



Criticism on Indonesia's water resource management

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ABSTRACT

Water is one of the primary natural resources that the state should protect as a public good to avoid commercialism and capitalist efforts and acts. However, government policies on water resources management will lead to uncontrolled exploitation of water resources in the future. Therefore, this research aimed to analyse the water resources law and provide criticism of the regulation and impact on environmental life and the public goods economy. This research was library research that used normative legal research methods. Furthermore, this research also used secondary data and qualitative discussion. The findings showed that water resources management in Indonesia led to exploitation, commercialism and international-scale capitalism that would significantly endanger environmental conditions. This condition was exacerbated by the international organisations' efforts that sought to control water resources in Indonesia..

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1. INTRODUCTION

Indonesia is currently facing a natural disaster, a water crisis, which is not only caused by climate change, ecosystem damage, and poor water management systems but is also exacerbated by the exploitation of water for commercial purposes without paying attention to the conservation of water resources (Weningtyas & Widuri, 2022). In essence, water is a substance that cannot be replaced. Therefore, the right to water is a fundamental right for human life (Austin, Schwantes, Gu, & Kasibhatla, 2019). Water is a natural and primary element of the earth that is needed by all living things as a source of food, which is needed to produce an ecosystem in a particular area and is an inseparable part of that ecosystem. As one of the main elements in life that originate from nature, indeed, there is inherent supporting capacity and carrying capacity to fulfill the basic needs of living things, especially human needs for water, in addition to the needs of plants and animals, which are also very dependent on water resources. The supporting capacity and carrying capacity of water for living creatures must always be considered, preserved, and developed and, most importantly, must be protected by statutory regulations.

As a renewable natural resource but has the nature of being quickly depleted or lost and dynamic but needed by every living creature, including humans, water has high economic value. Even to meet agricultural water needs, farmers have to pay to irrigate agricultural land. The need for water for agriculture is undoubtedly more significant than an individual's basic need for water. Agricultural countries in the world, such as Brazil, use filtered factory wastewater, which turns out to have many benefits for agriculture. The research results presented by Lahlou, Lima, and Mancuso in different years showed that the use of reused wastewater in agriculture could provide benefits such as nutrients and water, support plant growth, and reduce the use of artificial

fertilizers. Irrigation with reused water is a natural form of fertilization derived from nutrients such as nitrogen, potassium, and phosphorus, which are essential for cultivation in less fertile soils. Apart from that, it is an alternative to reduce demand pressure on water sources and reduce the amount of waste disposed of (Silva, 2022). However, it has not been implemented optimally in Indonesia, where water comes from environmentally friendly waste processing, then flows into rivers and empties into the sea. Likewise, with the use of river water, the majority of the water is wasted flowing into the sea. Hence, during the planting period, agricultural water needs are very high, and the water is not sufficient for agricultural needs. The main problem in water management in Indonesia is the imbalance between the level of consumption of society and agriculture, which is increasing while the water resources contained in the earth are increasingly depleting. It was in line with the results of Deni Hidayati's research that water has now become a problem that requires serious attention because of the decreasing capacity and quality of water resources in most areas of this country (Hidayati, 2018). In general, based on data, water availability in Indonesia was still sufficient to meet the living needs of all Indonesian people. However, the unequal distribution means that at specific periods, some people have difficulty accessing clean water (Astriani, 2020). Therefore, the state's role in managing water resources that is oriented towards justice for all Indonesian people is very much needed.

A state with inherent sovereignty must indeed regulate water use, manage it as effectively as possible, and control water use as well as possible so that water resources can provide benefits and a sense of justice for all Indonesian citizens in the present. More importantly, it will provide a sense of justice for future generations, which will undoubtedly greatly support the country's development. Indeed, as an agricultural country, in managing and allocating water, Indonesia should prioritize agricultural interests. So far, regulations regarding water resources have been based on Articles 18 a, 18 b, 20, 21, and 33 Paragraph 3 of the 1945 Constitution. Moreover, in a more concrete form, it is regulated in Law No. 17 of 2019 concerning Water Resources. This research seeks to discuss equity aspects in water resources management in Indonesia in accordance with current laws and regulations, which are undoubtedly based on Pancasila, especially the principle of Justice for All Indonesian People. Theoretically, this research can develop knowledge in the field of environmental protection, especially the protection of water resources with a study of the impact on the environment of excessive groundwater utilization. In addition, in practice, the utilization of water resources can be used as the main study material in making supervision and control policies.

