

The Citizen's Rights to Water in the Era of Autonomy Government

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Abstract— The right to water is a fundamental right for every citizen guaranteed by the constitution. This is because water has a very important function in supporting the survival of everyone. In the Indonesian constitution, it is stated that water is controlled by the state and is used for the maximum welfare of the people. This paper will discuss the fulfillment of the right to clean water for the people in the era of regional autonomy by taking a case study in Wonogiri Regency, Central Java. This study uses a qualitative approach to the type of normative legal research. The results of this study indicate that in the era of regional autonomy, the management of clean water or ground water was not decentralized to the Autonomous Regional Government, but is managed by the Provincial Government as a representative of the Central Government. People who need clean water are given the right to submit applications to the Energy and Mineral Resources Office, Wonogiri Regency. This shows that the citizen rights to have clean water is very dependent on the Government. Therefore, this paper recommends that regulations on the water resources management can be improved and decentralized to autonomous regional governments by improving the substance of norms as mandated by the Constitutional Court Decision.

Keywords— *Groundwater, Water Rights, Community, Local Government*

I. INTRODUCTION

Water is a basic need that sustains human life in their daily lives. Considering the vitality of the existence of water resources for human life, it is not surprising that the state explicitly regulates it in Article 33 paragraph (3) of the 1945 Constitution which states that water resources are controlled by the state and used as much as possible for the prosperity of the people¹. Based on this, the state has an obligation to carry out comprehensive management of water resources for the benefit of the people. Especially in its development, the right to water is part of the Human Rights (HAM) family².

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Increased utilization of groundwater resources has exceeded the capacity of groundwater reserves themselves, causing groundwater withdrawals to become uncontrolled and the availability of ground water continuously decreasing. Basically, ground water is a renewable natural resource³, but as much as possible the use of ground water is the last alternative after surface water, because groundwater renewal requires quite a long time. To anticipate this, it needs a prudent management of groundwater by all groups. Groundwater management includes efforts to plan, implement, monitor, evaluate the implementation of groundwater conservation, utilization of groundwater, and control of groundwater damage. Groundwater management aims to ensure that groundwater management pays attention to social functions, the environment, and the interests of inter-sectoral development in harmony, so as to overcome the imbalance between the availability of groundwater which tends to decrease and the growing need for groundwater⁴.

Talking about groundwater management, it cannot be separated from legal aspects⁵. The correct legal aspects are

¹ This right is in line with the state right manage the land, they are to regulate, maintenance and supervise. See Winahyu Erwiningsih, "Pelaksanaan Pengaturan Hak Menguasai Negara atas Tanah Menurut UUD 1945", *Jurnal Hukum* No. Edisi Khusus Vol. 16 Oktober 2009, p. 127.

² Arinto N., Husni S., Yuhka S., "Hak Atas Air dan Kewajiban Negara dalam Pemenuhan Akses terhadap Air", *Jurnal Mimbar Hukum*, Vol. 31, Number 2 December, 2015, p. 389.

³ Santi P. dan Utari N. "Implikasi Putusan Mahkamah Konstitusi Nomor 85/Puu-XI/2013 Terhadap Sistem Penyediaan Air Minum". *Jurnal Penelitian Hukum* Volume 2, Number 1, March 2015, p. 46

⁴ Dasapta E. I., dkk. "Beban Ganda Pengelolaan Air Tanah di Kabupaten/Kota Pasca Pembatalan UU No 7/2004 Tentang Sumber Daya Air: Ilustrasi dari Kota Bandung", *Jurnal Ilmu Sosial dan Humaniora*, Volume 6, Number 1, April 2017, p. 90-91.

⁵ Historically, the law on water resources can be traced from colonial era. In 1871 and 1936 the Dutch government insisted that taking water from 15 meters to ground must get permit from government. When Indonesia declared its independence day, the water resources management is regulated under UUD 45 especially the article 33, verse (3) and technically its regulated by the Law Number 11 of 1974 Concerning Irrigation. This Law than technically regulated under

realized in a statutory regulation which regulates groundwater management. Before talking about groundwater management, there are several definitions that explain groundwater. According to Article 1 number 1 Government Regulation Number 43 of 2008 concerning Groundwater, explains that "groundwater is water contained in layers of soil or rock below the surface of the land". Article 1 number 4 of Law Number 7 of 2004 concerning Water Resources, explains that "ground water is water that is contained in layers of soil or rock below the surface of the land". Whereas what is meant by groundwater management according to Article 1 Number 7 Government Regulation Number 43 of 2008 concerning Groundwater:

"Groundwater management is an effort to plan, implement, monitor, evaluate the implementation of groundwater conservation, utilization of groundwater, and control of groundwater damage".

