THE PROBLEMS OF THE RIGHT TO CLEAN WATER FROM THE SALUKI RIVER FLOW FOR THE PASIGALA COMMUNITY POST DISASTER

Nursiah Moh Yunus1
Rosdian2
Mohammad Saleh3

1Universitas Tadulako, Indonesia, nursiahpuput@gmail.com
2Universitas Tadulako, Indonesia, rosdianfh@gmail.com
3Universitas Tadulako, Indonesia, salehayhe@gmail.com

Abstract
As one of the natural elements needed by humans and other living things, the issue of the availability of clean water is an essential issue for the community, especially after the earthquake, tsunami and liquefaction disasters hit Palu City Sigi Regency and Donggala Regency (PASIGALA). Without realizing it, it has almost entered its third year after the disaster; this vital issue has developed because the condition of the water that is suitable for community consumption, which was previously felt to be abundant and can be used together, is now starting to be limited. Thousands of people only rely on tank cars. Recently, there has been a wise thought that water as common property can be positioned as a human right. Therefore, the state should fulfil it as the implementation of control of resources (water) by the state. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia expressly states the concept of the state's right to control water resources to achieve people's prosperity. This normative research seeks to explain the fulfilment of the right to water in Indonesia, which is based on the conception and philosophy contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The focus is on limiting problems regarding the fulfilment of clean water for the PASIGALA community after the disaster. This study tries to unravel the problems that: 1) the development of global conceptions and ideas has realized the importance of water resources and their recognition as one of the human rights,

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A. Introduction
Water in the history of human life has a central position and is a guarantee for the continuity of human life on earth. Water is related to a person's right to life, so water cannot be released within human rights. Recognition of water as a human right indicates an acknowledgment that water is such a necessity for human life; on the other hand, the need for protection for everyone
with access to water. For this protection, it is necessary to position the right to water as the highest right in the legal field, namely human rights.

The Palu, Sigi, and Donggala regions are currently experiencing severe damage due to being affected by the earthquake, tsunami and liquefaction in 2018. The disaster destroyed various facilities, including the installation of a clean water network that was completely damaged. The Master Plan for the Saluki River Drinking Water Supply System (SPAM), which is expected to be able to accommodate 600 litres/second for the clean water needs of the PASIGALA community, has not yet been completed, so to meet the needs of clean water; currently, thousands of residents only rely on clean water supplied by cars that provided clean water.

Philosophically, water is a public good given by God to humans to be used and enjoyed to carry out their lives. Thus the concept of ownership of water resources is a common property of humankind (res communis) and, therefore, cannot be privately owned like a private good. Because water resources are resources that control many people's lives and are directly related to the rights of human life, before the earthquake, the availability of clean water for PASIGALA was fulfilled, but after the earthquake, the supply of clean water was limited, while the need for clean water increased.

Moving on from the above understanding, the philosophical basis for the management of natural/agricultural resources as the common property of the Indonesian people is regarding the control, ownership, and utilization of agricultural resources that must be used for the greatest prosperity of the people as mandated in the 1945 Constitution Article 33 Paragraph 3. The meaning behind it is the existence of justice for the people towards managing these agricultural resources.

Juridically, the people's constitutional rights to water resources are regulated in Article 33 paragraph (3), Article 28A, 28I paragraph (1), and Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which still accommodates by paying attention to and recognizing local institutions must remain by the principles of social justice. Consequently, laws relating to water resources must not conflict with the constitution.

It started in 1948 when the Universal Declaration of Human Rights (UDHR) was declared and continued in 1966, with the implementation of the International Covenants on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). And their water is not explicitly mentioned as a human right but is mentioned as an inseparable part of the agreed-upon human rights, namely the right to life, the right to a good life, the right to health, the right to housing and the right to food.

2 Arinto Nurcahyono, Husni Syam, Yuhka Sundaya, The Right to Water and the Obligations of the State in Fulfilling Access to Water. hlm.41
3 Ibid
7 Nugroho, “Pergeseran Paradigma Hukum Pengelolaan Sumber Daya Air Dan Pengaruhnya Terhadap Pengakuan Kelembagaan Lokal Berdasarkan Prinsip Keadilan (Perspektif Sejarah Hukum).”
8 Universal Declaration of Human Rights, 1948
9 International Covenant on Economic, Social and Cultural Rights 1866
After that, it was mentioned more explicitly even though it was still part of a convention with other themes such as those contained in article 14, paragraph (2), letter h, The Convention on the Elimination of all Forms Discrimination Against Women-(CEDAW)\(^{10}\) That states parties should take steps measurable measures to eliminate various forms of discrimination against women, particularly ensuring women's rights to enjoy a decent standard of living for sanitation and healthy drinking water.