2. RESEARCH METHOD

This research method was normative legal research, namely legal research, which aims to find and uncover problems in statutory regulation as well as problems with these regulations and their impact on people's social lives. This research design was also called doctrinal research. The approaches were the statute and the conceptual approaches. The data sources consisted of primary and secondary data. Meanwhile, the data collection method was carried out by reviewing the text of statutory regulations, then analyzing it using theoretical instruments, and reviewing library data such as textbooks, journals, and data from the internet. Then the data is analyzed and the data analysis used in this research is a qualitative analysis method, namely interpreting the legal materials that have been grouped and processed. The processing technique of legal materials that have been collected is carried out in stages; inventory, identification, classification and systematization.

3. RESULTS AND DISCUSSIONS

Natural resource management is based on and relates to the foundation of two state function theories, namely, protection function theory and welfare function theory. In a developing country, natural resources are closely related to the social welfare level, so the state's role is needed to provide protection for these natural resources oriented towards social welfare in the present and for future generations.

The two-state functions relating to natural resources, especially water resources, and every citizen's interests are stated in Article 33 Paragraph 3 of the 1945 Constitution, which states clearly

that the earth, water, and natural resources contained therein are controlled by the state and used as much as possible for the people prosperity. Besides, Article 28 of the 1945 Constitution regulates Human Rights, considering that water resources are the primary capital of national development with social functions, environmental functions, and economic functions, which must be able to run in harmony so that their use can be sustainable (Sri, Wulandari, Ilyas & Hasanuddin, 2019).

Implementing these two functions in the state life of the Indonesian nation is not an easy matter. Adequate instruments and competent subjects are required, considering the current natural structure and the geographical condition of the archipelagic nation of Indonesia. The most crucial instrument needed is the law. Tudung Mulya Lubis believes that the function of law in people is that it binds citizens to obey, and even the government's behavior in carrying out state functions in accordance with legal provisions has a role and influence on economic activities in accordance with legal functions. In carrying out its function, the law contains instructions for human behavior, tools for resolving conflicts, and tools for socio-economic engineering (Fachrodin, 2019). Another opinion says that the law is used as a tool/means of realizing social justice. The law is expected to be useful for people's lives (Jeutner, 2020). Roscoe Pound's opinion is very familiar in legal circles, especially in the field of legal sociology, namely law as "Social Engineering" or as a tool for changing society, which is analogous to a mechanical process (Zainudin, 2019). Law is the most appropriate instrument of social life at present, especially in societies that have had an order of social life, such as government, law enforcers, representative rule makers, and so on, which can be used as supporters and strengtheners of legal instruments. It is because in order to realize its goals, the law will not be able to work alone.

Law is an instrument that can be used according to its function. One of them is to realize social justice. However, the concept of justice itself is very abstract, which has invited much debate throughout the ages, making it very difficult to find an ideal common ground. Even significant figures who have made many contributions to the field of law have still not found common ground regarding justice. People really need justice as an element of legal objectives. In its implementation, the law must be fair because the law is not synonymous with justice. Justice is very subjective, individualistic, and does not generalize (Kristiani, 2019). An uncertain and unjust law is not just a bad law but not a law at all (*den Begriff des Rechts*) (Tobing, 2018). The debate about justice is basically a concept, idea, ideal, or even wishful thinking that cannot be felt and not in concrete form, as demanded by most people or specific groups of people who have made many achievements in the form of contributions to the state finances and development of the region but do not get commensurate counter achievements. Hence, justice needs to be given a concrete form. From this phenomenon, it can be seen that the concrete form of justice is welfare. Social justice in an atmosphere of prosperity and well-being is the highest social ideal of the goal of the unitary state of Indonesia (Ach. Rifai, 2020). In a more actual concept, Fauzi provides a more concrete explanation that natural resource justice is a condition where there is no significant concentration in the control, allocation, use, and utilization of land and natural resources, which are the livelihood of many people (Koeswahyono, 2019). Therefore, it is not wrong if the condition of a fair society is a prosperous society. Meanwhile, the manifestation of a prosperous society is guaranteed security, order, tranquility, and guaranteed employment so that it can meet needs, the existence of good social relations, and adequate social facilities for individuals and society. Creating a prosperous society is the main task of the state, which must be carried out by the government, together with the people's representatives. In other words, justice is a concept and instrument for realizing people's welfare.

