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

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Abstract

Abstract

Water is essential for human survival and well-being. In Gumbasa District, Sigi Regency, the availability of clean water has significantly decreased following a recent earthquake. Debates persist regarding the perception of water either as an economic commodity or a social good. This article explores the evolution of water rights as human rights and examines initiatives to ensure and provide clean water in the post-disaster context of Gumbasa District. Employing a normative juridical approach, this research *analyzes secondary data from library resources. Findings underscore that the right to water entails nondiscriminatory access for all. The research highlights the critical role of the Sigi Regency Government in addressing disparities in water access, which are influenced not only by economic inequality but also by geographic and natural conditions. These factors exacerbate challenges in securing clean water access for some community segments, particularly in restoring water sources post-disaster.*

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A. Introduction

Water resources are crucial for the sustainability of all living beings, particularly humans.[1] It supports a wide range of activities including agriculture, urban and rural water supply, industry, fisheries, tourism, hydroelectric power, and flood and erosion control.[2] Given the essential nature and numerous benefits of water, it has historically been a focal point of debates and disputes. Indeed, water is indispensable; without it, life cannot exist. Every organism on this planet relies on water as a fundamental source of life, making it one of the most critical resources for human survival.[3]

Like other natural resources, water is a fundamental asset for national development, serving social, environmental, and economic purposes that must be harmoniously balanced to ensure sustainable use.[4] Recognizing water as a human right reflects its crucial importance for human survival and underscores the need to protect access to water for all.[5] Water is not just a commodity; it is a vital asset for human existence. Should this asset be diminished or depleted, human life would be untenable.[6]

Philosophically, water is considered a divine gift to humanity, intended for use and enjoyment in sustaining life. Consequently, water resources belong to the common heritage of all humanity (*res communis*) and should not be treated as private property.[7] Given water's critical role in supporting human life, it is indefensible for private entities to control and restrict access to these vital resources. Prior to the 2018 earthquake, the districts of Gumbasa, Tanambulava, and Sigi Biromaru enjoyed sufficient clean water supplies. However, post-earthquake conditions saw a reduced availability in Gumbasa, despite an increased demand for clean water.

In Indonesia, the challenge of accessing clean water persists, as the majority of fresh water is sourced from rivers, lakes, reservoirs, and wells.[8] It is essential that these water resources are managed effectively to meet the diverse needs of life and ensure equitable access for all. Indonesian water laws are closely linked to significant issues concerning water rights and the human right to water.[9] The right to water is increasingly recognized as a fundamental human right.[10]

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[1] Mohammad Reza, Agustina Nurul Hidayati. "Kearifan Lokal Suku Sasak Dalam Pengelolaan Sumber Daya Air Desa Lenek Daya, Kecamatan Aikmel Kabupaten Lombok Timur". *Jurnal Spectra*, Vol. 15 No. 30, 2017, p. 2.

[2] AL. Sentot Sudarwanto. "Dampak Dibatalkannya Undang-Undang Nomor 7 Tahun 2004 Tentang Sumber Daya Air Terhadap Manajemen Air untuk Kesejahteraan Masyarakat". *Yustisia Jurnal Hukum*, Vol. 4 No. 2 Mei – Agustus 2015. p. 456.

[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.

[4] *Ibid.*

[5] Arinto Nurcahyono, Husni Syam, Yuhka Sundaya. "Hak Atas Air dan Kewajiban Negara dalam Pemenuhan Akses terhadap Air". *Jurnal Mimbar*, Vol. 31, No. 2 (Desember, 2015).

[6] Wattimena, J.A. "Pemenuhan Hak atas Air Bersih dan Sehat, Serta Hak Menggugat Masyarakat". *Balobe Law Journal*, 1(1), 1-16. (2021). DOI: https://doi.org/10.47268/balobe.v1i1.497.

[7] Ibid p.41

[8] Dinarjati Eka Puspitasari. "Dampak Pencemaran Air Terhadap Kesehatan Lingkungan Dalam Perspektif Hukum Lingkungan (Studi Kasus Sungai Code Di Kelurahan Wirogunan Kecamatan Mergangsan Dan Kelurahan Prawirodirjan Kecamatan Gondomanan Yogyakarta)". *Jurnal Mimbar Hukum*, Vol 21, No 1 (2009). https://doi.org/10.22146/jmh.16254.

