Fulfillment of The Right to Clean Water for Post-Disaster Communities in Gumbasa District, Sigi Regency

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Abstract
Water is a basic human need; no one can live without water. As a basic need, water is part of the requirements for an adequate standard of living for the health and well-being of all human beings. The problem currently being faced is that the availability of clean water to meet the needs of the people of Gumbasa District is decreasing after the earthquake in Sigi Regency. On the one hand, there is a view that water is a commodity (economic good), while on the other hand, it is said that water is a social good. This article aims to analyze the progress of regulating the right to water as a human right and efforts to fulfill and provide clean water after the disaster in Gumbasa District, Sigi Regency. The research method uses a normative juridical method, which analyzes library materials or secondary data. The research results show that the right to clean water implies that everyone must access water without discrimination. The role of the Sigi Regency Government is essential when people are not in the same position in getting water; the difference
Fulfillment of The Right

A. Introduction

Water resources are one of the essential elements for the sustainability of living things, especially humans.\(^1\) Water resources have a significant role in supporting activities in agriculture, urban and rural clean water, industry, pond fisheries, tourism, electric power, and flood and erosion control.\(^2\) Because of the existence and benefits of water, which is vital for human life and other living creatures, it is not surprising that water has become the center of debate and even a source of disputes throughout the history of civilization. No one can deny that water is a resource without which life would not exist. All living things on this earth need water as a source of life. That is why water is one of the most critical human resources to carry out their lives.\(^3\)

As with natural resources in general, water resources are the essential capital for national development with social, environmental and economic functions that must work harmoniously to sustain their utilization.\(^4\) The recognition of water as a human right indicates two things; on the one hand is the recognition of the fact that water is such an essential need for human life, and on the other hand the need for protection for everyone over access to water.\(^5\) Water is an asset of human life. If these assets are reduced or exhausted, humans can certainly not live their lives.\(^6\)

Philosophically, water is a public good given by God to humans to be used and enjoyed to carry out their lives. Thus, the ownership of water resources is the common property of humanity (res communis), therefore, cannot be privately owned like a private good.\(^7\) Because water resources are resources that control many people’s lives and are directly related to the rights of human life, private control over water resources to obstruct the rights/access of others to the water resources in question cannot be justified for any reason. Before the 2018 earthquake, the availability of clean water for the Districts of Gumbasa, Tanambulava and Sigi Biromaru was fulfilled; after the earthquake for the District of Gumbasa, the fulfillment for clean water was limited, while the need for clean water increased.

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\(^{3}\) Hamid Chalid, Human Rights to Water: Studies on Water Law in the Netherlands, India and Indonesia, Doctoral Program Dissertation, Faculty of Law, University of Indonesia, Jakarta, 2009, p. 61.


\(^{7}\) Ibid p.41
In Indonesia, access to clean water is still a problem, most of the freshwater used comes from rivers, lakes, reservoirs and wells.\(^8\) The existence of water resources must be utilized as well as possible to meet various needs of life and guaranteed so that everyone gets their rights to these natural resources.\(^9\) Laws in the field of water in Indonesia are inseparable from other important issues, namely those relating to the right to water and water rights.\(^10\) Thus the importance of water for human life, it is not surprising that the right to water today, both globally, nationally and regionally, has been recognized as one of the human rights, namely the human right to water.\(^11\)

This affirmation of the state's role in managing water resources is a constitutional policy intended to guarantee the fulfillment of citizens’ rights to water.\(^12\) On that basis, water should be accessible and enjoyed by everyone because this right is one of the human rights or the most fundamental rights possessed by humans without which they cannot live their lives.\(^13\) Implicitly, water resource utilization is guided by economic efficiency principles in formulating patterns, including utilization priorities.\(^14\)

Nevertheless, the ideal concepts and principles regarding water resources do not always run smoothly. Water's philosophical and ideological values, including its position as a human right in practice, cannot always be realized quickly. On the other hand, efforts to fulfill human rights to water are often faced with various problems and challenges, ranging from weak regulation in the field of water resources, lack of government commitment to fulfilling human rights to water, to the problem of lack of government funding and investment in the water sector. Water resources, causing the government to be powerless to control and manage water resources to be distributed fairly to the people.

The existence of contradictions between philosophical and ideological values about water and the fulfillment of human rights to water after the disaster is the focus of this research. The marginalization of people's rights to access and obtain water after the earthquake, even though water is the most basic need for every human being to carry on his life, should be available/accessible freely and fairly by anyone. These issues will be discussed and elaborated on in this research. The problems in this study are formulated as the following questions: 1. How is the development of the regulation of the right to water as a human right? 2. How are the efforts to fulfill and provide clean water after the earthquake in Gumbasa District Sigi Regency?