Likewise, in article 24 of the Convention on the Right of The Child-CRC\(^{11}\) which states that to prevent malnutrition and the spread of disease, every child has the right to clean drinking water. The MDGs Declaration calls on the government to "provide access to clean water and adequate sanitation for people who currently cannot enjoy it." But the statement that explicitly and mentions explicitly water only occurred in 2002, when the United Nations Committee on Economic, Social and Cultural Rights, in its general comment No. 15, gave a stricter interpretation of articles 11 and 12 of the Convention on Economic, Social and Cultural Rights which state that the water right cannot be separated from other human rights, namely that water is not only an economic commodity and access to water (right to water) is a human right. The human right to water entitles everyone to be adequate, affordable, physically accessible, safe and acceptable water for personal and domestic uses. The water right also includes the freedom to manage access to water.

In subsequent developments, the right to water, both globally and at the national level, is increasingly recognized as a human right (human right to water).\(^{12}\) One of the acknowledgments and commitments at the international level can be seen in the "General Comments on the Right to Water," commonly known as "General Comments No. 15 (GC-15)", issued by the Committee on Economic, Social and Cultural Rights (CESCR)\(^{13}\) In November 2002, which explicitly mentions and recognizes that the water right is a human right.\(^{14}\) 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.\(^{15}\) In the Indonesian context, 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.\(^{16}\)

As a public good which is the common property (res communis) of the Indonesian people, water should be accessible and accessible to anyone.\(^{17}\) On the other hand, exclusive and private control of water sources to 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 threaten a person's right to life. Because we know very well that without water, humans can't survive.

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10 Convention on the Elimination of All Forms Discrimination Against Women, Article 14 paragraph 2, letter h, 1979
13 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.
15 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.”
16 Ibid.
17 The decision of the Indonesian Constitutional Court, Op.Cit, Paragraph 3.15, p.133
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 the trustee of the actual water owners (i.e. the public) over these water resources.\(^{18}\)

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.

The provisions in the code became known as the Doctrine of the Public Trust or, more popularly, called the public trust doctrine. Based on the Code, 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. On the other hand, the sea and the beach are res nullius for anyone but not owned by anyone.\(^{19}\)

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:

"Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." (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. The wealth of water resources are owned by the Indonesian people.

Thus the importance of water for human life, it is not surprising that it has been globally recognized as one of the human rights to water. Based on this, 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.\(^{20}\) But in reality, 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 fulfil human rights to water are often faced with various problems and challenges, ranging from weak regulation in the field of water resources, the lack of seriousness of the government to fulfilling human rights to water to the problem of lack of government funding and investment in the water sector. Water resources so that the government is powerless to control and manage water resources to be distributed fairly to the community.

This research focuses on contradictions between philosophical and ideological values about water and the fulfilment of human rights to water after the disaster. People's rights are not fulfilled to access and obtain water after the earthquake, even though water is the most basic

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\(^{20}\)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
need for every human being to carry on his life which should be available/accessible freely and fairly by anyone.

Novelty, the article explains the fulfillment of the right to water in Indonesia, based on the conception and philosophy contained in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The focus is on limiting the problem of fulfilling clean water for the post-disaster PASIGALA community. This research is normative juridical research. The research was conducted by analyzing library materials or secondary data, which included.21 This research is descriptive-analytical22. Meaning that this research is not only limited to an activity of collecting and compiling or presenting primary legal materials, secondary legal materials and tertiary legal materials but also analyzes them concerning legal theories and practical implementation of positive law concerning problems objects Study.

The approach used in this legal research is23 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 problems law that will be studied in this research.

These problems will be discussed and elaborated on in this research. The problems in this research are formulated in the form of questions: How is the Regulation and Fulfillment of Human Rights to Water in Indonesia? What are the Government's efforts in providing clean water from the Saluki river for the PASIGALA community after the disaster?

