

LEGAL POLICY ON FULFILLING THE RIGHT TO CLEAN WATER FOR INDONESIAN CITIZENS

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Accepted: 30-07-2024 Revised: 31-07-2024 Approved: 31-07-2024 Published: 31-07-2024

DOI: 10.30596/dil.v9i2.21121

How to cite:

Razikin (2024) "Legal Policy On Fulfilling The Right To Clean Water For Indonesian Citizens", De Lega Lata: Jurnal Ilmu Hukum, volume. 9 (2): p. 282-288

Abstract

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the state controls the rights to water resources with the sole purpose of the prosperity of the people. The meaning of Article 33 paragraph (3) philosophically is the embodiment of the 5th Principle of Pancasila, namely Justice for All Indonesian People, where water as one of the national riches is a need of the people which is controlled by the state within the framework of providing justice and prosperity for all Indonesian people. The general regulation of water fulfillment has been explained in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which provides a guarantee from the state for the people's right to water, including in this context the right to clean water. This concept is then further explained in Article 6 of Law Number 17 of 2019 concerning Water Resources. However, the SDA Law provides a loophole for water management, no longer solely for the public interest but shifting to private and even commercial interests. Article 8 of the SDA Law as amended by Article 53 of Law Number 11 of 2020 concerning Job Creation regulates the state's priorities for the people's right to water, namely: (a). daily basic needs; (b). people's agriculture and (c). use of Water Resources for business needs to meet daily basic needs through the Drinking Water Supply System. As a result, based on BPS data, 33.4 million Indonesians lack clean water and 99.7 million people lack access to good sanitation facilities. Legal policies on the fulfillment of clean water for Indonesian citizens must be carried out immediately as an anticipation of a medium crisis in 2025, the results of research by the National Water Resources Council. Because if there is no concrete legal policy, such as budget policy, institutional arrangements and changing existing legal products with the concept of the State controlling the rights to water resources with the sole intention of the people's prosperity, otherwise in 2040 Indonesia will be one of the countries experiencing a long water crisis, if that happens then death, poverty and hunger will become a serious problem for the Indonesian nation

Keywords: Legal Policy, Clean Water.

INTRODUCTION

The existence of humans and water has an inseparable relationship. Humans need more water than food or other needs. Water is intended to meet daily health needs in addition to being consumed for drinking. However, as the population increases and the environment changes, access to water becomes increasingly scarce. The state's responsibility to defend the human rights of citizens is very important in dealing with these restrictions. The right to regulate and manage water resources is one of the water rights protected by the constitutions of many countries including Indonesia.

Recognition of the right to water as a human right has been formulated in the WHO

constitution in 1946. WHO does not specifically mention the right to water but the right to enjoy the highest attainable standard of health. The same right is also recognized in the Universal Declaration of Human Rights (UDHR) which was adopted in 1948. Article 25 of the UDHR paragraph (1) which in essence states that everyone has the right to a standard of health and well-being adequate for himself and his family.

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the state controls the rights to water resources with the sole purpose of the prosperity of the people. The meaning of Article 33 paragraph (3) philosophically is the embodiment of the 5th Principle of Pancasila, namely Justice for All Indonesian People, where water as one of the national riches is a need of the people which is controlled by the state within the framework of providing justice and prosperity for all Indonesian people (Harjanti, 2009). However, various obstacles, including global pressure to privatize water resources, are a challenge for the state in fulfilling its duty to provide adequate access to water resources for human life.

Because access to water is not only a right but more of a human right (HAM). Because the right to water is a human right, constitutionally the state has an obligation to respect, fulfill, and protect this right, so that the state can carry out its obligations to fulfill the rights of citizens to water, the state must exercise control over water (Kasim, 2015).

