

Principles of General Benefits in Arrangements of Water Resources Enterprises to Realize Welfare and Community Justice

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ABSTRACT

The implementation of water resources management, including its business, is mandated in the 1945 Constitution of the Republic of Indonesia to realize the welfare of the people in general. This mandate is regulated in Article 33 (3) that the Earth, water, and natural resources contained therein shall be controlled as much as possible for the welfare of the people. In the water resources Law Law Number 17 of 2019, the principle of its implementation is based on public benefits. So in providing a comprehensive and philosophical concept and meaning, it is necessary to examine it in depth. The legal issue examined in this research is the concept and meaning of the principle of public benefit in regulating water resources business in realizing people's welfare. This is normative legal research using a statutory approach, philosophical concepts, and approaches by using legal materials, primary and secondary legal materials, and supporting legal materials. From the results of the research, it can be found that the meaning of the Principle of Public Benefit in regulating the exploitation of water resources is interpreted in terms of utilization, including in its exploitation, it is not justified to be oriented only to economic or material benefits, but rather immaterial in the form of social, cultural and emotional interests (the relationship between water and humans.), natural and ecological (relationship between water and nature) and ritual, spiritual (relationship between water and God). This means that water can be used for business or economic purposes when the community has fulfilled its daily needs.

Keywords: *Exploitation, Public Benefit, Water resources.*

1. INTRODUCTION

The legal politics of natural resource management has been constitutionally represented in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. It is stated that the Earth, water, and natural resources contained therein are controlled as much as possible for the prosperity of the people. Article 33 of the 1945 Constitution is the constitutional basis for state control over the Earth, water, and natural resources.

The right of state control based on the constitution is used for the greatest prosperity of the people. The two aspects of the rule cannot be separated, and both are a systematic unity. The right to control the State is an instrument (instrumental), while "used for the greatest prosperity of the people" is an objective (objectives). In the level of implementation and the existing reality, there is a diversity of phenomena or facts closely related to the different social arrangements and environments within the Indonesian State.

The State should control the important production branches and control the livelihoods of many people. The value of social justice should maintain the inspiration for the construction of legal politics as part of the development of the Indonesian national legal system in natural resources. Drinking water in several areas has been privatized with a concession model, for example, PAM Jaya, which has been privatized³ to PT Thames and PT. Lyonnaise. The control of water sources by the private sector and even foreigners have occurred in Ponggok village, Polanharjo district, Klaten, namely by PT Tirta Investama, whose shares are controlled by Danone,⁴ as well as in Bali PT Tirta Dewata Semesta Mambal located in Badung Regency. The preceding is undoubtedly contrary to the position of water as a social object that controls the livelihood of many people, which must be controlled by the State and used for the greatest prosperity of the people. Although the 1945 Constitution of the Republic of Indonesia after the amendment no longer includes an explanation as an integral part of the Body of the 1945 Constitution of the Republic of

Indonesia, the explanation of Article 33 before the amendment is essential to note. It is emphasized in the explanation of Article 33 of the 1945 Constitution that:

"The economy is based on economic democracy, prosperity for everyone. Therefore, the branches of production that are important for the State and affect the livelihood of the people must be controlled by the State. Oppressed a lot. Only companies that do not control the livelihood of many people may be in the hands of one person."

No one denies the statement that water exploitation is a crucial production sector for the State and affects the livelihood of many people. Therefore, the business should be controlled by the State, not by the private sector. However, on the other hand, the flow of globalization has influenced the management of natural resources in Indonesia. The global economy tends to have the characteristics of a capitalist liberal flow that does not take sides with the community and demands privatization in all lines of state economic life.

Seeing such phenomena occurring in the community, it is necessary to pay attention to the concept of public benefits in managing water resources, including in their exploitation.

There is a problem that is the subject of research to be able to find novelty in the clarity of the concept of public benefit in regulating water resource exploitation, namely How is the principle of public benefit as a guide in the implementation of water resource exploitation to realize community welfare and justice?

2. METHOD

This research will be conducted using normative legal research; it will be used because it examines and analyzes laws and regulations relating to water resources. When the researcher examines the legislation being studied, it will emphasize the philosophical foundations in the legislation being studied, namely regulations relating to water resources. Then the emphasis will also be on the aspect of justice and the perspective of human rights. This study will use a statutory approach and a philosophical approach. The reason for using a statutory approach is used so that researchers can analyze and examine the reasons or legis ratios from the formation of legislation which is the study, in this case, is water resources.