Welfare is people's safe condition, where the needs as described above are met. It, of course, requires extensive resources and quite a lot of capital, but future generations can feel benefits. One of the natural resources used by individual communities to meet the basic needs of life and is needed by the state as a natural resource that concerns the livelihoods of many people because it can provide significant benefits and can be used by companies (Legal Entities) for production objects that can bring economic benefits that are oriented towards economic benefits, our water resources. Due to its potential and economic, water resources must be protected, managed, and regulated so that justice can be oriented towards the welfare of society.

Juridically, the management of water resources in Indonesia is carried out by the State based on the 1945 Constitution, which stems from the State's right to control all natural resources that concern the interests of the Indonesian people's lives. Looking at the history of natural resource management and the facts of environmental and resource conditions currently occurring and looking at the level of Indonesian people's welfare, people can assess the relevance of the state's right to control natural resources today, as well as its orientation towards the realization of justice for Indonesian society as a whole. These points basically start from the right to control the state in Article 33 Paragraph 3 of the 1945 Constitution, which is implemented in Law No. 17 of 2019 concerning Water Resources Management.

The right to control the state is a derivative of the sovereignty theory, which is the highest power that is attributively attached to the state, which, in Jean Bodin's opinion, means that there is no supreme power that limits state sovereignty (Julius Sembiring, 2018). Even in international law, the theory of "*Par im parem non habet imperium*" applies, which means that a sovereign state is prohibited from carrying out its will over other sovereign states, carrying out in the sense of imposing its will on other states. The development of sovereignty theory gave birth to rights inherent in the state, namely, First, the right of the ruler to make laws that oblige citizens to accommodate the use of their property for the state's interests. Second, the state's right to levy a portion of citizens' property as tribute or tax. Third is the ruler's right to control land (Dogaru, 2020). The aim of the right to control the state is to achieve people's prosperity, happiness, well-being, and independence in an independent, sovereign, just, and prosperous Indonesian society and legal state. The founding fathers of the state and the team drafting the basic legal regulations adopted the concept of the right to control the state. They made this right an inseparable part of managing state resources. If examining the general explanation of number II/2, the state's right to control, which is included in Article 2, at the highest level gives the state the authority to regulate and organize the use, provision and maintenance of the earth, water and natural resources contained therein; determine and regulate the legal relationship between people and the earth, water and natural resources contained therein; determine and regulate legal relationships between people and legal actions regarding the earth, water and natural resources contained therein (Pardede, 2019). In its development after approximately 70 years of independence and the enactment of the 1945 Constitution, has this concept embodied the concept of social justice and realized social welfare for all Indonesian people?

The right to control from the state is not absolute, so its function is only to provide regulatory authority from the state to determine the relationships that may arise between humans and land as a natural object (Marulak, 2019). Apart from that, control by the state does not mean ownership (*eigensdaad*) because if state control rights are interpreted as *eigensdaad*, then there will be no guarantee for achieving the goal of the right to control, namely the greatest prosperity of the people (Linderfalk, 2020). However, the right to control certainly provides vast, biased, and highly interpretive authority and can even provide authority for the exploration and exploitation of natural resources in unlimited quantities. This right cannot be separated from Montesquie's opinion, namely the concept of empire with the *formulation* '*The rule over all individuals by the Prince*' (Zulkarnain & Priyanta, 2021). which can be interpreted as power over all individuals by the queen, if interpreted freely that all individuals, and the rights attached to individuals, especially material rights, are within the state's power. The state grants these rights because this concept was born in a monarchical system of government or a country in the form of a kingdom such as England, which makes the queen the holder of absolute power in the country.