B. Discussion

1. Regulation of the right to water as a human right

World public awareness of the problems that may arise related to water resources began to emerge in the 1970s and continues to grow. In 1972 the issue of water resources became a concern at the United Nations Conference on Human Environment, which was 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. And what is to come.24

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, research and development issues, water supply for the community, water use for agricultural needs and river problems.25 Thoughts on the water right can also be found in this Action Plan.26 As part of the

23The 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 international law; for more details, see Peter Mahmud Marzuki, Op. Cit, p. 95.
Action Plan produced at this conference, Resolution II on Community Water Supply stated for the first time the right to access to drinking water. The content of this resolution is considered a milestone in the debate on the water right.

In subsequent developments, the right to access drinking water was increasingly confirmed. The world community continues to pay attention to issues related to water resources. In January 1992, the International Conference on Water and the Environment was held in Dublin, Ireland, giving birth to the Dublin Statement on Water and Sustainable Development. Principle 4 in the Dublin Statement states that water has economic value, so it is considered an economic object. However, the statement stated that all human beings' fundamental right to access clean water and sanitation at an affordable cost is the main thing that must receive attention first.

Thus Dublin Statement not only about water as an economic object with economic value but also recognizes the human right to obtain it at an affordable cost. One note to note is that the Dublin Statement does not view access to clean water as free access but access at an affordable price.

At a conference in Rio de Janeiro, Brazil, organized by the United Nations, the Conference on Environment and Development (UNCED) in June 1992 or known as the Rio Summit, Agenda 21 was born on the Program of Action for Sustainable Development. There is a particular chapter, Chapter 18, which deals with the right to water in the program. Chapter 18 also supports the Mar del Plata resolution.

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

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

Some of the provisions in the Convention, protocol, charter or covenant do not specifically mention the right to access to clean water but mention several related rights such as the right to health, the right to a healthy environment and work environment, the right to sanitation and the right to physical growth. And mentality that is closely related to the right to water. The fulfillment of these rights is closely related to the fulfillment of the water right. Others specifically mention the right to water or access to clean drinking water.

The affirmation of the importance of water as a public good and a finite natural resource that is fundamental to life and health is reaffirmed in General Comment No. 15 ICESCR issued...


by the Committee on Economic, Social and Cultural Rights in 2002. Some of the things described in the General Comment are states' obligations to ensure that the water right can be enjoyed without discrimination by both men and women and the obligation to provide facilities that facilitate access to water for those with limited access. In addition, the general comments also reaffirmed the obligation of the state to respect, protect and fulfil human rights.

In Indonesia, the regulation of the water right can be seen in article 33, paragraph (3) of the 1945 Constitution states: "Earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people."

According to Article 33 paragraph (3), the state is not the owner. Still, the fundamental law only gives the state control rights to manage following the objectives outlined by the 1945 Constitution itself, namely "to be used for the greatest prosperity of the people." So the state's position is the trustee of natural wealth in the form of water, among others, which God has bestowed upon the Indonesian nation. Thus, the 1945 Constitution adopted the principle of water as a public good.30

The 1945 Constitution, after the amendment, added the provisions of paragraph (5) in the same Article Paragraph (5) states: "Further provisions regarding the implementation of this article are regulated in law." Thus, the 1945 Constitution, which previously did not regulate how to implement the rights of its citizens to water resources, has now become apparent in the arrangement.

2. Fulfillment of Right to Water Saluki River Flow for the Pasigala Community Post-Disaster

Water is one of the natural resources that humans need most; unlike other natural resources that can be replaced, such as fossil fuels that can be substituted with solar thermal energy, the human need for water cannot be replaced by other alternative resources.

Therein lies the vital presence of water for human life. It is one of the main conditions for the survival of humans and other living creatures. Without water, there would be no life on this earth. No one can deny this fact. As vital as water is for human survival, it is not surprising that water has often been the cause of conflict both in the past and present and is likely to become even more potential in the future. Even long before this article was written, in 1995, the Vice President of the World Bank (World Bank) had said that "If oil disputes mostly cause the wars of this century, then future wars will be fueled by water."

