



# *Legal Politics of Water Resources Regulation in Achieving Social Welfare*

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**Abstract— Article 33, Paragraph 3 of the 1945 Constitution emphasizes the state's right to control and utilize the land, waterways, and natural resources for the benefit of the people. This research aims to determine the most effective legal structure for managing water resources to promote social welfare. The current study uses a statutory and conceptual approach as part of a doctrinal/normative legal research technique. The study's conclusions suggest that, to advance social welfare for all Indonesians, the ideal legal framework for managing water resources should be consistent with the state's objectives, Pancasila ideology, and Articles 33 and 34 of the 1945 Constitution. In the context of Indonesian water resource regulation, it is critical to recognize that these resources are natural and must be protected and used to their fullest potential for the benefit of humankind.**

**Keywords— legal politics, water resources regulation, social welfare**

## I. INTRODUCTION

Water plays a vital role in improving the environment's and society's health. Water is essential in improving human populations' general quality of life and reducing the prevalence of water-associated diseases.[1] Water is a naturally occurring resource that is inherent and widely acknowledged as a fundamental human right and need. The Republic of Indonesia's 1945 Constitution recognizes everyone's right to access water resources as fundamental, as stated in Article 33, paragraph (3). Article 33, Paragraph 3 of the 1945 Constitution emphasizes, in particular, the state's right to regulate the land, seas, and related natural resources to maximize the welfare of the people. "controlled by the state" refers to applying regulations, managerial decisions, management practices, and oversight.[2]

This article serves as an example of a governmental regulatory process that prioritizes social justice and environmental concerns while working to improve public well-being. As a result, the foundation of Indonesia's national framework is democratic and economic sovereignty, with the primary goal of advancing its citizens' well-being. The 1945 Constitution's Article 33 outlines the ideals the legal structure controlling state authority must adhere to to achieve societal well-being and equitable resource allocation. This guarantees the accomplishment of the country's economic goals and the advancement of social fairness for everybody. Therefore, it is essential to continue promoting the value of social justice, which ought to be codified in the laws governing political governance about the distribution and administration of a country's resources.[3]

Article 33, paragraph (3) of the Constitution clearly states that water is a public good. This idea dates back to the basic concepts that guided the creation of the 1945 Constitution. The right to life is expressly addressed in Article 28H, which clarifies that human needs take precedence over water resources. Furthermore, numerous other

articles within the same legal framework—Article 27 paragraph (2), Article 28A, Article 28B paragraph (2), Article 28C paragraph (1) and (2), Article 28E paragraph (1), Article 28G paragraph (1), Article 28I, Article 29 paragraph (2), and Article 34 section (3)—emphasize the significance of guaranteeing access to water. Due to its rivalrous economic characteristics—one person's water consumption reduces availability for others—water is categorized as a public good. Water also has a unique quality—it is a necessary component of life, which supports the classification of water as a public good instead of a private one. As a result, laws can be put in place to prohibit private ownership and management of water resources.

There are issues with water resources, such as growing disputes over the allocation and usage of water resources within and between sectors and regions. There needs to be more information and data regarding the quantity and quality of water resources and a lack of community involvement.[4] Water resource management is deeply entwined with many aspects of human existence, as evidenced by its significant impact on many laws and advancements. A fair irrigation system, the preservation of ecological services, and universal access to clean water are only a few examples of the numerous ideas that make up the fundamental concept of management policy. It is expected that this component will need to be under control to guarantee the sustainable use of water resources while abiding by legislative guidelines that uphold equity and maximize human welfare.

## II. LITERATURE REVIEW

According to Bellefroid, political law is a subset of law that regulates the shift from *ius constitutum* to *ius constituendum*, facilitating the creation of new laws that further the interests of society. Moreover, legal and political activities include the design and amendment of laws since they are motivated by the primary goal of bringing about social change using rules rather than judgments. Satjipto Rahardjo defines legal politics as making decisions and figuring out tactics to achieve particular social and legal goals within a community.[2] Rahardjo asserts that several basic questions must be answered to understand legal politics fully. The plans that the current legal system is supposed to achieve, the best ways to realize these goals, the situations that call for legal reform and the best ways to carry it out, and the viability of developing a standardized and well-established framework to direct the choice of objectives and efficient ways to reach them are all included.

