" (hal. 3): "...dalam hukum acara perdata, penggugat adalah seorang yang "merasa" bahwa haknya dilanggar dan menarik orang yang "dirasa" melanggar haknya itu sebagai tergugat dalam suatu perkara." Demikian pula menurut Moh. Taufik Makarao, dalam bukunya "*Pokok-Pokok Hukum Acara Perdata*" (hal. 8): "Bahwa dalam hukum acara perdata inisiatif ada pada penggugat, maka penggugat mempunyai pengaruh yang besar terhadap jalannya perkara, setelah berperkara diajukan, ia dalam batas-batas tertentu dapat mengubah atau mencabut kembali gugatannya." (lihat *Putusan Mahkamah Agung tertanggal 28 Oktober 1970 No. 546 K/Sip/1970, termuat dalam Yurisprudensi Indonesia, diterbitkan oleh Mahkamah Agung Republik Indonesia, penerbitan 1971, halaman 374*). Dengan demikian dapat disimpulkan bahwa Penggugat berhak untuk menentukan siapa-siapa yang

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dijadikan atau ditarik menjadi pihak dalam perkara. Dan dalam perkara ini Penggugat berhak menentukan siapa yang akan dijadikan Tergugat dalam suatu gugatan perdata yang bertujuan untuk menuntut kerugian akibat dari perbuatan melawan hukum yang dilakukan Tergugat sebagaimana tertuang dalam dalil gugatan, oleh karena itu eksepsi tentang pihak tidak lengkap harus ditolak;

Menimbang, bahwa eksepsi selebihnya yaitu tentang gugatan Penggugat kabur tidak memenuhi pasal 1365 KUH Perdata, eksepsi tentang dasar hukum dalil gugatan tidak jelas dan menyesatkan serta eksepsi tentang kesalahan menentukan petitum adalah sudah menyangkut dalil pokok gugatan, maka eksepsi-eksepsi tersebut harus ditolak karena akan dipertimbangkan dalam pokok perkara;

Menimbang, bahwa eksepsi yang diajukan oleh Tergugat Konvensi/ Penggugat Rekonvensi tersebut tidak memenuhi kualifikasi sebagai eksepsi yang dapat diterima, maka keseluruhan eksepsi Tergugat Konvensi/ Penggugat Rekonvensi tersebut harus ditolak;

DALAM POKOK PERKARA

Menimbang, bahwa maksud dan tujuan gugatan Penggugat Konvensi/ Tergugat Rekonvensi pada pokoknya adalah:

Bahwa Penggugat sebagai Direktur PT. Panggon Sarkarya Sukses Mandiri bermaksud membangun Villa / Rumah Peristirahatan / Cottage yang disebut pula sebagai the Rayja Batu Resort, diatas tanahnya sendiri seluas 9.358 M2 yang kesemuanya telah memiliki Sertifikat Hak Milik, terletak di Jalan Raya Punten No.01 RT.01/RW.02 Desa Punten, Kecamatan Bumiaji, Kota Batu. Untuk keperluan pembangunan tersebut Penggugat telah mengurus semua syarat yang terkait dengan pembangunan Villa/Rumah Peristirahatan /Cottage tersebut dan Pemerintah Kota Batu telah menerbitkan surat-surat ijin pembangunan berupa: Surat Rekomendasi Tata Ruang Villa/Rumah Peristirahatan / Cottage, Surat Risalah Pertimbangan Teknis Pertanahan dalam Penerbitan Ijin Perubahan Penggunaan Tanah, Surat Ijin Peruntukan Penggunaan Tanah (IPPT), Surat Rekomendasi Dokumen UKL-UPL The Rayja Batu Resort; Surat Keputusan Kepala Kantor Pelayanan Perijinan Terpadu, Surat Keputusan Kepala Kantor Pelayanan Perijinan Terpadu

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tentang Ijin Gangguan (HO). Selain itu Penggugat telah mendapat surat persetujuan dari Desa Punten, Desa Bulukerto serta surat pernyataan dari tetangga-tetangga yang bersebelahan langsung dengan pembangunan tersebut;

Bahwa Tergugat baik secara bersama-sama maupun sendiri-sendiri telah bersekutu melakukan perbuatan melawan hukum, dengan cara mengirim surat kepada: Kementerian Pendidikan dan Kebudayaan Republik Indonesia, Kementerian Lingkungan Hidup Republik Indonesia, Ombudsman, Komnas HAM, Anggota Komisi VII DPR RI Totok Daryanto, Dirjen Dikti Kementerian Pendidikan dan Kebudayaan, DPRD Kota Batu dan BEM Universitas Brawijaya, yang isinya tentang keberatan terhadap pembangunan The Raya Batu Resort karena akan berdampak terhadap kerusakan sumber mata air Gemulo dan pencemaran lingkungan; Kemudian pada tanggal 24 April 2012 Tergugat telah melakukan pengancaman dan tekanan kepada warga sekitar pembangunan berupa ancaman yaitu: "Bagi warga yang tidak berpartisipasi dan tidak peduli terhadap kebutuhan air mendapat konsekuensi sesuai kesepakatan warga."; Selain itu Tergugat juga melakukan perbuatan memfitnah dengan menyatakan bahwa: "Pembangunan yang dilakukan Penggugat berada di Sumber Mata Air Gemulo, Serta pembangunan tersebut akan mencemarkan sumber mata air Gemulo." Bahwa Tergugat pada tanggal 31 Januari 2013 telah melakukan aksi demo dengan pengrusakan, pembongkaran pagar-pagar, direksikeet serta mengambil barang-barang (materialan) milik Penggugat;

Bahwa perbuatan Tergugat yang memfitnah dan memprovokasi masyarakat, merusak dan mengambil materialan Penggugat sehingga berujung pada terbitnya Surat Penghentian Pekerjaan dari Pemerintah Kota Batu adalah perbuatan melawan hukum yang merugikan Penggugat.

Menimbang, bahwa oleh karena terdapat dalil Penggugat yang diakui atau setidaknya tidak disangkal Tergugat, maka menurut hukum harus dianggap terbukti adalah mengenai perbuatan Tergugat yang berkirim surat kepada berbagai lembaga negara/pemerintah untuk meminta perlindungan hukum atau mengadakan perbuatan Penggugat yang telah melanggar hak atas lingkungan yang baik bagi Tergugat dan perbuatan Tergugat yang melakukan

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kegiatan unjuk rasa/demonstrasi yang dilakukan bersama warga masyarakat adalah sebagai hal yang diakui oleh Tergugat, sebagaimana tertuang pada jawaban Tergugat Dalam Pokok Perkara angka 3 (tiga) dan 5 (lima) serta termuat pula dalam eksepsi angka 5 (lima);

Menimbang, bahwa yang menjadi pokok persengketaan menurut dalil Penggugat adalah bahwa Tergugat telah melakukan perbuatan melawan hukum dengan cara memfitnah dan memprovokasi masyarakat, merusak serta mengambil materialan milik Penggugat, sehingga mengganggu pembangunan villa / rumah peristirahatan / cottage the Rayja yang dibangun oleh Penggugat dan berujung pada terbitnya Surat Penghentian Pekerjaan dari Pemerintah Kota Batu.

Menimbang, bahwa berdasarkan Pasal 163 HIR Penggugat berkewajiban untuk membuktikan hal tersebut di atas;

Menimbang, bahwa Penggugat untuk menguatkan dalilnya telah mengajukan bukti surat dan bukti rekaman data elektronik yang diberi tanda P-1 sampai dengan P-132, yaitu :

1. Asli dan foto copy Surat Keputusan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia No. AHU-59829.AH.01.01.Tahun 2011 tentang Pengesahan Badan Hukum Perseroan. diberi tanda P-1;
2. Asli dan foto copy Akta Berita Acara No. 107 tanggal 15 November 2011 yang dibuat oleh Notaris Julia Seloadji, S.H. diberi tanda P-2 ;
3. Asli dan foto copy Surat Keputusan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Direktorat Jenderal Administrasi Hukum Umum No.AHU -.AH.01.10-34746. Tanggal 25 September Tahun 2012 tentang Penerimaan Pemberitahuan Perubahan Data Perseroan PT. Panggon Sarkarya Sukses Mandiri, diberi tanda P-3 ;
4. Asli dan foto copy Akta Berita Acara No .29 tanggal 5 September 2012 yang dibuat oleh Notaris Julia Seloadji, S.H. diberi tanda P-4 ;
5. Asli dan foto copy Surat Keterangan Nomor: 267/Not/LX/2012 yang dibuat oleh Notaris Julia Seloadji, S.H, diberi tanda P-5 ;
6. Asli dan foto copy Akta Berita Acara No. 125 tanggal 19 September 2012 yang dibuat oleh Notaris Julia Seloadji, S.H. diberi tanda P-6 ;

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7. Asli dan foto copy Surat Keterangan Nomor: 105/AR/V/2013 Tentang Akta Pembukaan Cabang yang dibuat oleh Notaris Atik Rusmiati Supriyadi,SH, MKn tanggal 7 Mei 2013. diberi tanda P-7 ;
8. Asli dan foto copy Akta Pembukaan Cabang Nomor : 05 tanggal 6 Mei 2013 yang dibuat oleh Notaris Atik Rusmiati Supriyadi, SH. MKn. diberi tanda P-8 ;
9. Asli dan foto copy Akta Kuasa dan Persetujuan tanggal 21 Mei 2013 yang dibuat oleh Notaris Atik Rusmiati Supriyadi, SH. MKn. diberi tanda P-9 ;
10. Foto copy tanpa ada asli Buku Hak Milik atas Tanah No.512 Atas Nama Willy Boenardi Koesnadinata, diberi tanda P-10 ;
11. Foto copy tanpa asli Buku Hak Milik atas Tanah No. 572 Atas Nama Willy Boenardi Koesnadinata, diberi tanda P-11 ;
12. Foto copy tanpa asli Sertifikat Hak Milik atas Tanah No.733 Atas Nama Willy Boenardi Koesnadinata. diberi tanda P-12 ;
13. Foto copy tanpa asli Sertifikat Hak Milik atas Tanah No.00625 Atas Nama Willy Boenardi Koesnadinata. diberi tanda P-13 ;
14. Foto copy tanpa asli Sertifikat Hak Milik atas Tanah No.00965 Atas Nama Willy Boenardi Koesnadinata, diberi tanda P-14 ;
15. Foto copy tanpa asli Sertifikat Hak Milik atas Tanah No.00655 Atas Nama Willy Boenardi Koesnadinata. diberi tanda P-15 ;
16. Foto copy tanpa asli Sertifikat Hak Milik atas Tanah No. 00963 Atas Nama Willy Boenardi Koesnadinata. diberi tanda P-16 ;
17. Asli dan foto copy Surat Badan Perencanaan Pembangunan Daerah No. 050/038/422.202/2012 tentang Rekomendasi Tata Ruang Villa / Rumah Peristirahatan / Cottage. diberi tanda P-17 ;
18. Foto copy tanpa asli Formulir Permohonan Ijin Mendirikan Bangunan kepada Wali Kota Batu c.q. Kepala Kantor Pelayanan Perijinan Terpadu Kota Batu tanggal 6 Januari 2012. diberi tanda P-18 ;
19. Asli dan foto copy Surat Kantor Pelayanan Perijinan Terpadu nomor : 648/02/IPPT/422.208/2012 tentang Ijin Peruntukan Penggunaan Tanah tanggal 11 Januari 2012. diberi tanda P-19 ;
20. Asli dan foto copy Surat Badan Pertanahan Nasional Republik Indonesia Kantor Pertanahan Kota Batu Propinsi Jawa Timur nomor : 01 tanggal