State legal policy is very necessary when people are not in the same position in getting water, the difference in each person's position is not only due to economic inequality, but also the natural conditions in a particular area. These differences make it difficult for some parts of society to get access to water, and in this situation, the presence of the state is very necessary (Nurchayono et al., 2015). Even in Article 6 of Law Number 17 of 2019 concerning Water Resources, it is still in line with the provisions in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which provides guarantees from the state regarding the people's rights to water.

However, other articles in Law Number 17 of 2019 concerning Water Resources provide loopholes for water management, no longer solely for the public interest but shifting to private and even commercial interests. Article 8 of Law Number 17 of 2019 concerning Water Resources as amended by Article 53 of Law Number 11 of 2020 concerning Job Creation regulates the state's priorities for the people's right to water, namely: (a). daily basic needs; (b). people's agriculture and (c). use of Water Resources for business needs to meet daily basic needs through the Drinking Water Supply System.

Because water is believed to be a gift from God, water is an inherent part of human life activities and creativity, it is unimaginable how humans can live without water. However, the problem is, not all water can be used by humans. Only clean and healthy quality water can be used by humans. Water is an asset of human life. If this asset is reduced or runs out, then it is certain that humans cannot continue their lives.

RESEARCH METHOD

A research cannot be said to be research if it does not have a research method (Koto, 2021). Research methods are one of the factors of a problem that will be discussed. The type of research used in this research is normative legal research. This research was conducted using a statutory approach. The statutory approach is carried out by reviewing all laws and regulations that are related to the legal issue being handled. (Marzuki, 2017). Analysis of legal materials is carried out using qualitative analysis methods which are used to explain legal events, legal materials or legal products in detail to facilitate legal interpretation (Zainuddin & Ramadhani, 2021).

DISCUSS AND ANALYSIS

Regulations on Fulfillment of Water Rights for Indonesian Citizens

Conceptually, the State in fulfilling the rights of citizens cannot be separated from the power held by the state. State power is based on the concept of sovereignty, the concept of sovereignty concerns the holder of the highest power, this power can be viewed from power in the political field and power in the economic field is sovereignty over wealth or property including wealth over land and water as a source of livelihood (Asshiddiqie, 2005). In the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (2) states, "Sovereignty lies in the hands of the people and is carried out according to the Constitution." Therefore, the highest power, including in terms of managing natural resources, in this case water resources, is carried out by paying attention to the interests of the holder of the highest sovereignty, namely the people. Because the constitution is a guideline for how the implementation of people's sovereignty is carried out.

From a human rights perspective, the fulfillment of citizens' rights to water is regulated primarily in Article 28H of the 1945 Constitution concerning the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and to have the right to receive health services. In this provision, there is no specific mention of the right to water or access to clean, healthy and safe water. However, the rights in question can certainly be further explained in other provisions. The affirmation of the right to water is regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the state controls the rights to water resources with the sole purpose of the people's prosperity. Regarding the state's control over the earth and water and the natural resources contained therein for the greatest prosperity of the people. The concept of the state's right to control based on this provision has been interpreted by the Constitutional Court through its decision and has become jurisprudence which is also referred to in the decision on the judicial review of the Water Resources Law.

The construction of Article 33 paragraph (3) of the Constitution has actually been outlined in Law Number 7 of 2004 concerning Water Resources (SDA), but this law has quite serious problems and is considered to be in conflict with the six basic principles of water resource management restrictions. When Law Number 7 of 2004 concerning Water Resources (SDA) was tested at the Constitutional Court, the Constitutional Court (MK) in Decision Number 85/PUU-XI/2013 annulled the entire validity of Law Number 7 of 2004 concerning Water Resources (SDA) because it did not fulfill the six basic principles of water resource management restrictions. It has even provided limitations on how to fulfill the right to water as follows, First, every water management must not interfere with, set aside or even eliminate the people's right to water. Second, the state must fulfill the people's right to water. Third, it must remember that environmental sustainability is a human right. Fourth, state supervision and control of water is absolute. Fifth, state-owned enterprises or regional-owned enterprises must be given top priority in water management.

The affirmation of the Constitutional Court's decision is that the Private Sector May Not Control Water Management, because the concept of rights in Water Use Rights must be distinguished from the concept of rights in the general sense and must be in line with the concept of *res commune* which must not be an object of economic price. In addition, the concept of Water Use Rights in the Water Resources Law must be interpreted as a derivative of the right to life guaranteed by the 1945 Constitution. Therefore, the use of water outside of Water Use Rights, in this case Water Use Rights, must be through a permit application to the Government, the issuance of which must be based on a pattern that is prepared by involving the widest possible community participation. Therefore, Water Use Rights must not be intended as granting control rights over water sources, rivers, lakes, or swamps.

Water Use Rights are an instrument in the licensing system used by the Government to limit the amount or volume of water that can be obtained or exploited by those entitled, so in this context, permits must be used as an instrument of control, not an instrument of control. Therefore, the private sector may not exercise control over water sources or water resources but may only exploit a certain amount or allocation in accordance with the allocation determined in the permit strictly granted by the state (Rochmah, 2013).

However, after the Constitutional Court's decision, the SDA Law was then amended by

Law Number 17 of 2019 concerning Water Resources. Article 6 of the SDA Law is actually in line with the provisions in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which provides a guarantee from the state for the people's right to water. However, other articles in Law Number 17 of 2019 concerning Water Resources provide loopholes for water management, no longer solely for the public interest but shifting to private and even commercial interests. This can be seen in Article 8 of the SDA Law as amended by Article 53 of Law Number 11 of 2020 concerning Job Creation which regulates the state's priority for the people's right to water, namely, First, daily basic needs, second, people's agriculture and third, use of water resources for business needs to meet daily basic needs through the Drinking Water Supply System.

Several laws and regulations above show that water management as an effort to avoid a water crisis that makes Indonesia a high-income country in 2045, Indonesia is targeting economic growth of 6-7 percent, one of which is through the blue economy. Indonesia has launched the Blue Economy Roadmap. This cannot be fulfilled if water resources as part of human rights, resources contained in water are also needed by humans to meet other needs, such as for agricultural irrigation, power generation, and for industrial needs, which have an important role in the progress of human life and are also important factors for humans to be able to live decently, are not carried out through concrete legal policies.

Legal Policy on Fulfillment of the Right to Clean Water for the Citizens of Indonesia

Legal policies in fulfilling the right to water for the Indonesian people, there are still quite serious problems and challenges in the water law sector and efforts to fulfill human rights to water in Indonesia, especially when faced with the massive global agenda to liberalize and privatize water, which is often contradictory to the idea and efforts to fulfill human rights to water itself (Chalid & Yaqin, 2018). Indonesia has guaranteed legal certainty regarding the fulfillment of the right to clean water through the right to water in several articles of the 1945 Constitution of the Republic of Indonesia, such as the right to water in national legal products and the right to water in international law and human rights. The ideal concept of state responsibility for the fulfillment of the right to clean water can be carried out by reconstructing the law on state control rights and restrictions on the management and exploitation of water resources by the private sector which can limit public access to meet clean water needs.

This policy is important to be implemented by the government, based on the research results of the National Water Resources Council, it shows that a concrete legal policy is needed, such as changing existing legal products with the concept of the State controlling the rights to water resources with the sole intention of the people's prosperity, otherwise in 2040 Indonesia will be one of the countries experiencing the longest water crisis, resulting in death, poverty and hunger will become a serious problem for the Indonesian nation. Because currently BPS data shows that as many as 33.4 million Indonesians lack clean water and 99.7 million people lack access to good sanitation facilities. Clean water is a basic need. A sufficient development budget needs to be prepared to encourage the realization of access to safe drinking water in 2030. So far, the government budget in the last 5 years for the clean water sector has ranged from IDR 3.5-6.5 trillion with an average of IDR 4.5 trillion per year. If this amount can be maintained every year, by 2030 there will be government funds of around IDR 45 trillion. Still very far from the development needs until 2024 which amount to IDR 147 trillion or even the funding needs in 2030 amounting to IDR 238 trillion.