3. RESULT AND DISCUSSION

Article 33 paragraph (1) of the 1945 Constitution formulates that: "The economy is structured as a joint effort based on the principle of kinship." The meaning of kinship is the atmosphere of extended family life, including the extended family of the Indonesian people and nation. This is in line with Aristotle's view that the State occurs because of the merging of families into one large group to form a nation or State.⁵

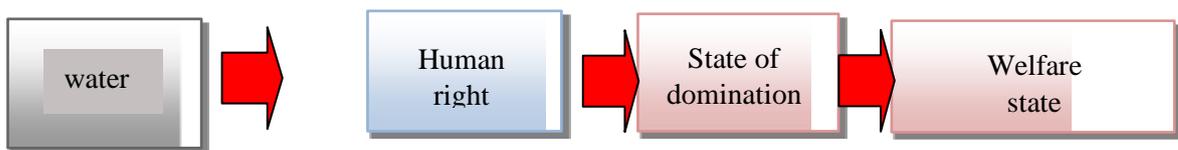
Furthermore, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is formulated "Earth and water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people."

Then in the official explanation⁶ of the 1945 Constitution, it is written, "Earth and water and natural resources contained in the Earth are the main points of people's prosperity. Therefore, it must be controlled by the State and used for the greatest prosperity of the people." This formulation is in line with the view of Jeremy Bentham that nature (water) provides happiness and distress. Humans are always trying to increase happiness and reduce pain.

From several phrases, the social function contained in the regulation of water resources management is essential to realize the welfare of the people in general. Therefore, the State has a responsibility to realize peace, security, comfort in social life. This means that the State is responsible for realizing the welfare Of the people. This goal is the same as the goals in the welfare state. (welfare state).⁷ This is in line with Roelof Krenenburg's view, stating that the State must actively seek welfare, act pretty, which can be felt by the entire community in an equitable and balanced manner, not for the welfare of certain groups, but for all people.⁸

Furthermore, it is contained in the Indonesian constitution (UUD NKRI 1945) CHAPTER XIV Article 33 and Article 34 with the title Economy and Social Welfare. In the regulation of water resources management related to its exploitation as contained in Law Number 7 of 2004, the Constitutional Court believes that it is not by the 1945 Constitution of the Republic of Indonesia, so it is canceled. water to its citizens.

Figure 1: Philosophical Framework for Water Resources Management



From this chart, it can be explained that water is a natural resource bestowed by God Almighty given to his people, namely humans and other living creatures, in carrying out their lives and lives. Water in the nation's life is also a means of equitable development and an element of unifying the nation. Therefore, in its development, countries in the world stipulate that water is part of human rights that must be fulfilled by every country to its citizens, meaning that the State is responsible for fulfilling water for every citizen in their minimum daily needs. Therefore the State in its management must be directly involved in the control and exploitation, and the State must not be negligent in the issue of water to every citizen. This is because the purpose of the State is to realize the welfare of the people as a whole.

Thus, it is necessary to formulate how water pays more attention to social and environmental functions than the economy. For this reason, in the future, it is necessary to have the same interpretation of social functions in their arrangements, which will later be able to realize people's welfare and social justice. For this reason, in the future, it will be a challenge for the Indonesian people to formulate policies and regulations regarding water resources that are appropriate and in line with the provisions of Article 33(3) of the 1945 Constitution, namely placing water resources under the control and responsibility of the State to be used as much as possible for the prosperity of the people.⁹ Thus, the most concrete action to take is to establish a new Water Resources Law and then establish its implementing regulations, which align with the constitutional principles contained in the 1945 Constitution.

Based on the discussion that has been described previously, it can be concluded that the meaning of the General Benefit Principle in regulating the exploitation of water resources is interpreted in terms of utilization, including in its exploitation, it is not justified to be oriented only to economic or material gains, but rather to primarily immaterial in the form of social, cultural and emotional interests. Relationship between water and humans), natural and ecological (relationship between water and nature), and ritual, spiritual (relationship between water and God). For this reason, respect for, protection of water resources, and the fulfillment of community rights to water need to be guaranteed through legal instruments (laws and regulations) based on Pancasila and the 1945 Constitution of the Republic of Indonesia, where the meaning, nature, and philosophy of the principle of benefit the right to water contained in religious norms, customary law, and environmental ethics must be reflected in the laws and regulations relating to water resources.

4. CONCLUSION

From the discussion that has been described previously in this study, it can be concluded as follows: the meaning of the Principle of Public Benefit in regulating the exploitation of water resources is

interpreted in terms of utilization, including in its exploitation, it is not justified to be oriented only to economic or material gains, but rather immaterial in the form of social interests, cultural and emotional (water's relationship with humans), natural and ecological (water's relationship with nature) and ritual, spiritual (water's relationship with God). For this reason, respect for, protection of water resources, and the fulfillment of community rights to water need to be guaranteed through legal instruments (laws and regulations) based on Pancasila and the 1945 Constitution of the Republic of Indonesia, where the meaning, nature, and philosophy of the principle of benefit the right to water contained in religious norms, customary law, and environmental ethics must be reflected in the laws and regulations relating to water resources.

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