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- 11-01-2012 tentang Risalah Pertimbangan Teknis Pertanahan dalam Penerbitan Izin Perubahan Penggunaan Tanah. diberi tanda P-20 ;
21. Asli dan foto copy Surat Izin Usaha Perdagangan Menengah PT. Panggon Sarkarya Sukses Mandiri oleh Kantor Pelayanan Perijinan Terpadu kota Batu Nomor: 510/048/422.208/SIUP/M-006/2012 tanggal 23 Februari 2012, diberi tanda P-21 ;
22. Asli dan foto copy Tanda Daftar Perusahaan Perseroan Terbatas PT. Panggon Sarkarya Sukses Mandiri nomor 13.38.1.55.00033 tanggal 24 Februari 2012, diberi tanda P-22 ;
23. Foto copy tanpa asli Laporan Hasil Penelitian Sumber Mata Air Gemulo Desa Bulukerto Kec. Bumiaji Kota Batu oleh Pusat Penelitian Lingkungan Hidup Lembaga Penelitian dan Pengabdian kepada Masyarakat Universitas Brawijaya Malang tanggal 25 Juni 2012. diberi tanda P-23 ;
24. Foto copy tanpa asli Formulir Permohonan Ijin Mendirikan Bangunan kepada Wali Kota Batu c.q. Kepala Kantor Pelayanan Perijinan Terpadu Kota Batu tanggal 2 Agustus 2012. diberi tanda P-24 ;
25. Asli dan foto copy Surat Kantor Pelayanan Perijinan Terpadu kota Batu Nomor : 180/550/IMB/422.208 /2012 tanggal 13 Agustus 2012 tentang Ijin Mendirikan Bangunan atas nama PT. Panggon Sarkarya Sukses Mandiri. diberi tanda P-25 ;
26. Asli dan foto copy Surat Keputusan Kepala Kantor Pelayanan Perijinan Terpadu Nomor : 530.08/118/HO/422.208/2012 tentang Ijin Gangguan (HO) tanggal 19 Nopember 2012. diberi tanda P-26 ;
27. Foto copy tanpa asli Notulen Pertemuan Koordinasi Antara Pengembang dengan Warga Desa Bulukerto dan Desa Punten tanggal 7 Januari 2012. diberi tanda P-27.
28. Foto copy tanpa asli Surat Kementerian Lingkungan Hidup Republik Indonesia Nomor : B-13819/Dep.I/LH/PDAL/12/2013 perihal Klarifikasi Rencana Pembangunan The Rayja Batu Resort tanggal 16 Desember 2013. diberi tanda P-28.
29. Asli dan foto copy Surat Sekretariat Daerah Nomor : 660/784/422.206/2012 tanggal 30 Maret 2012 perihal Rekomendasi Dokumen UKL - UPL The Rayja Batu Resort. diberi tanda P-29.

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30. Dokumen UKL - UPL Pembangunan The Rayja Batu Resort PT. Panggon Sarkarya Sukses Mandiri, diberi tanda P-30.
31. Asli dan foto copy Kumpulan Kuisisioner dan Dukungan Untuk The Rayja Batu Resort. diberi tanda P-31.
32. Asli dan foto copy Surat Rekomendasi Persetujuan Penyambungan Saluran Air Bersih dari PAM Desa Puntan Untuk The Rayja Batu Resort Nomor : 600/610/422.330.001/2012 tanggal 17 Oktober 2012. diberi tanda P-32 ;
33. Asli dan foto copy Surat Jawaban Atas Permohonan sebagai Pelanggan dari Badan Usaha Milik Desa Puntan Nomor : 002/PAM-BUMDES/XII/2012 tanggal 14 Desember 2012. diberi tanda P-33 ;
34. Asli dan foto copy Surat Undangan Walikota Batu Nomor : 005/1270/422.031/2013 tanggal 18 Juni 2013 tentang Koordinasi Penyelesaian Permasalahan Rencana Pembangunan Hotel The Rayja Resort di Desa Bulukerto Kecamatan Bumiaji. diberi tanda P-34 ;
35. Foto copy tanpa asli Surat Forum Masyarakat Peduli Mata Air kepada Rektor Universitas Brawijaya Malang Nomor : 025.FMPMA/I/2013 tentang Pernyataan Sikap Atas Hasil Penelitian yang Dijadikan Legitimasi Proyek tanggal 5 Februari 2013. diberi tanda P-35 ;
36. Foto copy tanpa asli Surat HIPPAM Desa Bumiaji kepada DPRD Kota Batu Nomor : 43/HIPPAM/A/III/2012 tentang Permohonan Peninjauan Kembali tanggal 20 Maret 2012. diberi tanda P-36 ;
37. Asli dan foto copy Surat ISMAIL MODAL dan PARTNERS kepada Kepala Kepolisian Resort Kota Batu Nomor: 049/IM.Adv/PPH/VI/2013 perihal Permohonan Perlindungan Hukum tanggal 18 Juni 2013. diberi tanda P-37 ;
38. Asli dan foto copy Surat ISMAIL MODAL dan PARTNERS kepada Walikota Batu c.q. Sekretaris Daerah Kota Batu Nomor: 050/IM.Adv/VT/2013 perihal Pencabutan Surat No. 730/1287/422.400/2013 mengenai Penghentian Aktifitas Kegiatan Pembangunan Proyek tanggal 25 Juni 2013. diberi tanda P-38.
39. Asli dan foto copy Surat ISMAIL MODAL dan PARTNERS kepada Walikota Batu c.q. Sekretaris Daerah Kota Batu Nomor: 060/IM.Adv/VI/2013 perihal Pencabutan Surat No.730/1287/422.400/2013 mengenai

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- Penghentian Aktifitas Kegiatan Pembangunan Proyek tanggal 25 Juni 2013. diberi tanda P-39.
40. Asli dan foto copy Surat Perjanjian Dengan Warga Perihal Perekrutan Tenaga Kerja tanggal 9 Juli 2013. diberi tanda P-40.
41. Asli Surat Somasi dan Permohonan Pembatalan Surat Pemberhentian Aktivitas Pembangunan Proyek kepada Kepala Sekretaris Daerah Kota Batu Nomor : 241/Edan Law/VII/2013 tanggal 16 Juli 2013. diberi tanda P-41.
42. Foto copy tanpa asli Surat Nomor : AA0906/DU/13 kepada Bapak Walikota Batu perihal Permohonan Ketegasan Walikota Batu tanggal 20 Juni 2013. diberi tanda P-42.
43. Foto copy tanpa asli Surat Penjelasan Hasil Penelitian dari Universitas Brawijaya kepada Ketua Forum Masyarakat Penyelamatan Mata Air Nomor : 0742/JN10/LL/2013 tanggal 15 Februari 2013. diberi tanda P-43.
44. Asli dan foto copy Surat Tanda Terima Laporan Polisi Nomor STTLP/16.a/II/2013/JATIM/RES BATU tanggal 2 Februari 2013 perihal Perbuatan Tidak Menyenangkan dan atau Pengrusakan. diberi tanda P-44.
45. Foto copy tanpa asli Surat kepada Ketua KOMNAS HAM Republik Indonesia Nomor : AA-0307KU/12 tentang Pengaduan Atas Hambatan Pembangunan dengan Pengerahan Massa Oleh Forum Masyarakat Peduli Mata Air tanggal 23 Juli 2012. diberi tanda P-45.
46. Foto copy tanpa asli Berita Koran Memo tanggal 27 April 2012 dengan Kop Berita Pro The Rayja Datangi Kecamatan Bumiaji. diberi tanda P-46.
47. Foto copy tanpa asli Berita Koran Surya tanggal 27 April 2012 dengan Kop Berita Tim Gabungan Cek Ulang Sumber Air. diberi tanda P- 47 ;
48. Foto copy tanpa asli Berita Koran Radar Malang tanggal 28 April 2012 dengan Kop Berita Pemkot Ukur Ulang The Rayja. diberi tanda P- 48 ;
49. Foto copy tanpa asli Berita Koran Memo tanggal 30 April 2012 dengan Kop Berita Walikota Dialog dengan Warga. diberi tanda P- 49.
50. Foto copy tanpa asli Berita Koran Malang Post tanggal 30 April 2012 dengan Kop Berita Warga Bumiaji Luluh. diberi tanda P- 50.
51. Foto copy tanpa asli Berita Koran Seputar Indonesia tanggal 30 April 2012 dengan Kop Berita Walikota Restui Proyek The Rayja. diberi tanda P- 51.

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52. Foto copy tanpa asli Berita Koran Radar Malang tanggal 30 April 2012 dengan Kop Berita Pemkot Amankan Izin The Rayja. diberi tanda P-52.
53. Asli foto Satelit Area Sumber Banyuning Punten dan Lingkaran Daerah Radius 200meter. diberi tanda P-53.
54. Asli foto Satelit Area Sumber Gemulo, Lokasi Proyek The Rayja dan Lingkaran Daerah Radius 200 meter. diberi tanda P-54.
55. Asli foto Area Sumber Gemulo Saat Ini. diberi tanda P-55. ;
56. Asli foto Area Sumber Gemulo Saat Ini. diberi tanda P-56 ;
57. Asli foto H. Rudi mengikuti Sosialisasi Pembangunan Rumah Peristirahatan The Rayja tanggal 7 Januari 2012. diberi tanda P-57.
58. Asli foto H. Rudi mengikuti Sosialisasi Pembangunan Rumah Peristirahatan The Rayja tanggal 7 Januari 2012. diberi tanda P-58.
59. Asli foto H. Rudi mengikuti Sosialisasi Pembangunan Rumah Peristirahatan The Rayja tanggal 7 Januari 2012. diberi tanda P-59 ;
60. Foto copy tanpa asli Berita Koran Radar Malang tanggal 2 Februari 2012 dengan Kop Berita Pemkot Tetap Ijinkan Pendirian The Rayja. diberi tanda P-60.
61. Asli foto oknum membagi - bagikan uang pada saat demo di kantor Pemkot Batu tanggal 17 Juni 2013. diberi tanda P-61.
62. Asli foto oknum membagi - bagikan uang pada saat demo di Kantor Pemkot Batu dan Perusakan di Area Proyek The Rayja tanggal 17 Juni 2013. diberi tanda P-62.
63. Asli foto H. Rudi di area proyek dan foto perusakan oleh Pendemo tanggal 17 Juni 2013. diberi tanda P-63.
64. Asli foto H. Rudi yang dianggap melakukan perbuatan tidak menyenangkan dan pengrusakan tanggal 10 September 2013 di Area Proyek The Rayja. diberi tanda P-64.
65. Asli foto H. Rudi ikut terlibat dalam melakukan perbuatan tidak menyenangkan dan pengrusakan tanggal 10 September 2013 di Area Proyek The Rayja. diberi tanda P-65.
66. Asli foto H. Rudi mendatangi acara sosialisasi dengar pendapat dan warga membubarkan diri sebelum ada keputusan di Pemkot Batu, diberi tanda P-66.