\(^13\) Hamid Chalid, Op.Cit.hlm.61

This research is normative juridical research. The research was conducted by analyzing library materials or secondary data, which included:\textsuperscript{15}

1. Primary legal materials\textsuperscript{16}, namely legal materials that are authoritative, including international conventions, declarations of the United Nations Special Body (ECOSOC), customary international law, general legal principles, especially those that apply to human rights, decisions of the International Court of Justice and doctrines that apply to human rights.

2. Secondary legal materials, namely materials that provide instructions or explanations regarding primary legal materials, such as research results, scientific works in the form of books, journals, papers and other literature whose content/substance is relevant to this research.

3. Tertiary legal materials, namely materials that provide instructions and explanations of primary and secondary legal materials, such as legal dictionaries (Black’s law dictionary), encyclopedias and internet sites.

This research is descriptive-analytical, this research is not only limited to collecting and compiling or presenting primary legal materials, secondary legal materials and tertiary legal materials but also analyses them concerning legal theories and implementation practices of positive law concerning problems (study objects).\textsuperscript{17}

The approach used in this legal research is an approach to various international legal instruments related to the object of research as well as to take a historical approach to these international legal instruments, to understand the changes and developments in the philosophy that underlies the rule of law to facilitate the analysis of the object of research as well as a case approach, related to the problem law that will be studied in this study.\textsuperscript{18} All secondary data collected will be analyzed qualitatively using legal research methods determined to study and find answers to legal problems in this study, then outlined in descriptive research results.\textsuperscript{19}

The novelty of this research will contribute to the government in implementing existing regulations related to water regulation in Indonesia. Basically, the management of water resources must be controlled by the state and used for the greatest prosperity of the people. This is also in line with the United Nations conference, namely the Stockholm Convention which states that water is a natural resource that must be protected in addition to other natural resources, clean water. The program that has been implemented by the Ministry of Public Development and Public Housing (PUPR), namely the installation of clean water pipes that have been operating at this time, has not been able to meet the needs of clean water for the community and is still in the construction stage.

\textsuperscript{15}Soerjono Soekanto and Sri Mamuji, Normative Legal Research, A Brief Overview, Radja Grafindo Persada, Jakarta, 2006, p.13.

\textsuperscript{16}Research in the field of international law refers to legal sources contained in the provisions of Article 38 of the Statute of the International Court of Justice as primary legal material, Peter Mahmud Marzuki, Legal Research, Kencana Prenada Media Group, Jakarta, 2005, p.167.

\textsuperscript{17}Ronny Hanitijo Soemitro, Legal and Jurimetric Research Methodology, Ghalia Indonesia, Jakarta, 1990, p.97.

\textsuperscript{18}The author assumes that what Peter Mahmud wrote as a statute approach can be interpreted, including the approach to international legal instruments, such as international conventions, considering this research is research in the field of international law; for more details, see Peter Mahmud Marzuki, op.cit., p.95.

\textsuperscript{19}Soerjono Soekanto, Introduction to Legal Research, University of Indonesia (UI-Press), Jakarta, 1986, p.69.
B. Discussion

Before discussing further the problems described in the introduction section above, it is better to put forward the theories surrounding human rights to water which are the basis for thinking in this research.

1. Theory of Human Rights to Water

As stated earlier, no one can deny that water is a resource without which life cannot exist.\(^{20}\) Without water, there is no life. Likewise, without water rights, the right to live is just an illusion because of one of the conditions for living in the water. Thus the importance of the meaning and benefits of water for humans and water rights is closely related and becomes a prerequisite for the right to life.

At first, the water right was only considered subordinate to the right to life. It was not until 1977 that there was an attempt to withdraw the right to water into an independent human right and separate it from the right to life. Also, in 1977, the first United Nations International Conference on water was held in Mar del Plata, Argentina. The conference passed a resolution that read: “All peoples […] have the right to have access to drinking water in quantities and of a quality equal to their basic needs”.\(^{21}\)

In subsequent developments, the right to water, both globally and at the national level, is increasingly recognized as one of the human rights.\(^{22}\) One of the acknowledgments and commitments at the international level can be seen in the "General Comments on the Right to Water," commonly called "General Comments No. 15 (GC-15),"\(^{23}\) issued by the Committee on Economic, Social and Cultural Rights (CESCR).\(^{24}\) In November 2002, which explicitly mentioned and recognized that water rights are human rights.\(^{25}\) Meanwhile, similar recognition and commitment at the national level can be seen in one of the decisions of the Constitutional Court No. 85/PUU-XI/2013 on the Review of Law No. 7 of 2004 concerning Water Resources, in which the Constitutional Court recognized and affirmed that the water right is a human right, and therefore must be respected, protected, and fulfilled by the state.\(^{26}\) In the context of Indonesia, recognizing and affirming the right to water as a human right by the Constitutional Court in interpreting the status and position of the right to water according to the 1945 Constitution has the consequence that human rights to water must be protected, developed, enforced and fulfilled by the state, especially the government.\(^{27}\)