The definitions above of legal politics state that it is concerned with formulating and implementing policies in the field of government, particularly about the adoption, application, and efficacy of laws. The Republic of Indonesia, which was founded in 1945 and is sometimes known as the 1945 Constitution, contains sections outlining the basic rules that regulate the use of natural resources.[6] These policies are derived from changing and pertinent ideals and are actively implemented. They are intended to represent the ideal approach to natural resource management. To accomplish the aims described in paragraph IV of the Preamble to the 1945 Constitution, society ought to endeavor to realize the purposes of the state. According to paragraph IV of the 1945 Constitution's preamble, the state's goal is to create a welfare state that prioritizes the state's role in promoting its citizens' social and economic well-being. The previously mentioned material is contained within the document's body, in Chapter XIV, "Social Welfare," which includes Articles 33 and 34. The amendments made to Article II of the 1945 Transitional Rules Constitution, now known as Article I of the 1945 Transitional Rules Constitution, provide necessary guidance to Indonesian legislators regarding their responsibility to realize the goals of the country's legal system. It is essential to stress the significance of legal evolution and direction to successfully uphold the principles of law. State administrators are tasked with interpreting the law and putting it into practice while keeping in mind the values of the society at large.

Water is described as a resource that should be under state control and exploitation, both in terms of physical administration and utilization, under Article 33 of the 1945 Constitution of Indonesia. The foundation of the legal system supporting the growth of the country's economy is the concept of social justice, which has two main components. First of all, the state maintains authority over essential industries that significantly impact many people's lives. Second, the state claims control over the wealth that comes with natural resources like land and water. To enhance the welfare and prosperity of the people, the state maintains control over it. Under Article 33's requirements, it is stated clearly that businesses that are important to the state and have a significant impact on many people's lives should be owned and managed by the government. The problems about the amount, quality, and distribution of water can be broadly divided into three categories when discussing clean water challenges. [7]Groundwater and surface water are the least abundant types of water compared to other types. Water supplies may become scarce as a result of this situation. Lack of water can lead to conflict between governments and even between countries, as well as between individuals within a society. As a result, it is crucial to enact laws that base their regulatory strategies on the legal issues surrounding natural resources, particularly water. Given the vital importance of water, the legal dynamics surrounding a state's authority to regulate its water resources should be separated from the legal dynamics surrounding its authority to control natural resources generally. Article 33 of the 1945 Constitution states that the legal notion of the welfare of the people should serve as the foundation for the political and legal considerations surrounding the regulation of water resources as a method of implementing the Constitution.

The ruling in Case Number 85/PUU-XI/2013 by the Constitutional Court about the petition to amend Law Number 7 of 2004 concerning water resources has sparked a great deal of scholarly debate regarding the state's

control right, as stated in Article 33 of the 1945 Constitution. To achieve social justice for all Indonesians, the Constitutional Court has determined that all people of Indonesian nationality are eligible to benefit from the welfare state concept. Specifically, this includes those who have freely pledged themselves to the Indonesian nation, represented by the motto "Bhinneka Tunggal Ika" on the Garuda Pancasila state emblem.

### III. METHOD

This study used normative/doctrinal juridical research as its technique. The inquiry was conducted using a methodology for library research. The aim of literary study is to obtain secondary data from primary, secondary, and tertiary sources.[4] The study strategy for normative juridical studies includes a legislative and a conceptual approach.[5] Using a statutory technique, the researcher examines all laws and regulations about the subject of the investigation. The conceptual approach is also applied, which entails researching the viewpoints and theories developed in legal science. By using this procedure, scholars can recognize notions, understandings, and principles of law relevant to the particular topic under investigation and aid in understanding legal concerns. Understanding these viewpoints and tenets provides academics with a foundational framework for creating legal arguments to settle disputed cases.