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67. Asli foto Acara Sosialisasi Dengar Pendapat dan Warga Membubarkan Diri Sebelum Ada Keputusan di Pemkot Batu. diberi tanda P-67.
68. Foto copy tanpa asli Denah Tanah Hak Milik Proyek The Rayja dan Persetujuan Tetangga. diberi tanda P-68 ;
69. Compact disk dokumentasi sejumlah 22 keping, diberi tanda P-69 ;
70. Foto copy tanpa asli berita acara mengenai verifikasi pengaduan oleh Sugeng Priyanto yang merupakan Asisten Deputi Pengaduan dan Penataan Hukum Administrasi Lingkungan dari Kementerian Lingkungan Hidup, dengan pangkat Pembina Utama Muda / IVc tanggal 4 Juli 2013 pukul 16.00 WIB, diberi tanda P-70;
71. Foto copy tanpa asli Surat dari Pusat Penelitian Lingkungan Hidup Universitas Brawijaya nomor : /UN 10.21.PPLH/PG/2013 tanggal 14 Juli 2013 mengenai Permohonan Jadwal Pertemuan dengan Deputi V Kementerian Lingkungan Hidup Republik Indonesia di Jakarta diberi tanda P-71 ;
72. Foto copy tanpa asli Surat dari Kementerian Lingkungan Hidup Republik Indonesia tanggal 29 Juli 2013 nomor : B-8616/Dep.V/LH/HK/07/2013 mengenai pembahasan tindak lanjut penanganan pengaduan sumber mata air Gemulo. diberi tanda P-72 ;
73. Foto copy tanpa asli Surat dari Kementerian Lingkungan Hidup Republik Indonesia mengenai rekomendasi tindak lanjut pembangunan hotel The Rayja nomor B9430/Dep.V/LH/08/2013 tanggal 28 Agustus 2013 diberi tanda P-73;
74. Foto copy tanpa asli Surat dari OMBUDSMAN Republik Indonesia tanggal 17 Oktober 2013 nomor: 0679/SRT/0121.2013/PBP.24/ Tim.4/ X/2013 mengenai Penyampaian Rekomendasi Ombudsman RI berkenaan dengan penyalahgunaan wewenang dalam pemberian IMB The Rayja Cottage yang berlokasi di kawasan Sumber Mata Air Gemulo diberi tanda P-74 ;
75. Asli Foto H. Rudi ikut terlibat dalam acara sosialisasi warga desa Puntan dan Gemulo, diberi tanda P-75 ;
76. Asli Foto H. Rudi yang dianggap melakukan tindakan tidak menyenangkan dengan melemparkan batu di area proyek The Rayja tanggal 31 Januari 2013 diberi tanda P-76 ;

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77. Asli Foto H. Rudi yang dianggap melakukan tindakan tidak menyenangkan dengan melemparkan batu untuk memblokir pintu masuk di area proyek The Rayja tanggal 31 Januari 2013, diberi tanda P-77 ;
78. Asli foto pendemo yang dianggap melakukan tindakan tidak menyenangkan dengan mengangkut semen keluar di lokasi proyek The Rayja tanggal 31 Januari 2013 diberi tanda P-78 ;
79. Asli foto perusakan yang dilakukan pendemo merusak pos jaga di lokasi proyek The Rayja tanggal 17 Juni 2013, diberi tanda P-79 ;
80. Asli foto H. Rudi disamping puing - puing bangunan yang dirusak pendemo di lokasi proyek The Rayja tanggal 17 Juni 2013, diberi tanda P-80 ;
81. Asli foto puing - puing bangunan yang dirusak pendemo di lokasi proyek The Rayja tanggal 17 Juni 2013 Foto puing - puing bangunan yang dirusak pendemo di lokasi proyek The Rayja tanggal 17 Juni 2013, diberi tanda P-81 ;
82. Asli foto lokasi sumber air Gemulo dan bangunan yang berdiri di sekitaran sumber air Gemulo saat ini, diberi tanda P-82 ;
83. Asli foto lokasi sumber air Gemulo dan bangunan yang berdiri di sekitaran sumber air Gemulo saat ini, diberi tanda P-83 ;
84. Asli foto lokasi sumber air Gemulo dan bangunan yang berdiri di sekitaran sumber air Gemulo saat ini, diberi tanda P-84 ;
85. Asli foto lokasi titik sumber mata air Gemulo, diberi tanda P-85 ;
86. Asli foto Lokasi titik sumber mata air Gemulo, diberi tanda P-86 ;
87. Asli dan Fotocopy Berita dari koran Radar Malang tanggal 5 Februari 2014 dengan kop berita Warga Pro The Rayja Angkat Bicara, diberi tanda P-87;
88. Asli foto H. Rudi yang dianggap melakukan tindakan tidak menyenangkan dengan melemparkan batu untuk memblokir pintu masuk di area proyek The Rayja tanggal 31 Januari 2013, diberi tanda P-88;
89. Compact disk dokumentasi sebanyak 3 (tiga) Keping diberi tanda P-89;
90. Asli foto keterlibatan H. Rudi pada demo tanggal 31 Januari 2013 di lokasi The Rayja, diberi tanda P-90 ;

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91. Asli foto keterlibatan H. Rudi pada demo tanggal 31 Januari 2013 di lokasi The Rayja, diberi tanda P-91 ;
92. Asli foto dugaan H. Rudi melakukan tindakan tidak menyenangkan dengan mengangkat batu untuk memblokir jalan masuk ke lokasi The Rayja tanggal 31 Januari 2013, diberi tanda P-92 ;
93. Foto bukti pendemo melakukan tindakan tidak menyenangkan dengan mengangkut semen keluar dari lokasi The Rayja, diberi tanda P-93 ;
94. Asli foto H. Rudi yang dianggap melakukan tindakan tidak menyenangkan dengan menekan Bapak Walikota Batu pada saat Demo, 17 Juni 2013 sehingga keluar surat pemberhentian proyek tanggal 21 Juni 2013, diberi tanda P-94 ;
95. Asli foto kondisi pos jaga proyek sebelum dan sesudah dirusak oleh pendemo, saat demo 17 Juni 2013, diberi tanda P-95 ;
96. Asli foto bukti pengerusakan yang dilakukan pendemo pada tanggal 17 Juni 2013, diberi tanda P-96 ;
97. Asli foto bukti pengerusakan yang dilakukan pendemo pada tanggal 17 Juni 2013, diberi tanda P-97 ;
98. Asli foto bukti pengerusakan yang dilakukan pendemo pada tanggal 17 Juni 2013, diberi tanda P-98 ;
99. Asli foto bukti pengerusakan yang dilakukan pendemo pada tanggal 17 Juni 2013, diberi tanda P-99 ;
100. Asli dan fotocopy Surat dari Bapedda No. 050/318/422.202/2014 tanggal 11 Februari 2014 tentang kawasan lindung dan jarak mata air Gemulo ke lokasi The Rayja, diberi tanda P-100 ;
101. Asli foto satelit lokasi pembangunan the Rayja, diberi tanda P-101 ;
102. Asli foto scan surat rencana pembangunan the Rayja batu resort sesuai perda Kota Batu No. 07/Tahun 2012 tentang RTRW, diberi tanda P-102 ;
103. Asli foto proses sidang UKL-UPL Dibalai kota Batu, diberi tanda P-103 ;
104. Asli foto pondasi dasar dari proyek the Rayja Batu resort, diberi tanda P-104 ;

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105. Asli foto lokasi mata air sumber Gemulo saat ini dan kualitas air yang ada, diberi tanda P-105
106. Fotocopy Peraturan Pemerintah RI No. 26 Tahun 2008 Tentang Rencana Tata Ruang Wilayah Nasional, diberi tanda P-106 ;
107. Fotocopy Peraturan Pemerintah RI No. 43 Tahun 2008 Tentang Air Tanah, diberi tanda P-107;
108. Fotocopy Peraturan Daerah Kota Batu No. 07 Tahun 2011 Tentang Rencana Tata Ruang Wilayah Kota Batu, diberi tanda P-108 ;
109. Fotocopy Peraturan Gubernur Jawa Timur No. 30 Tahun 2011 Tentang Jenis Usaha dan/atau Kegiatan yang wajib dilengkapi Upaya Pengelolaan Lingkungan Hidup (UKL) dan Upaya Pemantauan Lingkungan Hidup (UPL), diberi tanda P-109 ;
110. Fotocopy Peraturan Menteri Negara Lingkungan Hidup Republik Indonesia No. 05 Tahun 2012 Tentang Jenis Rencana Usaha dan/atau Kegiatan yang wajib memiliki Analisis Mengenai Dampak Lingkungan Hidup, diberi tanda P-110 ;
111. Fotocopy dari fotocopy penjabaran kawasan perlindungan setempat oleh sistem informasi tata ruang Pemerintah Provinsi Jawa Timur, Diberi tanda P-111;
112. Fotocopy dari Fotocopy Surat Penjelasan hasil penelitian konservasi mata air Gemulo kepada forum masyarakat penyelamatan mata air Nomor : 0742/UN 10/LL/2013 tanggal 15 Februari 2013, diberi tanda P-112 ;
113. Asli foto sidang UKL-UPL yang dilaksanakan di Balai Kota Batu tanggal 23 Februari 2013, diberi tanda P-113 ;
114. Asli foto sidang UKL-UPL yang dilaksanakan di Balai Kota Batu tanggal 23 Februari 2013, diberi tanda P-114 ;
115. Asli foto sidang UKL-UPL yang dilaksanakan di Balai Kota Batu tanggal 23 Februari 2013, diberi tanda P-115
116. Fotocopy Peraturan Menteri lingkungan hidup Nomor 09 Tahun 2010, diberi tanda P-116 ;
117. Asli foto pondasi dasar proyek The Rayja, diberi tanda P-117 ;
118. Asli foto pondasi dasar proyek The Rayja, diberi tanda P-118 ;
119. Asli foto pondasi dasar proyek The Rayja, diberi tanda P-119 ;