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\(^{20}\)Hamid Chalid, Op. Cit, p. 61


\(^{23}\)This GC-15 is not a treaty but the result of the Committee on Economic, Social and Cultural Rights (CESCR) interpretation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, in practice, the CESCR may apply measures that can 'force' states to implement the Covenant based on the interpretation of the CESCR.

\(^{24}\)The Committee on Economic, Social and Cultural Rights is a United Nations agency under ECOSOC tasked with monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights.


\(^{26}\)The decision of the Constitutional Court of the Republic of Indonesia Number 85/PUU-XI/2013 concerning Judicial Review of Law no. 7 of 2004 concerning Water Resources, in particular the section "Opinion of the Court.”

\(^{27}\)Ibid.
As a public good which is common property (res communis) of the Indonesian people, water should be accessible to anyone. 28 On the other hand, exclusive and private control of water sources that hinder the rights of others to obtain water from these sources is not justified for any reason because it can be categorized as a severe violation of human rights over water which in turn can threatens a person's right to life. Because we know very well that without water, humans cannot survive.

2. Public Trust Doctrine

The public trust doctrine offers two main ideas about material status and water ownership. First, water is a public good. Second, the state controls water resources as a trustee of the actual water owners (i.e., the public) over these water resources. 29

Public trust doctrine itself stems from one of the provisions in the Justinian Code (Roman), which states that navigable rivers and ports are res publicae; public property rights. Therefore, control over it is by the state. The state's position, in this case, is as a trustee (trustee, trust holder) of the public's rights to shipping and fishing. 30

Although this doctrine originates from Ancient Roman law and in the contemporary era currently applies in common law countries, it can be seen that this doctrine is very relevant and follows the spirit of Article 33 paragraph (3) of the 1945 Constitution, in this case concerning water resources. Because in line with the public trust doctrine, Article 33 paragraph (3) of the 1945 Constitution also stipulates that water is the common property of the Indonesian people, while the state is only the holder of the trust/trust from the Indonesian people to control these water resources so that they can be used for the prosperity of the Indonesian people. The following is the full text of Article 33, paragraph (3) of the 1945 Constitution:

“The land and waters and natural wealth contained within them are controlled by the State and shall be utilized to increase the prosperity of the People.”

Thus, this doctrine is very relevant to be used as a basis for thinking in this research because it is of the same soul and in the same breath as the provisions of Article 33 paragraph (3) of the 1945 Constitution, which indeed requires the control of water resources by the state as a party that has a mandate from the people to control and manage water resources. This is because the Indonesian people own a wealth of water resources.

3. The Development of The Regulation of The Right to Water as A Human Right

Awareness of the world community problems that may arise related to water resources began to emerge in the 1970s and continue to grow. In 1972 the issue of water resources became a concern at the United Nations Conference on Human Environment, held in Stockholm. The conference resulted in the Stockholm Declaration on Human Environment, in which one of the principles adopted in it stated that water is a natural resource that must be protected in addition to other natural resources such as air, soil, flora and fauna and must be managed carefully for the current generation. Furthermore, what is to come? 31

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28 The decision of the Indonesian Constitutional Court, Op.Cit, Paragraph 3.15, p.133
In 1977, the United Nations (UN) held the Mar del Plata Water Conference in Argentina, which specifically discussed the issue of water resources. This conference gave birth to the Mar del Plata Action Plan, which contains various recommendations and resolutions regarding water resource issues such as water resource assessment, water utilization and efficiency, environmental and health issues, regional and international cooperation to research and development issues, provision of water for the community, use of water for agricultural needs and river problems.\textsuperscript{32}

This Action Plan can also find thoughts on the right to water. Resolution II on Community Water Supply, as part of the Action Plan produced at this conference, stated for the first time the right to access to drinking water. This resolution's content is considered the starting point of the debate on the right to water. At a conference in Rio de Janeiro, Brazil, organized by the United Nations, the Conference on Environment and Development (UNCED) in June 1992, also known as the Rio Summit, Agenda 21 was born on the Program of Action for Sustainable Development. The program's chapter, Chapter 18, deals with water rights. Chapter 18 also supports the Mar del Plata resolution.\textsuperscript{33}