[9] Ibnu Sina Chandranegara. "Purifikasi Konstitusional Sumber Daya Air Indonesia (Constitutional Purification On Water Law)". *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Vol 5, No 3, 2016. http://dx.doi.org/10.33331/rechtsvinding.v5i3.150, p. 361

[10] Helmi Kasim. "Penegasan Peran Negara dalam Pemenuhan Hak Warga Negara Atas Air". *Jurnal Konstitusi*, Vol 12, No 2 (2015). https://doi.org/10.31078/jk1228.

Water, fundamentally regarded as a human right, should be universally accessible and available for everyone, underpinning the essential human right to live.[11] This right implicitly demands that water resource management adhere to principles of economic efficiency, including setting utilization priorities[12] Such management underscores the state's constitutional role in ensuring that every citizen's right to water is fulfilled.[13]

However, the idealistic principles governing water resources often encounter practical challenges. The philosophical and ideological beliefs recognizing water as a human right are not always swiftly or effectively implemented. In practice, efforts to fulfill this right are frequently hindered by issues such as weak water resource regulations, inadequate government commitment to upholding the human right to water, and a lack of funding and investment in the water sector. These factors can leave governments struggling to manage and fairly distribute water resources.

This research focuses on the discrepancies between the philosophical ideals and the actual fulfillment of the human right to water, particularly in the aftermath of disasters. Notably, the research will examine how, despite water being an essential need, people's rights to access and secure water were marginalized following the earthquake. The core issues of this research, which will be further explored, revolve around two main questions: 1. What has been the development in regulating the right to water as a human right? 2. What efforts have been made to fulfill and provide clean water in the Gumbasa District of Sigi Regency after the earthquake?

This research is normative juridical research conducted by analyzing library materials or secondary data, which included:[14]

1. Primary legal materials[15], 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. applies 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 research collected, compiled, and presented primary legal materials, secondary legal materials and tertiary legal materials to be analyzed based on legal theories and implementation practices of positive law concerning problems (research objects).[16]

[11] Hamid Chalid, *Op.Cit*. hlm.61
[12] Galih Puji Mulyono. "Perlindungan Hukum Terhadap Tata Penglolaan Air di Indonesia". *Jurnal Cakrawala Hukum,* Volume 10 No. 1 Juni 2019.
[13] Helmi Kasim. "Penegasan Peran Negara dalam Pemenuhan Hak Warga Negara Atas Air". *Jurnal Konstitusi*, Vol 12, No 2 (2015). https://doi.org/10.31078/jk1228.
[14] Soerjono Soekanto and Sri Mamuji, Normative Legal Research, A Brief Overview, Radja Grafindo Persada, Jakarta, 2006, p.13.
[15] 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.
[16] Ronny Hanitijo Soemitro, Legal and Jurimetric Research Methodology, Ghalia Indonesia, Jakarta, 1990, p.97.

This legal research employed a multifaceted approach that involved examining various international legal instruments pertinent to the research subject. Additionally, it included a historical analysis of these instruments to comprehend the shifts and progress in the philosophical foundations of the rule of law. This dual approach was designed to enrich the analysis of the research object. A case-based approach was also incorporated to specifically address the legal issues under scrutiny in this study.[17] All secondary data collected were subjected to qualitative analysis using predefined legal research methods aimed at investigating and resolving the legal issues identified. The findings from this analysis are systematically presented in the form of descriptive research outcomes.[18]

The novelty of this research contributed to the government's efforts to implement existing water regulations in Indonesia. Essentially, the management of water resources must be controlled by the state to ensure the greatest prosperity for the populace. This aligns with international standards, such as those set forth at the United Nations conference, specifically the Stockholm Convention, which mandates the protection of water as a crucial natural resource. The clean water initiatives already underway by the Ministry of Public Development and Public Housing (PUPR), which include the installation of clean water pipes, have thus far been insufficient to meet the community's clean water needs and remain in the construction phase.

B. Discussion

Before delving deeper into the issues outlined in the introduction section, it is advisable to first present the foundational theories concerning human rights to water as the conceptual framework of this research.

1. Theory of Human Rights to Water

As previously mentioned, it is undeniable that water is an essential resource for sustaining life.[19] Thus, the significance of water and its benefits to humans is intrinsically linked to water rights, forming a fundamental prerequisite for the right to life. Without water, life itself is impossible. Similarly, without water rights, the right to life becomes illusory, given that access to water is a condition for living.