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120. Asli foto Proses pengukuran pondasi the Rayja oleh Dinas Pekerjaan Umum tanggal 15 April 2014, diberi tanda P-120 ;
121. Asli foto Proses pengukuran pondasi the Rayja oleh Dinas Pekerjaan Umum tanggal 15 April 2014, diberi tanda P-121 ;
122. Asli foto Proses pengukuran pondasi the Rayja oleh Dinas Pekerjaan Umum tanggal 15 April 2014, diberi tanda P-122 ;
123. Fotocopy dari fotocopy surat tanda penerimaan laporan, diberi tanda P-123 ;
124. Asli dan fotocopy Hasil Pengamatan Lapangan dari Dinas PU Cipta Karya dan Tataruang, diberi tanda P-124 ;
125. Asli dan fotocopy Berita Acara Hasil Pengamatan Lapangan dari Dinas PU Cipta Karya dan Tataruang, diberi tanda P-125 ;
126. Fotocopy dari fotocopy Surat dari Forum Masyarakat Peduli Mata Air kepada DPRD Kota Batu Nomor 050/FMPMA/IX/2013 perihal hearing, diberi tanda P-126 ;
127. Fotocopy dari fotocopy Surat dari Bank BTN Nomor 25/S/KWL.II/ CMLR/III/2014 tentang Jawaban atas Permohonan Restrukturisasi Kredit PT. Panggon Sarkarya Sukses Mandiri, diberi tanda P-127 ;
128. Asli dan fotocopy Surat dari Bank BTN Nomor 1247/MLG.I/ HCLU/ SP2K/VII/2013 perihal Penjelasan Kelanjutan Proyek Pembangunan Hotel The Rayja Batu Resort, diberi tanda P-128 ;
129. Asli dan fotocopy Salinan Rekening Koran An. PT Panggon Sarkarya Sukses Mandiri, diberi tanda P-129 ;
130. Asli foto berisi gambar blokade dengan batu, diberi tanda P-130 ;
131. Asli foto berisi gambar pengangkatan batu secara gotong royong, diberi tanda P-131 ;
132. Rekaman video sebanyak 3 keping compact disk, diberi tanda P-132 ;

Menimbang, bahwa selain bukti surat dan bukti rekaman data elektronik, Penggugat juga mengajukan saksi-saksi yaitu: 1. Sumardi, 2. Ponawi, 3. Pramono, 4. Juma'in, 5. Darmaji, 6. Sular, 7. S. Wicaksono, 8. Joko Santoso, 9. Hendro Wahyudi, 10. Hernanto Sasmiko, 11. Eko Hadi Irawan S, dan dua orang ahli yaitu: 1. Dr. Rer. Nat. Arief Rachmansyah, 2. Dr. Abdul Rachmad Budiono, S.H., M.H.

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Menimbang, bahwa berdasarkan hal tersebut di atas maka terlebih dahulu Majelis Hakim akan mempertimbangkan mengenai perizinan dan legalitas pembangunan villa / rumah peristirahatan / cottage the Rayja yang dilakukan Penggugat tersebut, apakah telah memenuhi persyaratan perizinan.

Menimbang bahwa berdasarkan bukti surat bertanda P-10 sampai dengan P-16 yang berupa fotocopy dari copy sertifikat hak milik tanah terletak di Desa Bulukerto, Kecamatan Bumiaji, Kota Batu, telah bersesuaian dengan bukti bertanda P-17 berupa Surat Rekomendasi dari Badan Perencanaan Pembangunan Daerah (Bappeda) Kota Batu, tentang Rekomendasi Tata Ruang Villa / Rumah Peristirahatan / Cottage, dan bukti bertanda P-25 berupa Surat Keputusan Kepala Kantor Pelayanan Perijinan Terpadu Pemerintah Kota Batu, tentang Ijin mendirikan Bangunan atas nama PT Panggon Sarkarya Sukses Mandiri, yang telah menyebutkan status kepemilikan tanah pada bukti P-10 sampai dengan P-16 adalah milik PT Panggon Sarkarya Sukses Mandiri yang diwakili oleh Penggugat sebagai direktornya, dengan demikian telah terdapat alat bukti yang cukup untuk membuktikan bahwa Penggugat memiliki tanah di Jalan Raya Punten No.01 RT.01/RW.02 Desa Bulukerto, Kecamatan Bumiaji, Kota Batu dan oleh karena itu Penggugat berhak untuk membangun di tanah miliknya tersebut, apabila memiliki dokumen perizinan sesuai dengan peraturan perundang-undangan yang berlaku.

Menimbang bahwa pengertian izin berdasarkan Peraturan Pemerintah Nomor 36 Tahun 2005 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 28 Tahun 2002 Tentang Bangunan Gedung: "Izin mendirikan bangunan gedung adalah perizinan yang diberikan oleh Pemerintah Kabupaten/Kota kepada pemilik bangunan gedung untuk membangun baru, mengubah, memperluas, mengurangi, dan/atau merawat bangunan gedung sesuai dengan persyaratan administratif dan persyaratan teknis yang berlaku." Dengan demikian kewenangan memberi izin berada pada Pemerintah Kabupaten atau Kota, yang dalam perkara ini adalah Pemerintah Kota Batu. Oleh karena itu Pemerintah Kota Batu memang benar memiliki kewenangan memberikan izin kepada Penggugat untuk membangun bangunan baru di atas tanah milik Penggugat, sebagaimana bukti P-25 berupa surat Keputusan dari Kantor Pelayanan Perijinan Terpadu Kota Batu Nomor 180/550/IMB/422.208/2012 tanggal 13 Agustus 2012 tentang Ijin Mendirikan Bangunan atas nama PT. Panggon

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Sarkarya Sukses Mandiri, yang bersesuaian pula dengan persyaratan dokumen lain yaitu bukti bertanda P-19 berupa Surat Ijin Peruntukan Penggunaan Tanah, bukti bertanda P-20 berupa Risalah Pertimbangan Teknis Pertanahan dalam Penerbitan Izin Perubahan Penggunaan Tanah, dan bukti bertanda P-26 Surat Keputusan tentang Ijin Gangguan (HO), serta bersesuaian pula dengan keterangan saksi-saksi yaitu: Juma'in, Darmaji, S. Wicaksono, Joko Santoso, Hendro Wahyudi dan Agus Mulyono yang pada pokoknya memberikan keterangan yang sama bahwa Penggugat telah memiliki ijin untuk mendirikan bangunan the Rayja Resort. Maka berdasarkan bukti-bukti surat dan saksi-saksi tersebut Penggugat telah memiliki izin untuk mendirikan bangunan The Rayja Resort dari Pemerintah Kota Batu pada tanggal 13 Agustus 2012.

Menimbang bahwa sekalipun Pemerintah Kota Batu memiliki wewenang memberi izin mendirikan bangunan, namun karena terdapat aspek lingkungan hidup berupa sumber mata air Gemulo, yang diakui oleh kedua belah pihak berjarak 150 meter dari lokasi didirikannya bangunan villa / rumah peristirahatan / cottage the Rayja Resort, dan sesuai hasil pemeriksaan setempat oleh Majelis Hakim pada tanggal 28 April 2014 yang bersesuaian dengan bukti bertanda P-54 berupa foto Satelit Area Sumber Gemulo dan Lokasi Proyek The Rayja, serta keterangan saksi S. Wicaksono dan saksi Joko Santoso yang menerangkan bahwa jarak sumber air Gemulo dengan lokasi villa the Rayja adalah 150 meter, selain itu juga berdasarkan keterangan Ahli Dr. Rer. Nat. Arief Rachmansyah yang menyebutkan bahwa: "Hasil penelitian menunjukkan adanya akuifer di kedalaman 5 - 10 meter bawah permukaan tanah, dikhawatirkan apabila ada pembangunan di Utara atau Timur Laut akan mengganggu air Gemulo." sedangkan posisi lokasi villa / rumah peristirahatan / cottage the Rayja Resort berada di Utara sumber mata air Gemulo yang berarti berada di atas alur air bawah tanah (*akuifer*) yang menuju sumber mata air Gemulo, maka izin tersebut juga harus mempertimbangkan ketentuan peraturan perundang-undangan yang mengatur tentang izin usaha dan/atau kegiatan di bidang lingkungan hidup, khususnya tentang sumber daya air.

Menimbang bahwa PP No 26 Tahun 2008 Tentang Rencana Tata Ruang Wilayah Nasional, terdapat kriteria penetapan kawasan sekitar mata air yang meliputi: "Daratan di sekeliling mata air yang mempunyai manfaat untuk mempertahankan fungsi mata air dan wilayah dengan jarak paling sedikit 200

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(dua ratus) meter dari mata air.” Begitu pula dalam PP No. 38 tahun 2011 tentang Sungai, pada pasal 15 disebutkan bahwa garis sempadan mata air adalah mengelilingi mata air paling sedikit berjarak 200 m (dua ratus meter) dari pusat mata air, dan Peraturan Daerah Kota Batu Nomor 7 Tahun 2011 tentang Rencana Tata Ruang Wilayah Kota Batu tahun 2010-2030 pasal 34 huruf C Jo. Pasal 37 ayat (1) Jo. Pasal 38 huruf b Jo. Pasal 70 ayat (5) huruf C menyatakan bahwa kawasan sumber mata air Gemulo tersebut termasuk kawasan perlindungan setempat dan harus dilindungi karena berada dalam kisaran radius sempadan mata air yang berjarak 200 (dua ratus) meter, sedangkan pembangunan villa / rumah peristirahatan / cottage the Rayja Resort berjarak 150 (seratus lima puluh) meter dari mata air Gemulo, oleh karena itu pembangunan villa / rumah peristirahatan / cottage the Rayja Resort harus memenuhi standar perizinan lingkungan hidup.

Menimbang bahwa untuk membangun suatu bangunan villa / rumah peristirahatan / cottage the Rayja Resort, sekalipun berada di area tanah milik Penggugat sendiri namun karena jenis bangunan berdasarkan bukti bertanda P-29 dan P-30 adalah bangunan gedung bertingkat 4 (empat) berupa hotel dan fasilitas rekreasi diatas tanah seluas 9.358 m² (sembilan ribu tiga ratus lima puluh delapan meter persegi) adalah merupakan kategori hotel berbintang, dan keterangan ahli Dr. Abdul Rachmad Budiono, S.H.M.H., menyebutkan bahwa bangunan villa / rumah peristirahatan / cottage the Rayja Resort yang akan dibangun Penggugat tersebut termasuk yang wajib untuk dilengkapi dokumen Upaya Pengelolaan Lingkungan Hidup (UKL) dan Upaya Pemantauan Lingkungan Hidup (UPL). Demikian pula dalam Peraturan Gubernur Jawa Timur No. 30 Tahun 2011 Tentang Jenis Usaha dan/atau Kegiatan yang wajib dilengkapi UKL dan UPL, disebutkan bahwa hotel berbintang wajib dilengkapi UKL dan UPL.

Menimbang bahwa berdasarkan rezim perizinan lingkungan hidup yaitu Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup, pasal 36 menyebutkan bahwa: Setiap usaha dan/atau kegiatan yang wajib memiliki amdal atau UKL-UPL wajib memiliki izin lingkungan. serta berdasarkan pasal 34 Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup jo. Pasal 14 Peraturan Pemerintah Nomor 27 Tahun 2012 tentang Izin Lingkungan menyebutkan bahwa: “UKL-UPL sebagaimana dimaksud dalam pasal 3 ayat (2)

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disusun oleh Pemrakarsa pada tahap perencanaan suatu Usaha dan/atau Kegiatan.” maka telah cukup jelas bahwa UKL dan UPL harus dibuat pada tahap perencanaan, sedangkan berdasarkan bukti P-30, diperoleh fakta bahwa UKL dan UPL Pembangunan The Rayja Batu Resort dibuat pada tanggal 21 Februari tahun 2012, dimana pada waktu UKL dan UPL dibuat faktanya Penggugat sudah memiliki Ijin Mendirikan Bangunan nomor 180/75/IMB/422.208/2012 tanggal 30 Januari 2012 yang kemudian direvisi menjadi Ijin mendirikan Bangunan nomor 180/550/IMB/422.208 /2012 tertanggal 13 Agustus 2012 (bukti P-30).

Menimbang bahwa Undang-undang Perlindungan dan Pengelolaan Lingkungan Hidup menempatkan perizinan lingkungan sebagai instrumen pengendalian dalam perlindungan dan pengelolaan lingkungan hidup yang sangat menentukan berhasil tidaknya pelestarian fungsi lingkungan hidup untuk kelangsungan hidup manusia dan ekosistem, oleh karena itu sesuai ketentuan pasal 37 ayat (2) disebutkan: Izin lingkungan sebagaimana dimaksud dalam Pasal 36 ayat (4) dapat dibatalkan apabila:

- a. persyaratan yang diajukan dalam permohonan izin mengandung cacat hukum, kekeliruan, penyalahgunaan, serta ketidakbenaran dan/atau pemalsuan data, dokumen, dan/atau informasi;
- b. penerbitannya tanpa memenuhi syarat sebagaimana tercantum dalam keputusan komisi tentang kelayakan lingkungan hidup atau rekomendasi UKL-UPL; atau
- c. kewajiban yang ditetapkan dalam dokumen amdal atau UKL-UPL tidak dilaksanakan oleh penanggung jawab usaha dan/atau kegiatan.

Sedangkan fakta hukum telah membuktikan bahwa yang dimiliki oleh Penggugat adalah ijin mendirikan bangunan (bukti bertanda P-25) yang didalamnya sama sekali tidak terdapat pertimbangan bahwa dikeluarkannya ijin mendirikan bangunan adalah didasarkan pada UKL – UPL serta izin lingkungan yang seharusnya dikeluarkan oleh Pemerintah Kota Batu atas permohonan Penggugat, maka bukti bertanda P-25 berupa surat Keputusan dari Kantor Pelayanan Perijinan Terpadu Kota Batu Nomor 180/550/IMB/422.208/2012 tanggal 13 Agustus 2012 tentang Ijin Mendirikan Bangunan atas nama PT. Panggon Sarkarya Sukses Mandiri adalah tidak memiliki kekuatan hukum

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sebagai dasar untuk izin mendirikan bangunan villa / rumah peristirahatan / cottage the Rayja Resort.

Menimbang bahwa tindakan Pemerintah Kota Batu yang menghentikan kegiatan pembangunan villa / rumah peristirahatan / cottage the Rayja Resort berupa Surat Sekretaris Daerah Kota Batu Nomor 730/1287/422.400/2013 mengenai Penghentian Aktifitas Kegiatan Pembangunan Proyek tertanggal 25 Juni 2013, sesuai bukti bertanda P-38, P-39 dan P-41 dan bersesuaian pula dengan bukti bertanda T-25, menurut penilaian Majelis adalah sesuai kewenangan yang dimiliki oleh Pemerintah Kota Batu berdasarkan pasal 71 Peraturan Pemerintah nomor 27 Tahun 2012 tentang Izin Lingkungan, serta merupakan perwujudan dari penerapan asas tanggung jawab negara untuk menjamin hak warga negara atas lingkungan hidup yang baik dan sehat sebagaimana diatur dalam pasal 2 huruf a UU No. 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

Menimbang, bahwa berdasarkan pertimbangan tersebut di atas maka perizinan dan legalitas pembangunan villa / rumah peristirahatan / cottage the Rayja yang dilakukan Penggugat tersebut tidak memenuhi persyaratan perizinan, oleh karena itu Surat Keputusan Kepala Kantor Pelayanan Perijinan Terpadu Nomor: 180/550/IMB/422.208/2012 tanggal 13 Agustus 2012 tentang Ijin Mendirikan Bangunan Atas Nama PT. Panggon Sarkarya Sukses Mandiri tidak mempunyai kekuatan hukum.

Menimbang, bahwa selanjutnya Majelis akan mempertimbangkan apakah Tergugat telah melakukan perbuatan melawan hukum dengan cara memfitnah dan memprovokasi masyarakat, merusak serta mengambil materialan milik Penggugat, yaitu dari alat-alat bukti yang diajukan oleh Penggugat Konvensi/Tergugat Rekonvensi berupa alat bukti bertanda P-57, P-58, P-59, P-64, P-65, P-66, P-75, P-76, P-77, P-80, P-88, P-90, P-91, P-92 dan P-94 tentang foto-foto aktifitas Tergugat dan P-69, P-89, P-132 berupa compact disk berisi video maupun keterangan Saksi Sumardi, yang pada pokoknya menerangkan bahwa pada tahun 2012 ada rapat yang membahas mengenai sumber mata air Gemulo dimana ada pembangunan villa the Rayja yang berdekatan dengan sumber mata air Gemulo dan perwakilan HIPAM diminta untuk menyumbang uang kedalam kotak dan mengirim orang untuk

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menggelar demo menentang pembangunan villa the Rayja. Pada saat itu Tergugat hadir tetapi tidak banyak bicara.

Menimbang bahwa bukti berupa foto-foto maupun video tersebut menggambarkan aktifitas Tergugat yang berhubungan dengan rapat dan aksi demo terhadap pembangunan villa the Rayja yang dibangun oleh Penggugat, sekalipun oleh saksi-saksi Sumardi, saksi Juma'in, saksi Darmaji dan saksi Sular telah dibenarkan sebagai foto Tergugat, namun tidak terdapat keterangan saksi atau suatu alat bukti yang menunjukkan bahwa Tergugat telah melakukan perbuatan dengan cara memfitnah dan memprovokasi masyarakat, merusak serta mengambil materialan milik Penggugat.

Menimbang bahwa berdasarkan keterangan saksi Sumardi, saksi Juma'in, saksi Darmaji dan saksi Sular yang saling bersesuaian pada pokoknya menerangkan bahwa Tergugat adalah ketua Forum Masyarakat Peduli Air, namun berdasarkan hak konstitusional yaitu hak untuk berserikat dan berkumpul juga telah dijamin dalam Pasal 28E ayat (3) UUD 1945 dan Pasal 24 ayat (1) Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia, yang berbunyi bahwa: *"Setiap orang berhak untuk berkumpul, berapat, dan berserikat untuk maksud-maksud damai."* Maka Majelis berkesimpulan bahwa FMPA bukanlah suatu organisasi yang memiliki suatu konstruksi badan hukum, FMPA adalah suatu wadah komunikasi antara anggota masyarakat dan bukan sebagai subjek hukum, oleh karena itu pergerakan FMPA dalam melakukan unjuk rasa bersama masyarakat tidak dapat dibebankan pertanggungjawaban kepada Tergugat selaku ketuanya, karena dalam posita maupun petitum gugatan yang digugat oleh Penggugat adalah menunjuk Tergugat selaku orang perorangan (*natuurlijk persoon*).

Menimbang bahwa Ahli yang diajukan Penggugat yaitu Dr. Abdul Rachmad Budiono, S.H.M.H., pada pokoknya berpendapat bahwa: "Setiap warga negara berhak atas lingkungan yang baik dan bersih dimana hak tersebut adalah hak konstitusional yang dijabarkan didalam Undang-undang Nomor 32 tahun 2009 tentang perlindungan dan pengelolaan lingkungan hidup yang tercermin didalam hak prosedural, yaitu: Hak partisipasi dalam pengambilan keputusan, Hak informasi, dan Hak untuk memperoleh akses keadilan". Maka berdasarkan fakta hukum yang terungkap dalam persidangan bahwa perbuatan Tergugat yang berkirim surat kepada berbagai lembaga negara/pemerintah

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untuk meminta perlindungan hukum atau mengadukan perbuatan Penggugat adalah karena Tergugat mendasarkan pada hak atas lingkungan yang baik dan sehat yang dijamin UUD 1945 serta tertuang dalam pasal 65 Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup. Maka Majelis berpendapat bahwa perbuatan Tergugat yang melakukan kegiatan unjuk rasa/demonstrasi yang dilakukan bersama warga masyarakat adalah implementasi dari asas partisipatif selaku anggota masyarakat untuk berperan aktif dalam proses pengambilan keputusan dan pelaksanaan perlindungan dan pengelolaan lingkungan hidup, serta kepedulian Tergugat terhadap hak masyarakat untuk memperoleh kualitas air bersih dan lingkungan yang baik dan sehat, hal ini sejalan pula dengan pendapat Ahli yang diajukan Penggugat, yaitu Dr. Abdul Rachmad Budiono, S.H.M.H. yang menerangkan bahwa perbuatan Tergugat adalah cerminan dari hak konstitusional warga negara, sepanjang tidak dilakukan dengan cara-cara destruktif.

Menimbang, bahwa terbitnya Surat Penghentian Pekerjaan dari Pemerintah Kota Batu yang ditujukan kepada Penggugat, apakah terdapat korelasi dengan perbuatan Tergugat dan merupakan tanggung jawab Tergugat, maka berdasarkan bukti bertanda P-35, P-38, P-39 dan P-41 yang berupa copy maupun asli surat mengenai keberatan Penggugat terhadap Surat Penghentian Pekerjaan yang dikeluarkan Pemerintah Kota Batu dan bersesuaian dengan keterangan saksi S. Wicaksono, saksi Joko Santoso serta keterangan Ahli Dr. Abdul Rachmad Budiono, S.H.M.H. yang menyebutkan: "Masyarakat yang berhak dalam pengambilan keputusan adalah masyarakat yang berpotensi terkena dampak lingkungan atas rencana suatu pembangunan, dan apabila masyarakat tersebut tidak dilibatkan atau tidak setuju atas rencana pembangunan tersebut maka ijin tersebut tidak dapat keluar atau walaupun keluar merupakan ijin yang cacat prosedur, dan apabila ijin yang dikeluarkan berdasarkan prosedur yang cacat maka dapat dibatalkan". Kemudian saksi S. Wicaksono dan saksi Joko Santoso yang keduanya adalah Pegawai Negeri Sipil Pemerintah Kota Batu, menerangkan bahwa: "Surat penghentian pembangunan hotel the Rayja oleh Sekda Batu adalah dikarenakan ada rekomendasi penghentian pembangunan dari Kementerian Lingkungan Hidup dan Ombudsman." Dengan demikian Surat Penghentian Pekerjaan dari Pemerintah Kota Batu adalah dikeluarkan atas dasar kewenangan Pemerintah Kota Batu

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sendiri, bukan didasarkan pada tekanan atau provokasi dari Tergugat. Oleh karena itu Majelis berpendapat bahwa berdasarkan alat bukti yang diajukan Penggugat tersebut tidak terdapat satupun alat bukti yang membuktikan bahwa Tergugat dapat dibebani tanggung jawab terhadap terbitnya Surat Penghentian Pekerjaan dari Pemerintah Kota Batu yang ditujukan kepada Penggugat.