No formula states that water is a human right. The importance of water discussed in various declarations and resolutions only talks about the right to water or access to clean drinking water from the perspective of water as a basic human need. The statement that water is a human right was stated in the UN General Assembly Resolution on The Right to Development in 1999. The resolution stated that in realizing the right to development, "the right to food and clean water is a fundamental human right...". \textsuperscript{34}

The recognition of the right to water as a human right was formulated in the WHO constitution in 1946. In the constitution, WHO does not explicitly mention the water right but the right to enjoy the highest attainable standard of health.\textsuperscript{35} The same right is also recognized in the Universal Declaration of Human Rights or Universal Declaration of Human Rights (UDHR), which was adopted in 1948. This recognition is contained in Article 25 of the UDHR, especially in paragraph (1), which essentially states that everyone has the right to a standard of health. And good welfare for himself and his family.\textsuperscript{36} This right was later recognized as a human right in the International Covenant on Economic, Social and Cultural Rights (ICESCR).\textsuperscript{37} Or the International Covenant on Economic, Social and Cultural Rights in Article 12 paragraph (1).

\textsuperscript{32}Ibid
\textsuperscript{33}Helmi Kasim, Affirmation of the State's Role in Fulfilling Citizens' Rights to Water, Center for Research and Case Studies, Administration of ICT in the Registrar's Office and Secretariat General of the Constitutional Court.
\textsuperscript{34}Ibid. Page.359
\textsuperscript{35}Regarding this right, the WHO Constitution in total reads, "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition," http://www.who.int/governance/eb/who_constitution_en.pdf,
\textsuperscript{36}Article 25 paragraph (1) of the UDHR reads in full, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control. See Universal Declaration of Human Rights,http://www.un.org/en/documents/udhr/index.shtml#a25,
4. How are The Efforts to Fulfil and Provide Clean Water After The Earthquake in Gumbasa District, Sigi Regency

In 1972 the issue of water resources became a concern at the United Nations Conference on Human Environment, which was held at the Stockholm Convention, one of the principles adopted in it stated that water is a natural resource that must be protected in addition to other natural resources such as air, soil, flora and fauna as well as natural resources. It must be managed carefully for present and future generations. The same right is also recognized in the Universal Declaration of Human Rights or the Universal Declaration of Human Rights (UDHR), adopted in 1948, that water is a fundamental right.

Article 33 of the 1945 Constitution, in particular, regulates the control by the state over the earth and water and the wealth contained therein to be used as much as possible for the prosperity of the people.

The Ministry of Public Works and Housing provides the innovation and technology support needed to build infrastructure that was damaged during a disaster. Infrastructure innovations that are currently under construction can improve water quality in the form of sedimentary devices. The use of sedimentary equipment as appropriate technology, fast, effective, cheaper and environmentally friendly process is also encouraged to create added value and sustainable development so that future generations can feel the benefits of infrastructure.

To meet the community's need for clean water after the disaster, the government is trying to ensure that the people of Gumbasa can enjoy clean water. Efforts are being made at this time by dividing the water flow into 2, used for irrigation 70% and as clean water for residents 30%. Nevertheless, of course, the distribution of clean water is not enough for the residents.

C. Conclusion

1. Conclusion

It must be admitted that water law in Indonesia is still plagued with quite serious problems, both at the regulatory and implementation levels, especially regarding fulfilling human rights to water. He has laid down an ideal principle regarding the direction of water resources management in Indonesia, which states that water resources must be controlled by the state to be used for the greatest prosperity of the people. In short, there are still quite severe problems and challenges in the legal sector. Water and efforts to fulfill human rights to water in Indonesia, especially faced with the massive global agenda to liberalize and privatize water, often contradic the ideas and efforts to fulfill human rights over the water itself.

Entering three years after the disaster, the installation of the pipe that flows from the Gumbasa River has been operating but has not fulfilled the integrity of the community and is still in the construction stage, based on the results of an interview with the Head of the Public Works and Housing Service of Sigi Regency, who said that the government is trying to ensure that water from Gumbasa can generally operate on the year 2024.

2. Suggestion

Prevent absolute control over a resource. The state's control over natural resources, especially water resources by the state, should be accompanied by strengthening the functions of the people's representative institutions and other supervisory institutions in the context of controlling the control itself. Optimization of supervision can be focused on new regulations that are not in line with the spirit of Article 33 of the 1945 Constitution of the Republic of Indonesia. Essential supervision is also carried out on cooperation agreements, both those that
have been implemented and in the planning stage, between regional drinking water companies and private partners. Under the pretext of the right to use water.

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C. Regulation

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The committee on Economic, Social and Cultural Rights is a United Nations agency under ECOSOC in charge of monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights.