

Political Law on the Right to Control the State over Water Resources

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ABSTRACT

Water is a basic human need whose existence is guaranteed by the law, namely Pasal 33 of the 1945 Constitution paragraph 3, namely "The earth and water and natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people." In accordance with Law No.7 of 2004, the State will guarantee the right of everyone to get water for basic needs at least every day to meet a healthy, clean and productive life. It is explicitly that to be able to obtain clean water is the right of every citizen of a country. The guarantee is a joint responsibility between the Central Government and local government including ensuring everyone's access to water sources to get water. So that water resources have social, environmental and economic functions.

Keywords: *Water resources, master rights.*

1. INTRODUCTION

Water is a commune in accordance with article 33 of the 1945 Constitution, water is one of the natural resources that control the lives of people controlled by the state not by individuals or private business entities. So that the regulation of water must enter into the public legal system that cannot be used as an object of ownership in the sense of civil law. Furthermore, after the amendment of the 145th Constitution there has been a change in the paradigm of state power that was originally centralistic and tends to be authoritarian turned into decentralized and democratic. [1]. The same is true of water resources. Therefore, the only concept of rights in accordance with the nature of the arrangement is the right to water as a human right as stipulated in the constitution. The Constitutional Court held that the concept of the right to use water as formulated in the Water Resources Act (SDA) should be interpreted as a derivative of the right to life guaranteed by The Constitution 1945. So that beyond the right to use any business on water must be subject to the right of control by the state. Utilization of water beyond the right to use must be through a permit application to the Government and by fulfilling the conditions specified [2]. The government can issue permits for the use of water both as raw materials and the utilization of resources from water.

2. DISCUSSION

1. Human Rights to Water in Water Resources Act

The State guarantees the right of everyone to get water for basic daily needs to meet the needs of a healthy, clean

and productive life (article 5 of the UUSDA). Furthermore, the district / city government has the responsibility of meeting the minimum daily basic needs of water for the community in its territory.

While the Government and provincial governments through their programs are also obliged to ensure that water rights can be fulfilled. The fulfillment of human rights is the responsibility of the state, meaning it requires the state to ensure that everyone can meet the need for water. The three aspects of human rights that must be guaranteed by the state are respect, protection and fulfillment of rights that concern the needs of the present and also guarantee its continuity for the future as a life of many people. Therefore, the state also needs to be actively involved in the management planning of SDA which aims to ensure the availability of water for the community. For example, in conservation efforts SDA, which is basically human intervention in the hydrological cycle, to be available enough water when needed by humans. Water resources are also needed to meet other needs such as agriculture, power generation, and for industrial purposes. The availability of foodstuffs and electricity needs will be met one way is through the utilization of water resources.

Therefore, the regulation of water resources is not enough only regarding the regulation of water as a basic human need, namely as a human right, but also needs to be regulated the utilization of water resources for secondary purposes in order to live properly.[3].

1. Mastery of Water by the State

Although the state has the right to control over water, but in water there is an aspect of human rights, then the management of water must be done transparently that includes the role of the community and still respects the rights of indigenous peoples to water thus building

democratization in the water resource management system. The right to water is the right to obtain and cultivate water is not intended to give the right of control over water sources, rivers, lakes or swamps. The right to water use is not a right to ownership of water but is limited to the right to obtain and use or cultivate a certain amount of water in accordance with the allocation set by the government to water users. The right to use water has two properties 1). The right to use is right in persona, is a reflection of human rights 2). The right to use water business is a right that solely arises from permits granted by the government or local governments and as a permit is bound by licensing rules, including provisions on licensing requirements and reasons that cause permits to be revoked by the licensee. Disputes over the right to use water business are unlikely to arise between the government or local governments by holding permits. Water rights are instruments in the licensing system used by the government to limit the amount or volume of water that can be obtained or cultivated by the entitled. [4].

With the right to use water business, it will be clearly determined how much water volume can be attempted by the permit holder. So the right to use water business is not rented or transferred partly or entirely to a third party.

The preparation of water resource management patterns is done by involving the role of the community in the business world as widely as possible. The involvement of the community and the business world is intended to provide input on the plan for the preparation of water resources, and responses to the patterns to be used in the lobation of water resources.

The role of the state as the one to control the water, and the response to the pattern to be used in the rationing of water resources, is carried out by the government or local government and not transferred to the business or private world. States in exercising the right of control over water include activities: 1) formulating policies, 2) carrying out management actions 3) making arrangements, 4) conducting lobs, 5) conducting supervision.

In addition to meeting daily basic needs directly is also needed for industrial activities, both small, medium and large industries where these activities are carried out by non-government. Therefore, if the needs of water resources by the economic unit are not fulfilled it will cause the industry to stop operating which will have a direct effect on the economy of the community.