Initially, water rights were considered merely ancillary to the right to life. It was not until 1977 that efforts were made to establish the right to water as an independent human right, distinct from the right to life. That same year, the first United Nations International Conference on Water was held in Mar del Plata, Argentina. The conference adopted a resolution stating: "All peoples […] have the right to have access to drinking water in quantities and of a quality equal to their basic needs." [20]

The recognition of the right to water as a human right has gained increasing acknowledgment both globally and nationally.[21] Internationally, this recognition is evidenced by the "General

[17] 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.

[18]Soerjono Soekanto, Introduction to Legal Research, University of Indonesia (UI-Press), Jakarta, 1986, p.69.

[19]Hamid Chalid, *Op. Cit*, p. 61

[20]Audrey Gaughran, "Business and Human Rights and the Right to Water," Proceedings of the Annual Meeting, American Society of International Law, Vol. 106, Confronting Complexity, 2012, p. 52-55.

[21]Wouters, Patricia and Dan Tarlock. "The Third Wave of Normativity in Global Water Law." *The Journal of Water Law*, Vol. 23, Issue 2, 2012, p. 52.

Comments on the Right to Water," also known as "General Comment No. 15 (GC-15),"[22] issued by the Committee on Economic, Social and Cultural Rights (CESCR) in November 2002.[23] This document explicitly acknowledges the right to water as a human right.[24] On the national level, similar recognition is reflected in the decision of the Constitutional Court No. 85/PUU-XI/2013 regarding the Review of Law No. 7 of 2004 on Water Resources. Here, the Constitutional Court not only recognized the right to water as a human right but also declared that it must be respected, protected, and fulfilled by the state.[25] In Indonesia, the affirmation by the Constitutional Court that the right to water is a human right under the 1945 Constitution has significant implications. It mandates that the right to water be protected, developed, enforced, and fulfilled by the state, particularly by the government.[26]

Water, as a public good and common property (*res communis*) of the Indonesian people, should be accessible to everyone.[27] Exclusive and private control over water sources, which restricts others' ability to access this vital resource, is unjustifiable under any circumstances. Such control can be considered a severe violation of human rights regarding water access, potentially threatening an individual's right to life.

1. Public Trust Doctrine

The public trust doctrine provides a foundational framework for understanding the material status and ownership of water. It is based on two key principles: first, that water is a public good; and second, that the state administers water resources as a trustee on behalf of the public, who are the true owners of these resources.[28] This doctrine has its roots in the Justinian Code of ancient Roman law, which declared navigable rivers and ports as *res publicae* or public property. Accordingly, control over these resources was vested in the state, positioning it as a trustee managing the public's rights to activities such as shipping and fishing.[29]

Originating in Roman law and predominantly applied in common law jurisdictions, the public trust doctrine aligns closely with modern constitutional principles in Indonesia, particularly as articulated in Article 33, paragraph (3) of the 1945 Constitution. This constitutional provision echoes the doctrine by stating: “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.”

Under Article 33, paragraph (3), water is designated as common property of the Indonesian people, with the state acting as a trustee. This relationship mandates that the state control and manage water resources, not for its own benefit, but for the prosperity of the people. Given this alignment, the public trust doctrine is not only relevant but also provides a compelling legal and philosophical basis for this research. It reinforces the constitutional requirement that the state

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[22] 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.

[23] 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.

[24] UN ECOSOC, Committee on Economic, Social & Cultural Rights, General Comments No. 15: The Rights to Water Geneva, 11-29 November 2002. (UN Doc. E/C.12/2002/11, Nov. 2002.

[25] 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."

[26] *Ibid.*

[27] The decision of the Indonesian Constitutional Court, *Op.Cit,* Paragraph 3.15, p.133

[28] Hamid Chalid, *Op. Cit*., p. 31.

[29] Richard Ausness, “Water Rights, The Public Trust Doctrine, and the Protection of Instream Uses”, *University of Illinois Law Review* 407,1986, p. 409

manage the nation's water resources responsibly and equitably, affirming the state's role as a trustee for the people's collective rights to these resources.