Menimbang, bahwa alat bukti selain dan selebihnya yang diajukan oleh Penggugat, menurut Majelis tidak ada relevansinya dengan dalil pokok gugatan yang mendalilkan bahwa Tergugat telah melakukan perbuatan dengan cara memfitnah dan memprovokasi masyarakat sehingga mengganggu pembangunan villa / rumah peristirahatan / cottage the Rayja Resort yang dibangun oleh Penggugat dan berujung pada terbitnya Surat Penghentian Pekerjaan dari Pemerintah Kota Batu. Sedangkan dalil bahwa Tergugat merusak serta mengambil materialan milik Penggugat, adalah berada dalam ranah hukum pidana dan sampai perkara ini diperiksa ternyata tidak terdapat satupun alat bukti yang menunjukkan Tergugat bersalah melakukan perusakan atau mengambil materialan milik Penggugat.

Menimbang bahwa berdasarkan pertimbangan di atas, Majelis berpendapat bahwa tidak terdapat bukti yang cukup untuk membuktikan Tergugat melakukan perbuatan memfitnah, memprovokasi masyarakat, merusak dan mengambil materialan Penggugat yang mengakibatkan terbitnya Surat Penghentian Pekerjaan dari Pemerintah Kota Batu.

Menimbang bahwa dalil pokok dalam gugatan Penggugat tidak terbukti, maka tidak perlu mempertimbangkan alat bukti yang diajukan Tergugat untuk mendukung sangkalannya.

Menimbang, bahwa berdasarkan pertimbangan tersebut di atas petitem angka 5 (lima) berupa tuntutan agar menyatakan Tergugat melakukan perbuatan melawan hukum dengan cara mengirim surat kepada instansi pemerintah dan melakukan aksi demo di lokasi pembangunan, pembongkaran pagar-pagar, *direksikeet* serta mengambil barang-barang (materialan) milik Penggugat tersebut haruslah ditolak;

Menimbang, bahwa selanjutnya mengenai petitem selain dan selebihnya adalah tidak beralasan hukum untuk dikabulkan, maka harus ditolak seluruhnya.

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Menimbang, bahwa berdasarkan keseluruhan pertimbangan yang telah diuraikan diatas, maka gugatan Penggugat Konvensi/Tergugat Rekonvensi ditolak seluruhnya;

DALAM REKONVENSI

Menimbang, bahwa maksud dan tujuan gugatan Penggugat Rekonvensi/Tergugat Konvensi pada pokoknya dapat dirangkum secara ringkas adalah bahwa Tergugat Rekonvensi / Penggugat Konvensi melakukan perbuatan melawan hukum karena tanpa memiliki izin yang sah telah mendirikan bangunan the Rayja Resort Hotel di kawasan konservasi sumber air Gemulo sehingga merugikan Penggugat Rekonvensi/Tergugat Konvensi sebagai pemakai air dari sumber air Gemulo.

Menimbang bahwa terhadap hal-hal yang masih relevan dan saling terkait dengan pertimbangan hukum yang telah diuraikan dalam Pokok Perkara, Dalam Konvensi, maka selanjutnya tidak perlu diulangi uraian pertimbangan hukumnya dan dianggap telah termasuk pula dalam pertimbangan hukum Dalam Rekonvensi.

Menimbang, bahwa oleh karena telah diakui atau setidak-tidaknya tidak disangkal maka menurut hukum harus dianggap terbukti yaitu bahwa Tergugat Rekonvensi/Penggugat Konvensi sedang mendirikan bangunan villa/rumah peristirahatan / cottage the Rayja Resort yang sebagian lokasinya berjarak 150 meter atau kurang dari 200 meter dan berada di kawasan konservasi sumber air Gemulo;

Menimbang bahwa yang dimaksud dengan "The Rayja Resort" dalam gugatan rekonvensi adalah sama pengertiannya dengan istilah yang disebutkan oleh Tergugat Rekonvensi/Penggugat Konvensi dalam gugatan konvensi, yaitu bangunan villa / rumah peristirahatan / cottage the Rayja Batu Resort, yang dibangun Tergugat Rekonvensi/Penggugat Konvensi, terletak di Jalan Raya Punten No.01 RT.01/RW.02 Desa Punten, Kecamatan Bumiaji, Kota Batu.

Menimbang, bahwa berdasarkan hal tersebut di atas maka Majelis Hakim perlu mempertimbangkan terlebih dahulu tiga hal pokok yaitu :

1. Apakah Tergugat Rekonvensi / Penggugat Konvensi telah mendirikan bangunan the Rayja Resort Hotel di kawasan sumber air Gemulo ?

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2. Apakah pembangunan the Rayja Resort Hotel tersebut tanpa memiliki izin yang sah ?
3. Apakah terkait sumber air Gemulo tersebut Penggugat Rekonvensi/ Tergugat Konvensi memiliki kedudukan sebagai subyek hukum untuk menggugat (*persona standi in judicio*) ?

Menimbang, bahwa berdasarkan Pasal 163 HIR Penggugat Rekonvensi /Tergugat Konvensi berkewajiban untuk membuktikan hal tersebut di atas;

Menimbang, bahwa Penggugat Rekonvensi/Tergugat Konvensi untuk menguatkan dalil-dalilnya telah mengajukan bukti berupa bukti T-1 sampai dengan T-54, yaitu:

1. Foto copy tanpa asli Surat Permohonan Bantuan Advokasi AMPSU kepada Yayasan Pusaka, diberi tanda T-1 ;
2. Foto copy tanpa asli "The Rayja Cottage" Proses perijinan Rencana Pembangunan The Rayja, diberi tanda T-2 ;
3. Foto copy tanpa asli "Rumah Peristirahatan The Rayja" Proses perijinan Rencana Pembangunan The Rayja, diberi tanda T-3 ;
4. Foto copy tanpa asli Tanda Tangan Penolakan dari warga Desa Bumijaji, diberi tanda T-4 ;
5. Asli dan foto copy Tanda Tangan Penolakan dari warga Dusun Cangar Desa Bulukerto, diberi tanda T-5 ;
6. Foto copy tanpa asli Tanda Tangan Penolakan dari warga Desa Sidomulyo, diberi tanda T-6 ;
7. Asli dan foto copy Surat Penguatan Konservasi Sumber Umbul dari Pusaka, diberi tanda T-7 ;
8. Foto copy tanpa asli Surat Konservasi Sumber dari Dinas Pengairan dan Bina Marga Kota Batu, diberi tanda T-8 ;
9. Asli dan foto copy Undangan Sidang Pembahasan Dokumen UKL/UPL dari Sekretariat Daerah Kota Batu, diberi tanda T-9 ;
10. Asli dan foto copy Penyerahan Hasil kegiatan Pengabdian Masyarakat dari ITN, diberi tanda T-10 ;
11. Foto copy tanpa asli Pemberitahuan seluruh anggota dan pengguna air HIPPAM Dusun Cangar Desa Bulukerto, diberi tanda T-11 ;

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12. Foto copy tanpa asli Undangan dari DPRD untuk Audiensi terkait pembangunan The Rayja, diberi tanda T-12 ;
13. Foto copy tanpa asli Kesepakatan Bersama "Masyarakat dengan Pemkot", diberi tanda T-13 ;
14. Asli dan foto copy Surat Pernyataan Mencabut Ijin oleh Walikota Batu, diberi tanda T-14 ;
15. Asli dan foto copy Surat Pernyataan Kepala Desa Bulukerto, diberi tanda T-15 ;
16. Asli dan foto copy Permohonan penghentian semua aktivitas kerja dan penarikan semua alat berat di lahan sengketa The Rayja, diberi tanda T-16;
17. Asli dan foto copy Surat Terjadinya Maladministrasi Oleh The Rayja kepada Ombudsman, diberi tanda T-17 ; (T-17 tidak ada tanda tangan)
18. Foto copy tanpa asli Undangan pertemuan Mediasi oleh Komnas HAM, diberi tanda T-18 ;
19. Asli dan foto copy Pernyataan sikap atas hasil penelitian UB, diberi tanda T-19 ;
20. Foto copy tanpa asli Penjelasan hasil penelitian dari UB, diberi tanda T-20 ;
21. Asli dan foto copy BPN Kota Batu tentang Permohonan Salinan Dokumen, diberi tanda T-21 ;
22. Foto copy tanpa asli Undangan Sekretaris Daerah Tentang Pembahasan Konservasi Sumber Gemulo, diberi tanda T-22 ;
23. Foto copy tanpa asli Somasi FMPMA kepada Walikota Batu, diberi tanda T-23 ;
24. Foto copy tanpa asli Pokok-pokok kebijakan langkah penyelesaian oleh Walikota Batu, diberi tanda T-24 ;
25. Foto copy tanpa asli Penghentian aktivitas kegiatan pembangunan hotel oleh Sekretaris Daerah Kota Batu, diberi tanda T-25 ;
26. Asli dan foto copy surat Tuntutan tidak memperpanjang 1MB The Rayja oleh FMPMA kepada KPPT, diberi tanda T-26 ;
27. Asli dan foto copy Somasi kepada BAPPEDA Kota Batu untuk tidak memperpanjang 1MB The Rayja, diberi tanda T-27 ;