The right to use water business and business permits is a licensing system whose issuance must be based on the pattern of water resource rationing where the preparation has involved the broadest role of society. The performance of the water power sumber will be supervised directly by the interested parties. With this licensing system, the business of water resources will be controlled by the government. So that the application for permission to get the right to business or business license must be rejected if the granting of the permit is not in

accordance with the pattern of water resource ration that has been prepared.

The existence of the principle of beneficiaries paying for the lobation of water resources is implemented flexibly by not wearing the same calculation without considering the type of utilization. So that with this principle in its implementation is not imposed on water users for daily needs as well as for social purposes. For example, for households and schools or places of worship distinguished by for industry. The use of water for agricultural purposes of the people is exempt from the obligation to finance water resource rationing services.

Thus the application of this principle considers the value of justice in accordance with article 33 paragraph 3 of the 1945 Constitution.

The existence of indigenous hukuam communities that still have ulayat rights to water resources is still protected in water use in accordance with article 6 paragraph 2 of the Water Resources Act. So there are concerns that the mastery of water sources by sasta will not occur because private sasta parties to do business on water resources are done by licensing mechanisms both to get water business rights and water business rights. The private sector cannot do control over water resources, but can only do business in certain amounts or allocations only in accordance with the allocation specified in the permit granted [5].

While the lobification of water resources where the river is located in more than one district of the river area, the management is a province, and what is the river area beyond the province of the lobbying is the central government, so that in one river area there will be integrated management. As for the benefit of the population around the river area has been built distribution channels based on technical considerations in accordance with the allocation of the distribution channel. But if there is an excess volume of water, it does not rule out the possibility to be channeled to other river areas in accordance with each management pattern.

Water control for other countries provided by the central government after receiving recommendations from local governments. And the government can only grant water business permits to other countries if the provision of water for its own needs has been met. These needs include basic needs, environmental sanitation, agriculture, security, industry, mining, transportation, forestry and biodiversity, sports, recreation, aesthetic tourism and other needs. [6].

2. Water Resource Use Issues

Water supply in the equator is strongly influenced by climate factors, namely the rainy season and dry season. In the rainy season the amount of water tends to be excessive, while in the dry season the water supply decreases. In addition to quantity, water quality also has an effect because the feasibility of water consumed depends on the quality and adequate allocation. In such

circumstances conflicts between users and personal use may develop. For example, the rapid population growth in the city causes the provision of clean water to be important for the viability of the community. Residents of cities that are relatively economically able, can get water easily because investments to improve water services have sufficient funds. That way people get water with cheap economic value. But on the contrary, in rural areas that have not been reached by pipelines and the population is poor plus difficult water sources (the depth level is high), even if there is a water source far from the settlements. They have to pay a heavy price to get water services or with extra power to get clean water.

Other cases related to the water supply on the island of Java tend to be reduced because it is used for domestic and industrial purposes. The limited availability of irrigation water will trigger conflicts between farmers in the downstream and upstream. [7]. Rivers that cross more than one administrative region, such as districts/cities or provinces, always have the potential for conflict, both between sectors upstream and downstream and between administrative regions. In the dry season, downstream areas often lack water supply so as to accuse the upstream area of excessive water tapping. Conversely, in the rainy season downstream areas blame upstream areas as the cause of flooding. Therefore, the river is a unity between the container of water and water that flows as a unit of territory and environment.

In many instances, when groundwater is taken excessively and coastal areas are not covered by protective vegetation, salt water from the sea seeps into the land called intrusion, due to the entry of seawater into the groundwater layer.

Thus how people can meet the basic needs of water and can also make efforts so that in the middle of the hydrological cycle enough to get a water supply when they need water for their lives. It is therefore the obligation of the state to respect, protect, and fulfill the human right of access to water.

And the special character of water is the inevitability for the state to intervene to make the arrangements it wants so that human rights can be respected, protected and fulfilled.

3 CONCLUSION

The management and utilization of water resources on the one hand as an economic commodity, and the other as goods that become basic human needs. Because humans cannot live without water, so it requires arrangements that must take into account the human rights of citizens and states have an obligation to respect and fulfill them. The state in carrying out such obligations requires the arrangement of funds and power.

Such regulatory techniques will position the state as a permit in order to respect, protect and fulfill "people's

human rights to access to water better and more effectively."

Water is a gift from God, so no one has the right to feel it, but all are responsible for managing it for the sustainability of these water resources. The position of the community to manage water should not be denied especially in preserving the environment for the preservation of water sources because water problems are a sensitive issue.

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