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

Global awareness of water resource issues began emerging in the 1970s, leading to significant international discussions and declarations that shaped the ongoing discourse about water as a vital resource. In 1972, the United Nations Conference on the Human Environment was held in Stockholm, marking a pivotal moment in environmental advocacy. The resulting Stockholm Declaration on the Human Environment emphasized that water, alongside other natural resources like air, soil, flora, and fauna, must be safeguarded and managed prudently for both current and future generations.[30]

The focus on water resources continued to intensify, leading to the 1977 United Nations Water Conference in Mar del Plata, Argentina. This conference was crucial as it produced the Mar del Plata Action Plan, which outlined various strategies for water resource assessment, utilization, efficiency, and the addressing of environmental and health issues. It also emphasized regional and international cooperation, and the provision of water for community and agricultural needs. Mar del Plata conference marked the first explicit mention of the right to access to drinking water in Resolution II on Community Water Supply.[31]

The 1992 United Nations Conference on Environment and Development in Rio de Janeiro, also known as the Rio Summit, introduced Agenda 21. This program of action for sustainable development includes Chapter 18, which not only deals with water resources but also supports the principles set forth in the Mar del Plata resolution.[32] However, the discussions and declarations until then primarily addressed water from the perspective of a basic human need without explicitly stating water as a human right. This changed in 1999 when the UN General Assembly's Resolution on The Right to Development declared that "the right to food and clean water is a fundamental human right."[33] Moreover, the concept of water as a component of the right to health was implicitly recognized much earlier. The World Health Organization's constitution in 1946 and the Universal Declaration of Human Rights in 1948 each articulated the right to the highest attainable standard of health[34], which encompasses access to clean water. This recognition was further solidified in the International Covenant on Economic, Social, and Cultural Rights (ICESCR) [35], particularly in Article 12, paragraph (1), which specifically addresses health rights.

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[30] Principle 2 of the Stockholm Declaration on Human Environment states, "The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate." See Salman MA Salman and Siobhan Mclnerney-Lankford, The Human Right to Water. Legal and Policy Dimensions, Washington, DC: The World Bank, 2004, Pg 7. The full text of the Stockholm Declaration on Human Environment can be accessed athttp://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503.

[31] *Ibid.*

[32] 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.

[33] *Ibid.Page.359*

[34] *Ibid.Page.359*

[35] 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,

These historical milestones reflect the evolving recognition of water not merely as a need but as a fundamental human right, crucial for health and well-being, thereby mandating its protection and sustainable management by states and international bodies alike.[36]

3. How are the Efforts to Fulfil and Provide Clean Water after the Earthquake in Gumbasa District, Sigi Regency

In 1972, the United Nations Conference on the Human Environment held in Stockholm highlighted the importance of water resources, emphasizing their protection alongside other vital natural resources such as air, soil, flora, and fauna for the benefit of current and future generations. This stance is supported by the Universal Declaration of Human Rights, which since 1948, has recognized access to water as a fundamental human right. Furthermore, Article 33 of the 1945 Constitution mandates state control over natural resources, including land and water, ensuring their use contributes to public welfare.

Responding to the needs for improved infrastructure, particularly after disasters, the Ministry of Public Works and Housing has been promoting innovative technology solutions. These include sedimentary devices that improve water quality and offer a rapid, cost-effective, and environmentally friendly way to ensure sustainable development. In the wake of disasters, efforts are focused on meeting the clean water needs of communities such as Gumbasa by allocating 70% of water resources for irrigation and 30% for potable water. However, these measures still fall short of fully meeting the residents' clean water demands.

C. Conclusion

It must be acknowledged that Indonesia's water law faces significant challenges at both regulatory and implementation levels, particularly concerning the fulfillment of human rights to water. The legal framework ideally posits that water resources should be controlled by the state to maximize public prosperity. However, this principle often clashes with the global push towards the liberalization and privatization of water services, complicating efforts to ensure that the human right to water is met.

Three years post-disaster, the pipeline drawing water from the Gumbasa River remains under construction and has yet to fully meet community needs. In an interview, the Head of the Public Works and Housing Service of Sigi Regency indicated that the government aims for the system to be fully operational by 2024, striving to secure a reliable water supply for the region.

D. Suggestions

The control of natural resources, particularly water resources by the state, necessitates the strengthening of oversight functions of people's representative institutions and other regulatory bodies to prevent monopolistic control over these essential assets. This is crucial to ensure that new regulations adhere to the spirit of Article 33 of the 1945 Constitution of the Republic of Indonesia, which mandates that such resources be used for the greatest prosperity of the people. Effective supervision should also extend to cooperation agreements between regional drinking

[36] *International Covenant on Economic, Social and Cultural Rights* was adopted in New York by United Nations General Assembly Resolution 2200A (XXI) on December 16, 1966, and entered into force on January 3 1976. Seehttp://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx, accessed March 18, 2021. Indonesia has ratified the Covenant with Law Number 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights), LN No. 2005 Number 118, TLN No. 4557.

water companies and private partners, both existing and planned, under the guise of the right to use water.

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