If looking more deeply, the law actually functions as a tool to limit the behavior of legal subjects. Thus, there are no violations of the rights and obligations inherent in other legal subjects. However, the state's right to control natural resources, which can be interpreted as an expansive right with minimal control, will be very vulnerable to violations of the rights of other legal subjects, which could occur in the present and even in future generations. Many cases of forest and environmental damage originate from this right, which results in natural disasters, flash floods, landslides, air warming, as well as many cases of criminal acts of corruption that have received permanent judge decisions, which also originate from the right to control a state that gives legal rights to other parties to explore and even exploit natural resources without strict supervision from

the state, because when the main obsession is solely growth, at that time human attitudes and actions towards nature tend to turn into arbitrariness (Anam & Askar, 2020). Hence, the goals set by law for people's prosperity are increasingly far from the ideals and even bring damage and destruction to the environment. Besides, it will require higher costs from state revenues and a long time to rehabilitate and restore damaged environmental conditions. It is appropriate that every mining company, as a company that manages natural resources and controls the livelihoods of many people, is also burdened with obligations to realize the welfare of all people (Austin et al., 2019).

It is appropriate for competent experts to study state control rights relating to natural resources. A well-known adage in the legal sociology school of thought of *Rebus Sicstantibus* is that the law was formed according to the conditions at that time, meaning that as time goes by, conditions will definitely change. The impact and goals given by the law on life, the environment, and society will, of course, change too. Of course, people can feel the impact and facts that we feel after more than 70 years of the government granting us the right to control the environment and natural resources. We value it as a basis for consideration in making policies to reassess the relevance of the right to control the state from the aspects of justice and prosperity of people in the present and future.

This reevaluation is very necessary considering that water is the most critical natural resource that cannot be replaced with other resources, which is also a human right to the need for live to water. Besides, the condition of the existence of water resources is decreasing. Many surface water sources are being destroyed, drying up during the dry season, people's basic needs are increasing, many floods occurring evenly in various areas during the rainy season, although with different intensities, and even flash floods occurring in various areas where such disasters have never historically occurred. Opening access to commercial water resources by law will undoubtedly have a significant impact on the availability of water for basic needs and agriculture and other industries, without any restrictions and supervision, as well as positive contributions by companies to water resources, the surrounding environment, and the surrounding communities of the water source.

Private companies that manage (drink) water will always be profit-oriented. It is normal for economic companies because economics is synonymous with profits that can be valued in money. Private companies engaged in the exploitation of water resources should pay more attention to the people's interests because the main objects of production goods are public utilities, which basically have no rights attached to them, such as air or seawater. One of the principles of water law that applies in Europe is that river water that crosses borders between adjacent countries must not be stopped and accommodated in the territory of a particular country. In other words, river water must be allowed to flow along the river because water is a public domain, such as with air. There must be no rights attached to particular objects, and even the state has no rights over these objects.

Private companies in the management and commercialization of water resources should be more oriented towards public service as well as protecting the environment and protecting the people who need these water resources. Basically, the company is an extension of the government, which is transferred to a private company through specific permits that must also carry out government functions. Empirical experience and research reported by witnesses and experts during the trial showed that private management of drinking water did not improve the quality of drinking water, and prices did not decrease but became more expensive. The practice of privatization and/or exploitation of water resources was expanding because people's need for water increased, thereby encouraging the economic value of water to be more vital compared to its social value and function (Husin, 2020).