Coordination is needed to fulfill the need for clean water which is the target of the policy in providing clean water for the Indonesian people (Kornita, 2020). Providing access to clean water/drinking water is a concurrent and mandatory government affair. The fulfillment of clean water is carried out with a community-based or independent approach, and based on institutions through regional-owned enterprises (BUMD) in the field of drinking water. However, everything does not always run smoothly, because the many stakeholders in the clean water sector require qualified leadership, and there also needs to be an authority that becomes a leading institution in the clean water sector (Purwanto, 2020).

The challenge to meet the amount of funding is clearly not easy. If the APBN is still unable to provide the amount needed for the sector development budget, then the possibility of the regional government being able to allocate the APBD as expected by the central government is almost impossible. Field data collected by the Working Group on Drinking Water and Environmental Sanitation indicates that the average APBD for the drinking water and sanitation sector is only around 2% per year. (Bappenas, 2020).

The 2020-2024 RPJMN also noted that the achievement of clean water service access performance was still not satisfactory in the previous development period. Increasing access to clean and safe drinking water still needs to be optimized. There are various challenges in providing access to drinking water, ranging from weak governance and institutions, to limited commitment and capacity of local governments. The 2030 Sustainable Development Goals (SDGs) stipulate the sustainable development goal (TPB) of access to drinking water is universal access for the entire community with drinking water that must meet the criteria for safe drinking water; from a suitable water source, located inside or in the yard, accessible whenever needed, and of a quality that meets health standards.

Optimizing the use of water sources, building intakes, utilizing other water sources, controlling the upstream of rivers, and expanding the scope of services, environmental strategies include securing, maintaining and improving the quality and quantity of river water, routine monitoring and evaluation every 6 months of the quality and quantity of river water, implementing raw water processing technology, and increasing operational hours (Mustikawati, 2022).

SDGs mandate access to safe drinking water. The development of the clean water sector, which has so far adopted a community-based and institution-based approach, needs to be reviewed. To realize access to safe drinking water, both approaches must be complemented by efforts to improve the quality of the water produced, meeting the safety criteria required by the SDGs. The complexity of managing the clean water sector requires institutional arrangements that can accelerate the addition of clean water access in terms of quantity and quality. It is necessary to prepare an authority that has authority from upstream to downstream related to the drinking water sector.

Based on the various problems and solutions explained above, a legal policy is needed in addition to building a new paradigm in Law Number 17 of 2019 concerning Water Resources. Which must be adjusted to Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which provides a guarantee from the state for the people's right to water. However, other articles in Law Number 17 of 2019 concerning Water Resources provide loopholes for water management, no longer solely for the public interest but shifting to private and even commercial interests. This can be seen in Article 8 of the Water Resources Law as amended by Article 53 of Law Number 11 of 2020 concerning Job Creation. Therefore, legal reform is the key to meeting the clean water needs of Indonesian citizens who are currently threatened by crisis, in addition there is also a serious budget policy in dealing with the water crisis and coordination between the central and regional governments must also be strengthened in ensuring that the Indonesian people can meet their clean water needs now and in the future.

CLOSURE

Conclusion

The general regulation of water fulfillment has been explained in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which provides a guarantee from the state for the people's right to water, including in this context the right to clean water. This concept is then further explained in Article 6 of Law Number 17 of 2019 concerning Water Resources. However, the SDA Law provides a loophole for water management, no longer solely for the public interest but shifting to private and even commercial interests. Article 8 of the SDA Law as amended by Article 53 of Law Number 11 of 2020 concerning Job Creation regulates the state's priorities for the people's right to water, namely: (a). daily basic needs; (b). people's agriculture

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