In order to realize the management of groundwater resources, each region is given autonomous authority and responsibility to manage groundwater resources in its territory to prevent conflicts of interest between regions in the uncontrolled extraction, use and use of groundwater so as to have an impact negative to groundwater and the surrounding environment. This is in accordance with the mandate of Law Number 23 of 2014 concerning Regional Government, which gives the Local Government the authority to administer and regulate all governmental affairs outside the governmental affairs stipulated in this law⁶. The purpose of granting authority in the implementation of regional autonomy is to improve people's welfare, equity and justice, democratization and respect for local culture and pay attention to the potential and diversity of the region⁷.

In connection with the management of the groundwater, Wonogiri Regency originally arranged it in the Wonogiri District Regulation Number 3 of 2011 concerning Groundwater Management, but this Law was revoked together with the Local Regulation Number 16 of 2012 through Local Regulation Number 5 of 2017 on Revocation of the Wonogiri Regency Local Regulation. Number 3 of 2011 concerning Management of Groundwater and Regional Regulations of Wonogiri Regency Number 16 of 2012 concerning Management of Mineral Mining in Wonogiri Regency, so that

practical management of groundwater in Wonogiri has no legal basis anymore as its foundation.

In fact, there are at least three problems related to groundwater management, namely: the area of drought which is increasingly widespread, including in Wonogiri. This is in accordance with the hydrological study⁸ which states that "[in] Central Java there are 18 regions that experience water crisis, Wonogiri Regency is the region with the most distribution, the distribution map of drought in the Wonogiri region has reached more than 70 percent, the southern districts, while the north part is is not vulnerable north ". In addition, the use of groundwater without regard to carrying capacity; and the lack of understanding of a number of Regencies / Cities towards the groundwater basin (CAT)-based groundwater management resulting in a regional ego that was strengthened by the regulation of the tax authority and groundwater licensing in the Regencies / Cities (even though the groundwater basin Cross-Regency / Municipal).

This paper will discuss two issues. First, it will be analyzed regarding the legal authority for the Regional Government of Wonogiri Regency in the management of groundwater resources; and what is the existing policy for the Management of groundwater resources in Wonogiri. Before discussing these two issues, it is first used to describe the conception of the right to ground water.

II. GROUNDWATER MANAGEMENT CONCEPTION

Water is a basic need for all living things. In meeting the basic needs of humans, the environment around us, social and economic development, all of it is very dependent on water. The unique characteristics that water has are its own challenges in the process of good water management, such as complex hydrological cycles and the uneven nature of water in time and space.

Water management is not as easy as imagined because water as one of the natural resources in it has the potential to trigger conflict in people's lives. Water use is related to infrastructure and where the water resources are generated. Infrastructure is related to what the water is used for while resources are divided into two namely artificial and natural. Artificial water resources related to how to collect water such as checkdam, irrigation and others. While natural water resources are more focused on the management and utilization of mountain springs, groundwater, and underground rivers.

These water resources require management in a comprehensive and integrated manner, continuously assessed and evaluated for their benefits, water sources must be protected and must be developed for the maximum benefit for the community. Groundwater management is needed both technically and non-technically, adapted to groundwater behavior including the availability, distribution, availability,

Government Regulation Number 22 year 1982 Concerning the Water Management. And also KepMen PE. No.03.P/M/Pertamben/1983; KepMen PE. No. 08P/03/M.PE/1991; Kepmen PE. No.02P/101/M.PE/1994. Since 1983 the water management is handled by the Governor. However, since 1995 Under the Ministry of Mining and Energy' Decision Number 1945K/102/M.PE/1995 apart of water management is carried out by both the Local Government and Department of Mining and Energy. In the reform era, The Ministry of Energy and Mineral had issued regulation Number 1451 K/10/MEM/2000 Concerning the Technical Guidance of Government Acts on graiundwater and also Ministrial Decision Number 716K/40/MEM/2003 on the limit of the ground water basin in the Java and Madura Islands. See *Ibid*.

⁶ HAW. Widjaja, (2007). *Penyelenggaraan Otonomi Daerah di Indonesia*, Jakarta : PT Raja Grafindo Persada, p.133

⁷ Dedy Supriady, Bratakusmah dan Dadang Solihin, (2004). *Otonomi Penyelenggaraan Pemerintah Daerah*, Jakarta : Gramedia Pustaka, p. 32

⁸ Solotrust.com [September 18, 2018], "Wilayah Wonogiri Paling Rentan Kekeringan, Penanggulangan Jangka Panjang Diperlukan", dalam <<https://www.solotrust.com/read/12187/Wilayah-Wonogiri-Paling-Rentan-Kekeringan-Penanggulangan-Jangka-Panjang-Diperlukan>> (accessed on January 28, 2019).

and quality of groundwater and its environment. Groundwater management activities are efforts to plan, implement, monitor and evaluate the implementation of conservation activities, utilization of ground water and the control of groundwater damage. Groundwater management needs to be directed to create a balance between groundwater utilization and conservation efforts⁹.

Groundwater management is carried out based on Government Regulation Number 43 of 2008 concerning Groundwater, therefore it must also refer to the principle as regulated in the regulation, namely the principle of integration with surface water. The principle of integration with surface water and groundwater are a condition of Surface Water Resources and Groundwater and their impact on the environment must be considered in an integrated manner in decision making. The condition of water resources includes the location or location of the water source to be used, the availability, and the quality of water at the water source. Impacts on the environment, for example sea water intrusion, land subsidence, development damage, water pollution, ecosystem damage and others.

III. LEGAL AUTHORITY OF GROUNDWATER MANAGEMENT

In the modern legal system, state power is divided and divided between branches of legislative, executive and judicial power. The power to make rules in the life of the state is constructed from the sovereign people who are institutionalized in the state organization in the legislative body as a representative body for example the power to form laws is the power of the state which is held by the legislature¹⁰. Whereas the branches of state government power as implementing or executive organs only carry out the regulations set by the legislative branch. Meanwhile the judicial or judicial branch of power acts as the party that enforces these regulations through the judicial process.

The basic legal norms are usually outlined in the constitution or the highest law under the constitution there are laws as a form of regulation established by the legislature. However, because the material regulated in the law is limited to general matters, lower forms of regulation are needed as the implementing regulations of the relevant law. Moreover, as a product of political institutions, laws are often only able to accommodate general policy material. The legislative forum is not a technical forum but a political forum, A.V. Dicey agreed to the delegation of authority:

The cumbersomeness and prolixity of English statute is due in no small measure to futile *endeavoursof* Parliament to work out the details of large legislative

changes... the substance no less than the form of law would, it is probable, be a good deal improved if the executive government of England could, like that of France, by means of decrees, ordinances, or proclamations having the force of law, work out the detailed application of the general principles embodied in the acts of the legislature.¹¹

In relation to the delegation of authority to regulate where the main source of authority is in the hands of legislators, the granting of authority to further regulate it to the executive or implementing agency must be expressly stated in the legislation to be implemented. This is usually called the legislative delegation of rule making power¹².

Based on the provisions of Article 7 paragraph 1 of Law Number 12 of 2011 the legislation and norm formulation relating to the authority of the district in the environmental field, then groundwater management is a form of authority and obligation of the government in the context of supervision and provision of policies to regulate local government affairs provided by the central government regarding groundwater management.

With the existence of a legal umbrella relating to groundwater management, this can create a balance between conservation efforts and the utilization of groundwater. And aims to realize the benefits of groundwater that is fair, balanced and sustainable, for the maximum prosperity of the people and the public interest. With the enactment of regional autonomy gives the broadest authority to the regions to manage groundwater available in the region in order to prevent conflicts of interest between regions in uncontrolled groundwater extraction so as to have a negative impact on groundwater and the surrounding environment.

But unfortunately, Wonogiri District Regulation Number 3 Year 2011 concerning Groundwater Management, has been cancelled together with Regional Regulation Number 16 of 2012 through Regional Regulation Number 5 Year 2017 Regarding Revocation of Regional Regulation Number 3 Year 2011 Regarding Groundwater Management and Regional Regulation of Wonogiri Regency Number 16 of 2012 concerning Management of Mineral Mining in Wonogiri Regency, so that the practical management of groundwater in Wonogiri has no legal basis anymore as its foundation.

The regulation was revoked because of the Constitutional Court Decision Number 85 / PPU-XI / 2013 dated February 18, 2015 which stated that Law Number 7 of 2004 concerning Water Resources was in conflict with the 1945 Constitution and there was no binding legal force. As a result of the Constitutional Court's Decision, all Government Regulations, Presidential Regulations, Ministerial Regulations including Regional Regulations, as a follow-up of Law Number 7 of 2004, do not have legal force.

Historically, Law Number 7 of 2004 concerning Water Resources was passed to replace Law Number 11 of 1974 concerning Irrigation. This Water Resources Law

⁹ Heru Hendrayana and Doni Prakarsa Eka Putra, (2008), *Konservasi Air Tanah-Sebuah Pemikiran*, Jurusan Teknik Geologi – Fakultas Teknik Universitas Gadjah Mada Yogyakarta, p. 5, cited from <https://www.researchgate.net/publication/275964865>.

¹⁰ Made Subawa, (2003). *Implikasi Yuridis Pengalihan Kekuasaan Membentuk Undang-Undang terhadap Sistem Ketatanegaraan Republik Indonesia Pasca perubahan UUD 1945*, Disertasi Program Pasca Sarjana Universitas Airlangga, Surabaya, p.1.

¹¹ Hilaire Barnett, (2003). *Constitutional & Adminitratif Law*, Amerika Serikat: Fourth Edition Cavendish Publishing, p.485.

¹² Jimly Asshiddiqie, (2006). *Perihal Undang-Undang*, Jakarta: Konstitusi Press, p.215.

regulates the management of water resources, especially by the State. The state guarantees the right of every person to obtain water for basic daily minimum needs to fulfil a healthy, clean and productive life¹³, one of which is in the supply of drinking water as one of the basic human needs. In the management of water resources, to provide drinking water for the people, the State has developed a drinking water supply system¹⁴. The responsibility for implementing the development of drinking water supply systems belongs to the Central Government and Regional Governments. Regional Governments in carrying out concurrent compulsory governmental affairs related to basic services, have the authority in developing drinking water supply systems. Provisions regarding the development of drinking water supply systems are further regulated in the Government Regulation Number 16 of 2005 concerning Development of Drinking Water Supply Systems.

In its implementation, the development of drinking water supply systems often gets protests and criticisms related to the issue of privatization, commercialization and privatization of water that arises in the community and water activists. The community worried that the company's water exploration will cause drought so that the water resources in the exploration area will die¹⁵.

One of the issues that led to the judicial review of the Water Resources Law to the Constitutional Court with the results of the decision as mentioned above, was declared contrary to the 1945 Constitution. The annulment of the Water Resources Law has various consequences for the existence of the laws and regulations below it, especially for the implementing regulations, such as the Government Regulation¹⁶.

In the Constitutional Court Decision Number 85 / PUU-XI / 2013 The Court stated 6 (six) of the 8 (eight) Government Regulations did not meet 6 (six) basic principles of water resources management restrictions, namely:

1. Every exploitation of water must not interfere with, disregard, let alone negate people's rights to water because the earth and water and the natural resources contained therein must be controlled by the state, but also the allocation is for the greatest prosperity of the people;
2. The state must fulfil the people's right to water;
3. Must keep the environment in mind;
4. As an important branch of production and controls the livelihoods of many people which must be controlled by the state (vide Article 33 paragraph (2) of the 1945 Constitution) and water which according to Article 33 paragraph (3) of the 1945 Constitution must be controlled by the state and used for as much as- the magnitude of the people's prosperity, the supervision and control by the state over water is absolute;

5. As a continuation of the right to control by the state and because water is something that really controls the livelihoods of many people, the main priority given to exploitation of water is a State-Owned Enterprise or a Regional-Owned Enterprise; and
6. If after all the above restrictions have been met and it turns out there is still availability of water, the Government is still possible to give permission to private businesses to conduct concessions on water with certain conditions and strict.

With the cancellation of Law Number 7 of 2004 concerning Water Resources, the six Government Regulations lost their foundation. However, this does not immediately invalidate these regulations. The Constitutional Court does not have the authority to review the statutory provisions under the law, so the Constitutional Court cannot cancel the statutory regulations other than the law. While the authority to examine the statutory provisions under the law is the authority of the Supreme Court, so that only the Supreme Court can cancel the six Government Regulations *a quo*.

IV. GROUNDWATER MANAGEMENT POLICY: WONOGIRI CASE

Water is one of the most vital needs in Wonogiri Regency. The geographical condition of Wonogiri, which tends to be dry, often faces drought problems that reach almost 75% in the entire Wonogiri region. Based on the results of the analysis of the Researcher of the Research Institute for Watershed Management Technology, Irfan. B Pramono¹⁷ mentioned that almost 75% of the Wonogiri area was in a very drought-prone condition. According to him, the cause of drought in Wonogiri is caused by several factors, including minimal rainfall due to climate change, reduced infiltration capacity, inappropriate cropping patterns (monocultures or types of plants not suitable for water availability), patterns of land development that are not appropriate, and lack of facilities and infrastructure of water resources. To overcome this problem, a number of well excavation efforts have been carried out by the Regional Government in the Wonogiri Region. The distribution of bore wells built by the Regional Government through the Local Budget and the Central Government Budget in Wonogiri during the period of 8 years (2003-2011) was only found in 6 Districts and 7 Villages. The addition of dug wells / pegs is only found in Balepanjang Village, Baturetno, which was excavated as many as 10 wells in 2012. This condition is certainly far from ideal considering the vast area of Wonogiri and the water needs that are also not small. This was proven, for example in 2015, there were 8 districts which were affected by drought, namely: Pracimantoro, Paranggupito, Giritontro, Nguntoronadi, Giriwoyo, Eromoko, Manyaran, and

¹³ See article 5 of Law Number 7 of 2004 Concerning Water Resources.

¹⁴ *Ibid.* Article 40.

¹⁵ Anonym. "Warga Tolak Privatisasi Air oleh Produsen Minuman Aqua", <http://www.mongabay.co.id/2013/01/15/warga-tolak-privatisasi-airbersih-oleh-produsen-minuman-aqua/>, (Accessed on January 30, 2019).

¹⁶ It is Government Regulation Number 16 of 2005 Concerning the Development of Water Supply System and some others related.

¹⁷ Balai Penelitian dan Pengembangan Teknologi Pengelolaan Daerah Aliran Sungai, "Tujuh Puluh Lima Persen Wilayah Wonogiri Sangat Rentan Kekeringan", <<http://dassolo.litbang.menlhk.go.id/berita/baca/240/tujuh-puluh-lima-persen-wilayah-wonogiri-sangat-rentan-kekeringan>>, (accessed on January 29, 2019).

Selogiri¹⁸. At least 60 thousand residents who live in the eight districts do not get clean water supply. Various efforts were made to meet the needs of clean water. In addition to water dropping, other efforts include the construction of reservoirs and lifting water from underground caves¹⁹.

Various technical policies in the effort to supply water for the needs of the community in the Wonogiri region, are one form of the responsibility of the Regional Government as affirmed in the 1945 Constitution, namely: access to water is one of its own human rights, Article 28 I paragraph (4) of the 1945 Constitution determines, "The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the State, especially the government."

Technically, for a short-term solution to overcome the absence of legal regulations related to water resources management, especially in the regions, a Minister of Public Work and Public Housing Circular Letter has been issued: 04 / SE / 2015 concerning Water Resources Utilization Permit and Government Cooperation Contracts and Private Sector in the Piped Water Supply System after the Constitutional Court Decision Number 85 / PUU-XI / 2013 and Presidential Regulation Number 38 Year 2015 concerning Government Cooperation with Business Entities in the Provision of Infrastructure.

However, because the two regulations were made in the context of "contingency" to overcome the legal vacuum, their validity is certainly not permanent, until they are waiting for the birth of the new Water Resources Law, so that the authority of the government and regional government is even clearer in managing water resources. This is important because water is a vital community need to support their daily lives.

V. CONCLUSION

Wonogiri as one of the districts in Central Java is highly dependent on good quality water supplies. This has an impact on regional economic growth that depends on the availability of reliable water sources, both drinking water needs, domestic water, public service facilities, agriculture, animal husbandry, tourism, industry and mining. To support the existence of a good quality water supply is as important as planning the allocation of resources such as ground water. The groundwater management plan that is compiled will produce a groundwater management plan that functions as a guide and direction for conservation, utilization and control of groundwater damage. The results of this study indicate that the authority for water management is no longer the authority of the Regional Government of Wonogiri Regency, but the authority of the Province. This is confirmed in the Regional Regulation of Central Java Province Number 3 of 2016 concerning Energy Management in Central Java Province.

The groundwater management policy can be carried out through a mechanism for submitting groundwater needs to

the Department of Energy and Mineral Resources. Furthermore, it will be checked with the Wonogiri Groundwater Potential Map. As a contingency policy is carried out by providing drinking water assistance through the dropping of a tanker. This shows the level of community dependence on the government in getting clean water is very high.

Groundwater management in Wonogiri Regency, Central Java Province needs to get coordinated arrangements between the parties concerned to improve public services and provide benefits in the context of community welfare. In addition, cumulative licensing issues with taxation are not partially integrated, so compliance with groundwater exploration permits can be curbed.

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¹⁸ Retrieved from <https://publikasiilmiah.ums.ac.id/handle/11617/9185>.

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