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28. Asli dan foto copy Somasi kepada Dinas Cipta Karya dan tata Ruang Kota Batu untuk tidak memperpanjang IMB The Rayja, diberi tanda T-8;
29. Asli dan foto copy Somasi kepada KLH Kota Batu untuk tidak memperpanjang IMB The Rayja, diberi tanda T-29 ;
30. Asli dan foto copy Jawaban somasi dari KPPT, diberi tanda T-30 ;
31. Asli dan foto copy Tanggapan somasi dari Dinas Cipta Karya dan Tata Ruang, diberi tanda T-31 ;
32. Asli dan foto copy Tanggapan somasi dari BAPPEDA, diberi tanda T-32 ;
33. Foto copy tanpa asli Surat teguran dan permohonan pencabutan dari WALHI, diberi tanda T-33 ;
34. Asli dan foto copy Somasi Pencabutan 1MB The Rayja kepada KPPT, diberi tanda T-34 ;
35. Foto copy tanpa asli Pengaduan dan Permohonan Perlindungan Hukum oleh PT. Panggon Sarkarya Sukses Mandiri, diberi tanda T-35 ;
36. Asli dan foto copy Pemberitahuan dari KLH Kota Batu, diberi tanda T-36 ;
37. Foto copy tanpa asli Rekomendasi Tindak Lanjut Pembangunan The Rayja dari KLH RI, diberi tanda T-37 ;
38. Asli dan foto copy Rekomendasi dari Ombudsman, diberi tanda T-38 ;
39. Asli dan foto copy Menghimbau dan Mendesak kepada Walikota Batu, diberi tanda T-39 ;
40. Asli dan foto copy Pengaduan dan Permohonan Tindakan Lanjutan kepada Komnas HAM, diberi tanda T-40 ;
41. Asli dan foto copy Permohonan Perhatian dan Partisipasi kepada BPD Bulukerto, diberi tanda T-41 ;
42. Asli dan foto copy Berita Acara Penolakan Pembangunan The Rayja, diberi tanda T-42 ;
43. Foto copy tanpa asli Undangan dari DPRD Kota Batu, diberi tanda T-43;
44. Asli dan foto copy Tindak Lanjut Rekomendasi Ombudsman, diberi tanda T-44 ;
45. Asli dan foto copy Surat Keberatan Pemerintah Desa Bumi Aji, diberi tanda T-45 ;
46. Fotocopy dari fotocopy Foto udara jarak lokasi pembangunan Hotel The Rayja, diberi tanda T-46 ;

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47. Fotocopy dari fotocopy Perda No. 7 tahun 2011 tentang RTRW Kota Batu tahun 2010-2013 diberi tanda T-47 ;
48. Asli kumpulan foto-foto perjuangan warga dan kondisi pembangunan terakhir hotel The Rayja, diberi tanda T-48 ;
49. Asli dan fotocopy kliping koran dari beberapa media cetak, diberi tanda T-49 ;
50. Asli dan fotocopy Surat rekomendasi dari KOMNAS HAM RI, diberi tanda T-50 ;
51. Asli dan fotocopy Surat perlindungan hukum dari KOMNAS HAM terhadap pejuang FMPMA, diberi tanda T-51 ;
52. Asli dan fotocopy tanda tangan penolakan warga desa Pandanrejo terhadap pembangunan Hotel The Rayja, diberi tanda T-52 ;
53. Asli dan fotocopy Pemberian Pendapat KOMNAS HAM RI (Amicus Curiae), diberi tanda T-53 ;
54. Asli dan fotocopy Surat Keterangan Nomor : 008/5-Ket/KH/IV/2014 Tentang Perlindungan Hukum dari KOMNAS HAM RI terhadap pejuang FMPMA, diberi tanda T-54 ;

Menimbang, bahwa selain bukti surat, Penggugat Rekonvensi /Tergugat Konvensi juga mengajukan saksi-saksi yaitu 1. Agus Mulyono, 2. M. Chamim, 3. Zaenal Arifin, 4. Arief Nugroho, 5. Jemadi, 6. Basuki Rahmat, 7. Edy Suyanto, 8. Suharto, dan Ahli, yaitu : 1. Prof. Dr. Sudarmaji, M.Eng.Sc., 2. Prof. Dr. Sunyoto Usman, 3. Dr. Deni Bram, SH. MH., 4. Dr. Andri Gunawan Wibisana, S.H., LL.M., 5. Siti Nurlaila, S.H.

Menimbang bahwa pertimbangan mengenai Apakah Tergugat Rekonvensi / Penggugat Konvensi telah mendirikan bangunan the Rayja Resort Hotel di kawasan sumber air Gemulo telah dipertimbangkan dalam pokok perkara, dalam gugatan konvensi, yang pada pokoknya telah terbukti lokasi didirikannya bangunan the Rayja Resort Hotel dengan sumber air Gemulo adalah berjarak 150 meter, dimana menurut PP No 26 Tahun 2008 Tentang Rencana Tata Ruang Wilayah Nasional dan PP No. 38 tahun 2011 tentang Sungai, disebutkan bahwa garis sempadan mata air adalah mengelilingi mata air paling sedikit berjarak 200 m (dua ratus meter) dari pusat mata air, dan sesuai bukti bertanda T-47 berupa Peraturan Daerah Kota Batu Nomor 7 Tahun 2011 tentang Rencana Tata Ruang Wilayah Kota Batu tahun 2010-2030 pasal

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34 huruf C Jo. Pasal 37 ayat (1) Jo. Pasal 38 huruf b Jo. Pasal 70 ayat (5) huruf C menyatakan bahwa kawasan sumber mata air Gemulo tersebut termasuk kawasan perlindungan setempat dan harus dilindungi karena berada dalam kisaran radius sempadan mata air yang berjarak 200 (dua ratus) meter, oleh karena itu semua pemangku kepentingan dan termasuk pelaku usaha harus berani menata area konservasi menjadi daya dukung pelestarian fungsi lingkungan pada mata air Gemulo dan bukan sebaliknya justru menjadikan area konservasi menjadi bangunan gedung hotel bertingkat 4 (empat) The Rayja Resort yang berdasarkan keterangan ahli Dr. Rer. Nat. Arief Rachmansyah adalah berada diatas alur air bawah tanah (akuifer) yang menuju mata air Gemulo sedangkan pembangunan the Rayja Resort Hotel berjarak 150 (seratus lima puluh) meter dari mata air Gemulo yang masih termasuk area konservasi, dengan demikian telah terbukti bahwa Tergugat Rekonvensi telah mendirikan bangunan the Rayja Resort Hotel di kawasan sumber air Gemulo.

Menimbang bahwa untuk menjawab apakah pembangunan the Rayja Resort Hotel tersebut tanpa memiliki izin yang sah, pertimbangan pembuktian terhadap hal ini telah diuraikan pula dalam pokok perkara, dalam gugatan konvensi dan Majelis mengambil alih pertimbangan tersebut sebagai bagian pertimbangan dalam rekonvensi, dimana telah disimpulkan bahwa dokumen perizinan untuk pembangunan villa / rumah peristirahatan / cottage the Rayja yang dilakukan Tergugat Rekonvensi/Penggugat Konvensi tersebut tidak memenuhi persyaratan perizinan lingkungan, oleh karena itu Surat Keputusan Kepala Kantor Pelayanan Perijinan Terpadu Nomor: 180/550/IMB/422.208/2012 tanggal 13 Agustus 2012 tentang Ijin Mendirikan Bangunan Atas Nama PT Panggon Sarkarya Sukses Mandiri (Bukti P-25) adalah tidak mempunyai kekuatan hukum.

Menimbang bahwa selanjutnya Apakah terkait sumber air Gemulo tersebut Penggugat Rekonvensi/ Tergugat Konvensi memiliki kedudukan sebagai subyek hukum untuk menggugat (*persona standi in judicio*), maka sesuai asas *Legitima Persona Standi in Judicio* yang menegaskan bahwa hanya orang-orang yang memiliki hak atau kewenanganlah yang dapat bertindak selaku pihak dalam suatu perkara di Pengadilan. Oleh karena itu kedudukan Penggugat Rekonvensi/Tergugat Konvensi dalam gugatan konvensi maupun gugatan rekonvensi adalah sebagai orang perseorangan (*natuurlijk persoon*)

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pemakai air dari sumber mata air Gemulo dan tidak dapat serta merta mengatasnamakan Forum Masyarakat Peduli Mata Air (FMPMA). Lagipula apabila seseorang mengajukan gugatan dengan mengatasnamakan masyarakat atau organisasi lingkungan hidup, maka secara prosedural terdapat hukum acara yang khusus untuk memeriksa perkara tersebut, yaitu dengan prosedur gugatan perwakilan kelompok (*class action*) atau prosedur gugatan organisasi lingkungan hidup (*legal standing*). Hal ini dapat didasarkan pada ketentuan yang diatur UU No. 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup atau lebih khusus lagi didasarkan pada UU No. 7 Tahun 2004 tentang Sumber Daya Air, yaitu pasal 90 yang menyebutkan: "Masyarakat yang dirugikan akibat berbagai masalah pengelolaan sumber daya air berhak mengajukan gugatan perwakilan ke pengadilan." dan pasal 92 ayat (1) yang menyebutkan: "Organisasi yang bergerak pada bidang sumber daya air berhak mengajukan gugatan terhadap orang atau badan usaha yang melakukan kegiatan yang menyebabkan kerusakan sumber daya air dan/atau prasarannya, untuk kepentingan keberlanjutan fungsi sumber daya air." Sedangkan FMPMA bukanlah suatu organisasi yang memiliki suatu konstruksi badan hukum, FMPMA adalah suatu wadah komunikasi antara anggota masyarakat dan bukan sebagai subjek hukum, dengan demikian kedudukan Penggugat Rekonvensi/Tergugat Konvensi adalah tetap sebagai orang perseorangan (*natuurlijk persoon*) dan tidak dapat mengajukan tuntutan hukum kepada Tergugat Rekonvensi dengan mengatasnamakan FMPMA.

Menimbang, bahwa Tergugat Rekonvensi/Penggugat Konvensi telah terbukti melakukan perbuatan melawan hukum dengan mendirikan bangunan The Rayja Resort Hotel di area sempadan konservasi mata air Gemulo tanpa memiliki izin yang sah, sehingga harus dihentikan karena berpotensi merugikan masyarakat pemakai air dari sumber mata air Gemulo yang salah satu warga masyarakat pemakai air tersebut adalah Penggugat Rekonvensi.

Menimbang bahwa perbuatan melawan hukum yang berpotensi merugikan (*potential loss*) terhadap ekosistem sumber mata air dan mengancam terjadinya krisis air, dimana akan memerlukan waktu yang lama untuk pemulihan lingkungan hidup serta untuk menghilangkan dampak negatif yang terus mengancam selama ekosistem belum terpulihkan, oleh karena itu Majelis berpendapat bahwa perbuatan melawan hukum Tergugat Rekonvensi yang

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berpotensi merugikan (*potential loss*) terhadap ekosistem tersebut harus diperhitungkan dalam sudut pandang futuristik dan tindakan kehati-hatian yang berpihak pada kelestarian fungsi lingkungan hidup agar bencana ekologis dapat dicegah.