Before privatization and exploration of water resources, what needs to be paid close attention to is the people's right to water, which is clearly stated in the regulations that this right is not a property right. In material law, this right is in the public domain. Nevertheless, it gives rise to many misperceptions. In society, if someone has a yard and there is a water source, then that becomes his property. However, if looking further, it is clear that that person is the holder of property rights to the source but not to the water. The stipulation of statutory regulations regarding the form and position of water in Indonesian law is clearly not a commodity object that can be

bought and sold like economic goods as is the case with the widespread form of commercial water business which has developed in almost every region in Indonesia at present, or which occurred before the latest law about water resources. The state has clearly stated in the State Constitution that the State controls water. It is also supported by Article 7 of Law No. 17 of 2019 concerning Water Resources, which states that “Water resources cannot be owned and/or controlled by individuals, community groups, or business entities.” Meanwhile, the community’s rights to water resources are regulated in Article 8 of the law, which gives rights to the community in six forms, namely the right to minimum basic needs for water, the right to basic daily needs, agricultural needs, water needs for certain businesses that require water, which can be obtained through access to drinking water companies provided by the government. Article 8 is actually very in line with the theoretical views of international water law presented by Samuel Charles Wiel, a water law expert from the United States: “Like other things of general concern, water has been the subject of much legal thought, and different theories have been worked out.” It means that, as is the general view, water has become a legal subject, and various theories have been developed (Chalid & Yaqin, 2018).

The use of water resources is for public purposes, not for business purposes. However, finally, the use of water for business purposes is granted as long as it gets government permission as determined by government regulations (Gunawan, Nadir, & Fatkhurohman, 2022). Regulations regarding water rights have a priority level where if water resources are limited, then basic daily needs are prioritized, then water for agricultural irrigation, water use for public purposes, such as public facilities and places of worship, and water for business needs with specified permissions.

The granting of this last right should receive serious attention from the government by providing conditions, obligations, and strict supervision of every form of business that uses water as its primary object. This right will absorb the most water compared to other rights and will have the most significant impact on the environment and surrounding communities. Reporting to Kompas Daily, in December 2022, currently, there are 2000 brands of bottled drinking water companies (Kiki safitri, n.d.). An even more significant number was reported in the Indonesian Daily, namely 7,780 bottled water company products released by 1,032 companies (Indonesia, n.d.). Meanwhile, in 2018, there were 29 billion liters nationally, and there were more than 700 bottled drinking water companies, with an average annual increase of 10-12%. Moreover, profits obtained by well-known domestic brand companies recorded revenues of IDR 804 billion. This amount decreased by 1.23% compared to the 2017 achievement of IDR 814 billion (Rachmawaty & Hasbi, 2020). Looking at this data, it can be seen how very tempting and promising the business of water companies in Indonesia is with abundant natural potential. It will quickly enter the international level with much encouragement for water demand from abroad, especially for drinking purposes and clean water for households, so that commercialism becomes an international commodity caused by liberalism and privatization of clean water with strong encouragement from international financial institutions, namely aggressively campaigning for liberalization in the future, with the aim of nothing other than changing the water law paradigm concept throughout the world that water is commodity water with economic value. Thus, it is worthy of commercialization (Kornfeld, 2021). Indeed, this situation will endanger life as a whole because it will have a systemic impact.

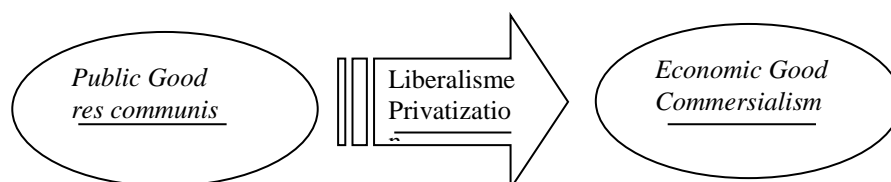


Figure 1. The flow of commercialisation of public goods into the capitalist system

Efforts to commercialize public objects can undoubtedly influence the equity values for the Indonesian people as well as for customary rights to water contained in Article 8 Paragraph 4b of Law 17 of 2019, namely that the use of natural resources for business is determined by permission. This article is a gateway that can endanger the environmental ecosystem, so the fact that currently,

there is a proliferation of drinking water companies, both experienced and new, are competing to gain control of water sources located in remote villages and mountains. This article basically indicates two things, namely the government's inability to manage and distribute water resources to people who are experiencing drought and really need clean water for their basic daily needs. This inability can originate from instruments and facilities owned by the State, inadequate infrastructure, funding that is not allocated, or government policies that do not lead to this.