The phrase is not a figment. Of all water on earth, only 2.35% is freshwater (freshwater), and the rest is seawater (saltwater). Two-thirds of the 2.35% of freshwater is trapped in glaciers and covered in permanent snow. The remaining one third is still littered with pollution. According to data, about 2 million tons of fresh water are wasted daily due to pollution. Meanwhile, in line with global climate change, water scarcity will increase by 20% in the next 25 years. On the other hand, the population continues to grow, and the need for agricultural land to feed the earth's population is also increasing.

The intersection between the two facts above, namely the increasing demand for and consumption of water which is faced with the fact that the availability of water is decreasing, inevitably gives rise to the problem of water scarcity. In this regard, the World Bank adheres to the results of the Conference on Water and Environment (Water and Environment Conference) held in Dublin, Ireland, in 1992, which later gave birth to the so-called "Dublin Principles" (Dublin Principles). The Dublin Principles contains principles/guidelines on global policies around water and environmental issues.

It is important to underline here that it is not the problem of water scarcity that is solely the primary concern and background of this research, but rather the right to get water after the disaster in the cities of Palu, Sigi, Donggala has not been felt by the community until now. This project is worth approximately Rp 500 billion. The value is quite significant. The initial design for the intake project was in Saluki Village, Gumbasa District, Sigi Regency, Central Sulawesi Province, with a water speed of 300 litres per second. Still, the fact is that currently, it is not as planned; 300 litres per second is not enough. But only 150 litres per second, as the current Head of BWSS III, says. With a capacity of 150 litres, it will not be able to serve the Palu, Sigi, Donggala (PASIGALA) as planned by the central government through the Director-General of Clean Water Ministry Public Works and Public Housing (PUPR) RI. Let alone serving the cities of Palu, Sigi, and Donggala, it is already challenging to serve Palu alone because the water does not flow due to the number of broken pipes. The results of field research started from the Saluki Intake to the IPA located in Oloboju Village, Sigi Regency; there were at least 108 broken pipes.

According to the Head of the Cipta Karya Department of Central Sulawesi, Ir. Abdul Razak, MT, the plan will be repaired in 2024. The latest developments state that the customer community is set to pay a fee for installing the PASIGALA regional pipe SPAM. According to the Head of the Sulawesi River Region III Center, while attending a hearing at the Central Sulawesi Regional People's Representative Assembly, he suggested that repairs or improvements meet the customer community in Pasigala should be made to the pipe SPAM before running the water. The Deputy Chair of Commission III of the Central Sulawesi Regional People's Representative Assembly highlighted the development project for the Regional Drinking Water Supply System (SPAM) of Palu City, Sigi Regency, and Donggala, which has not been completed until now, so the residents of Pasigala have not thoroughly enjoyed it,” urged the project. Resolved so that the community's difficulty accessing clean water in the three regions, known by the acronym PASIGALA, can be resolved immediately. But unfortunately, until now, the SPAM PASIGALA, which has received the most prominent budget, has not flowed water as desired, with a capacity of 600 litres per second.

If referring to the Pasigala SPAM master plan, the capacity can accommodate 600 litres/second, whereas the first stage is built with 300 litres / second capacity. So if the Pasigala SPAM is average, the community will no longer have difficulties with the need for clean water. This is because the project is designed to meet the drinking water needs of this region. Including the supply of clean water and drinking water to the victims of the earthquake and tsunami disaster and liquefaction in refugee camps, now three years after the disaster, the need for water for the community is increasingly urgent, especially for residents who still live in shelters but the water has not yet flowed.

C. Conclusion

It must be admitted that water law in Indonesia is still plagued with severe problems, both at the regulatory level and the implementation level, especially in the fulfilment of human rights to water. At the regulatory level, although constitutionally, the 1945 Constitution, through Article 33 paragraph (3), has laid down ideal principles regarding the direction of water resource management in Indonesia, namely 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 water law sector and efforts to fulfill human rights to water in Indonesia.

Entering three years after the disaster, the PASIGALA SPAM has not yet operated, the installation of pipes flowing from the Saluki River, which is planned to meet the water needs of the PASIGALA residents, has not yet been completed, based on the results of an interview with the Head of the Cipta Karya Office of Central Sulawesi Province, saying that the
government is trying to make SPAM PASIGALA can operate in 2024.

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