Menimbang, bahwa berdasarkan alat-alat bukti yang diajukan oleh kedua belah pihak sebagaimana tersebut di atas dalam kaitannya satu sama lain yang ternyata bersesuaian Majelis Hakim berpendapat bahwa Penggugat Rekonvensi/Tergugat Konvensi telah berhasil membuktikan dalil pokok dalam gugatan rekonvensi oleh karena itu gugatan Penggugat Rekonvensi/Tergugat Konvensi patut untuk dikabulkan sebagian;

Menimbang bahwa berdasarkan uraian pertimbangan di atas serta berdasarkan pertimbangan rasa keadilan lingkungan (*environmental justice*), maka petitum gugatan Rekonvensi angka 2 (dua) patut untuk dikabulkan agar menyatakan Tergugat Rekonvensi / Penggugat Konvensi melakukan perbuatan melawan hukum dengan tanpa memiliki izin yang sah telah mendirikan bangunan the Rayja Resort Hotel di wilayah konservasi sumber mata air Gemulo yang dapat merugikan (*potential loss*) terhadap Penggugat Rekonvensi/Tergugat Konvensi selaku pemakai air dari sumber mata air Gemulo, yaitu kerugian karena kebutuhan pemakaian air yang sebelumnya terpenuhi secara cuma-cuma atau murah dari Sumber mata air Gemulo menjadi terancam dan akan menjadi kebutuhan dasar yang memerlukan biaya untuk memenuhinya.

Menimbang bahwa telah dipertimbangkan mengenai izin mendirikan bangunan yang dimiliki Tergugat Rekonvensi / Penggugat Konvensi adalah tidak layak dan tidak mempunyai kekuatan hukum, serta sesuai dengan keterangan Ahli Hidrologi, Prof. Dr. Sudarmaji, M.Eng.Sc., yang menerangkan bahwa : Pengurangan debit air pada sumber mata air Gemulo bukan semata karena dibangunnya the Rayja Resort Hotel, tetapi pembangunan the Rayja Resort Hotel tersebut akan menambah dampak terhadap beban lingkungan” serta mempertimbangkan pula prinsip kehati-hatian untuk meminimalisir atau menghindari ancaman terhadap kerusakan sumber mata air Gemulo, maka petitum angka 3 (tiga) yang menuntut agar menghukum Tergugat Rekonvensi/ Penggugat Konvensi untuk menghentikan kegiatan pembangunan rumah peristirahatan The Rayja Resort adalah beralasan hukum dan patut untuk dikabulkan;

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Menimbang bahwa petitum angka 4 (empat) dalam gugatan rekonvensi yang menuntut agar menghukum Tergugat Rekonvensi untuk membayar kerugian yang ditimbulkan Tergugat Rekonvensi sebesar Rp2.000.000,00 (dua juta rupiah) per orang jika dikalikan setiap warga 4 (empat) desa lebih kurang 9.000 (sembilan ribu) orang sehingga total kerugian sebesar Rp18.000.000.000,00 (delapan belas milyar rupiah). Adalah tuntutan yang tidak didasari dengan landasan hukum dalam prosedur permintaan ganti rugi, karena dalam perkara ini kedudukan Penggugat Rekonvensi / Tergugat Konvensi adalah sebagai orang perorangan (*natuurlijk persoon*) bukan sebagai wakil kelompok sebagaimana dalam tuntutan ganti rugi dalam prosedur gugatan perwakilan kelompok (*class action*), maka kerugian yang dihitung adalah hanya kerugian Penggugat Rekonvensi / Tergugat Konvensi secara orang perseorangan yang dituntutnya sebesar Rp2.000.000,00 (dua juta rupiah), namun alat bukti yang diajukan oleh Penggugat Rekonvensi / Tergugat Konvensi tidak terdapat satupun alat bukti yang dapat dipergunakan sebagai pertimbangan penghitungan ganti rugi, maka sesuai asas bahwa putusan tidak boleh melebihi apa yang dituntut (*ultra petita*) serta pertimbangan potensi kerugian lingkungan berupa lenyapnya atau berkurangnya manfaat masa datang (*loss or lack of future benefits*) akibat terganggunya debit air pada sumber mata air Gemulo, Majelis berpendapat bahwa dasar tuntutan kerugian adalah sesuai petitum dalam gugatan Rekonvensi yaitu sejumlah Rp2.000.000,00 (dua juta rupiah) dipandang layak untuk dikabulkan.

Menimbang bahwa terhadap petitum selain dan selebihnya dalam gugatan rekonvensi, menurut Majelis adalah tidak beralasan hukum untuk dikabulkan, maka petitum selain dan selebihnya haruslah ditolak.

DALAM KONVENSI DAN REKONVENSI

Menimbang, bahwa oleh karena gugatan Penggugat Konvensi ditolak, sedangkan gugatan Rekonvensi dikabulkan sebagian sehingga Penggugat Konvensi/Tergugat Rekonvensi berada di pihak yang kalah, maka Penggugat Konvensi/Tergugat Rekonvensi harus dihukum untuk membayar biaya perkara;

Menimbang bahwa sebelum menjatuhkan putusan, Majelis perlu mengingatkan kepada semua elemen masyarakat sebagai generasi masa kini yang harus bervisi cinta tanah air dan menjaga kualitas lingkungan, maka harus meminimalisir ancaman bencana ekologis dan krisis air dengan lebih berperan

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menjadi manusia yang membawa *rachmat* bagi alam (*rachmatan lil alamin*) serta demi kelangsungan hidup generasi akan datang (*next generation*) yang lebih baik, janganlah kita warisi bangsa dan anak cucu dengan penderitaan dan air mata, tetapi warisi bangsa dan anak cucu kita dengan mata air, karena air adalah sumber kehidupan.

Memperhatikan Pasal 132a HIR, Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup dan peraturan-peraturan perundangan lain yang bersangkutan;

MENGADILI:

DALAM KONVENSI

Dalam Eksepsi

- Menolak eksepsi Tergugat;

Dalam Pokok Perkara:

- Menolak gugatan Penggugat seluruhnya;

DALAM REKONVENSI

1. Mengabulkan gugatan Penggugat Rekonvensi sebagian;
2. Menyatakan Tergugat Rekonvensi melakukan perbuatan melawan hukum sehingga merugikan Penggugat Rekonvensi;
3. Menghukum Tergugat Rekonvensi untuk menghentikan kegiatan pembangunan The Rayja Resort Hotel;
4. Menghukum Tergugat Rekonvensi untuk membayar kerugian yang ditimbulkan Tergugat Rekonvensi sejumlah Rp 2.000.000,00 (dua juta rupiah) kepada Penggugat Rekonvensi;
5. Menolak gugatan Penggugat Rekonvensi selain dan selebihnya

DALAM KONVENSI DAN REKONVENSI

- Menghukum Penggugat Konvensi/Tergugat Rekonvensi untuk membayar biaya perkara sejumlah Rp. 3.001.000,00 (tiga juta seribu rupiah);

Demikian diputuskan dalam sidang permusyawaratan Majelis Hakim Pengadilan Negeri Malang, pada hari Senin, tanggal 30 Juni 2014 dan hari Senin, tanggal 7 Juli 2014, oleh kami, Bambang Hery Mulyono, S.H., sebagai Hakim Ketua, Betsji Siske Manoe, S.H., M.Hum dan Rina Indrajanti, S.H., M.H., masing-masing sebagai Hakim Anggota, yang ditunjuk berdasarkan Surat Penetapan Ketua Pengadilan Negeri Malang Nomor 177/Pdt.G/2013/PN.Mlg.

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tanggal 25 April 2014, putusan tersebut pada hari Senin, tanggal 21 Juli 2014 diucapkan dalam persidangan terbuka untuk umum oleh Hakim Ketua dengan dihadiri oleh para Hakim Anggota tersebut, Ririn Ambarwati, S.H.,M.Hum. Panitera Pengganti, dan dihadiri pula oleh kuasa Penggugat Konvensi/Tergugat Rekonvensi, serta kuasa Tergugat Konvensi/Penggugat Rekonvensi.

Hakim-hakim Anggota:

Hakim Ketua,

T.T.D.

T.T.D.

Betsji Siske Manoe, S.H., M.Hum.

Bambang Hery Mulyono, S.H.

T.T.D.

Rina Indrajanti, S.H., M.H.

Panitera Pengganti,

T.T.D.

Ririn Ambarwati, S.H.,M.Hum.

Perincian biaya :

1.Pendaftaran Rp. 30.000,-

2.A T K Rp. 50.000,-

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3.PNPB.	Rp. 10.000,-
4.M a t e r a i	Rp. 6.000,-
5.Redaksi	Rp. 5.000,-
6.Pemeriksaan setempat	Rp. 1.050.000,-
7.Panggilan	<u>Rp. 1.850.000,-</u>
Jumlah	Rp. 3.001.000,-

(Tiga Juta Seribu Rupiah) ;

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Appendix 2: Judgment of the Supreme Court (English Summary, translated by the author)

Judgment

Willy Suhartanto (the plaintiff) ¹

vs.

H. Rudy (the defendant)

.....

(The Judge) has concluded that the licensing document for the construction of the Ryja Hotel which was done by the defendant, did not fulfill the obligation of the environmental assessment. Therefore, the permission granted by the integrated licensing office (number 180/550 / IBM / 422.208 / 2012 dated August 13, 2012, on Permission for the Construction of the hotel by PT Panggon Sarkarya Sukses Mandiri) is not valid.

.....

The defendant has proven that the construction of the Rajya Hotel resort in the conservation area of Gemulo water source conservation, was an illegal, act because it was carried out without valid permission. So, the construction must be stopped because it has the potential to harm the Gemulo water source that community members use.

.....

Before the judgment, we need to remind all elements of society that as the present generation we must love the country and maintain the good quality of the environment. So we must minimize the threat of ecological disasters and water crises by bringing mercy to nature and the next generations. Do not leave our country suffering and leave the next generations in tears (*air mata*), but leave our country and offspring with water sources (*mata air*) because water is the source of our life.

.....

Bring to Judge

Convention:

Exception; We reject the exception of a defendant.

The case of the lawsuit; We reject all of the accusations of the plaintiff.

Counterclaim:

¹ He is the General Director of PT Panggon Sarkarya Sukses Mandiri, which manages the hotel. The owner is Willy Boenardi Koesnadinata

1. We grant a part of the counterclaims of the defendant.
2. We declare that the plaintiff made an illegal action that harmed the defendant.
3. We order the plaintiff to stop the construction of the Rayja Hotel.
4. We order the plaintiff to pay 2,000,000 rupiah compensation for damages to the defendant.
5. We reject the other demands of the defendant.

Convention and Counterclaim

We order the plaintiff to pay 3,001,000 rupiahs for legal costs.

The judges of Malang District Court decided on Monday 30 June 2014, and on Monday 7 July 2014, we, Bambang Hery Mulyono (chairman of the panel of judges), Betsji Siske Manoe, and Rina Indrajanti decided the judgment above. This judgment is based on the decree of the chairman of the panel of judges of Malang District Court, Number 177/Pdt.G/2013/PN.Mlg, 25 April 2014. The chairman of the panel of judges of the Supreme Court announces this judgment of 21 July 2014 with judges Ririn Ambarwati and Panitera Pengganti.