Behind this commercialism and various profits, companies are actually given legal responsibilities called Corporate Social Responsibility (CSR), which the Limited Company Law and the Environmental Management and Protection Law regulate. Apart from that, the real impact in terms of the community's environmental and agricultural ecosystem needs for the supply of water resources will undoubtedly be reduced, even if entrepreneurs claim that the water resources as the objects of their permits are the company's property. Indeed, the community will not question or sue. Research by Harjito from the UGM Hydrology laboratory conveyed several impacts caused by excessive continuous and uncontrolled extraction of groundwater and non-periodic environmental conservation, namely the reduction in the availability of groundwater in the long term, increasing depletion, green open land, worsening environmental conditions, and reduced water absorption, the threat of drought during the dry season, inundation and flooding during the rainy season (Anderson-Teixeira & Belair, 2022). Meanwhile, the conclusions conveyed by Lolom from his research regarding excessive groundwater extraction could result in a decrease in the quantity and level of groundwater, a decrease in water reserves, drying out of residents' wells, seawater intrusion towards land, and the most dangerous as land subsidence, as stated in In Jakarta, land subsidence occurred continuously (Rodríguez Bolaños & Portilla Parra, 2020). Sea water intrusion is the entry of seawater towards land (Sonjaya, Heryanto, Mulyana, & Aridhayandi, 2020). If looking at the positive impact on residents' income, the existence of this drinking water company also made big profits, in terms of employment, trade, and distribution business as well as recycling glass or bottle packaging waste after use because many bottled water companies used 100% raw materials of packaging from recycling. However, what needs to be underlined is that capitalism relies on itself that capital is the main factor, profit is the primary goal, and exploitation of natural resources is the main activity (Tohir, 2021). Hence, recently, the principle of developmentalism has developed, namely development based on capitalism, which is campaigned by the IMF by providing various short-term loan benefits through development policies that are oriented towards increasing the absorption of employment and labor resources but aimed at exploiting natural resources.

4. CONCLUSION

Article 7 of Law 17 of 2019 concerning Water Resources basically does not open up opportunities for any party to obtain any rights to water. However, Article 8 Paragraph 4b opens up opportunities for private parties or individuals to obtain rights to water management for business purposes with specific permits that the government stipulates. This article will basically be contrary to Article 33 Paragraph 3 of the 1945 Constitution. It is because Article 8 Paragraph 4b of Law 17 of 2019 concerning Water Resources will open up opportunities for water resources commercialism and lead to capitalism in the water resources economy. In fact, what is happening nowadays is the proliferation of water companies in various regions, both local companies and international water companies. Meanwhile, government supervision of these companies in extracting water resources is very weak, leading to the exploitation of water resources. This situation will indeed have a very negative impact on living things, agriculture, and the environment both directly and in the future. In order to minimise the impact of the proliferation of companies that use water for commercial purposes, the government should conduct periodic evaluations and establish controls that limit the extraction of groundwater for commercial purposes. The limitation in this research is knowing the exact amount of water taken by businesses in the utilization of water resources, because the supervision carried out by the government is very limited and temporal and the reports provided cannot be confirmed as valid reports because there is no technology to record groundwater withdrawals that have been made. In the future, the utilization of water resources should be strictly monitored and controlled by the government and there should be technology used for the utilization

of water resources. Research is very useful in implementing sustainable development based on environmental sustainability, because water resources are the main element supporting environmental sustainability and national development. Another more important contribution is as a consideration and input idea in decision-making related to environmental preservation and water resources.

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