### IV. RESULT AND DISCUSSION

As the official constitution of the country, the 1945 Indonesian Constitution has a standing higher than that of a traditional law. The 1945 Constitution established itself as the most elevated legal system by providing the fundamental legal framework from which all other laws were derived. The 1945 Constitution's Article 33, paragraph (3) has a clause that guarantees the state's ability to regulate natural resources, including water resources. The welfare and development of the general public are the only goals of this control. According to Law Number 5 of 1960's Article 2, Paragraph 2 on the Regulations on Basic Agrarian Principles, the government may regulate rights. This law deals with water distribution, use, supply, and conservation. Moreover, it also holds the legal connections between people and water and the relationships between people and water-related legal acts.

Government Regulation Number 22 of 1982, which deals with water regulations, and Government Regulation Number 23 of 1982, which deals with irrigation and drainage, outline the laws about irrigation. Law No. 11 of 1974 raises several concerns regarding community involvement. The matter under discussion concerns more clarity surrounding community engagement in water management. The relevant legislation must clearly define who or what exactly qualifies as a community representative regarding water management.[8] Moreover, the Water Law is further reinforced and refers to several other laws, including Law Number 5 of 1960, which deals with the fundamental regulations on agrarian principles; Law Number 9 of 1960, which addresses health principles; Law Number 11 of 1962, which focuses on hygiene for public businesses; Law Number 5 of 1967, which establishes the introductory provisions for forestry; Law Number 6 of 1967, which outlines the fundamental requirements for animal husbandry and animal health; Law Number 1967, which encompasses the introductory provisions for mining.

On March 18, 2004, Indonesia passed new laws to supersede the Water Law 1974. Law No. 7 of 2004's definition of water resources management covers many topics, including extending water coverage to include seawater on land. Furthermore, a more comprehensive range of regulations is protected by Law No. 7 of 2004, which addresses various elements of managing water resources, including mitigation, conservation, control, and utilization of water-related dangers. It also contains laws about the management procedure. This talk focuses on the rights and responsibilities of communities in water resource management. In societies governed by customary law, the aforementioned legal framework recognizes customary rights to water resources, as specified by Article 6.[12]. During the House of Representatives of the Republic of Indonesia's (DPR RI) deliberations on the Draft Law on Water Resources, several members and community organizations voiced their opposition to it, ultimately resulting in its rejection. There have been two main reasons why the public has been so critical of the Water Resources Law. Water is now considered a marketable resource by this legislation, which could cause disputes between communities and disproportionately affect those who are disenfranchised. Urban, industrialized, and densely inhabited areas' water demands are given priority, as are the needs of wealthy, well-off people who can afford to have enough clean water. As such, this may cause difficulties for those who could be better off financially. Moreover, this law opposes the core principles of protecting human rights.

Law No. 7 of 2004 has unintentionally assisted in starting water privatization in Indonesia despite its goal of creating sustainable water resource management. The government permits private organizations to control water resources by granting water usage rights. Furthermore, businesses that use much water are given a large share of resources in government development plans. To protect the public interest, governments authorize the construction of companies close to water sources, thereby preventing the general public from accessing these resources. The approach to managing water resources has changed significantly over time. Water was once considered a socially beneficial resource that was freely available. However, it has since transformed into an economic commodity, frequently leading to exploitation and privatization.

Law Number 7 of 2004 concerning water resources was declared unlawful by the Constitutional Court in 2015 because it was not by the Republic of Indonesia's 1945 Constitution. The influence that water users may have on

society might be dire. Private companies frequently control water supplies, especially those doing business abroad, who take advantage of these resources to make large profits. However, it is significant to remember that the re-enactment of Law Number 11 of 1974—which relates directly to the regulation of water resources—addresses the lack of a legal vacuum. Until the DPR considers the proposed new law, the current water law acts as a stopgap approach to remedy the lack of legal provisions.[9]

The government's enactment of Law Number 17 of 2019 in 2019 marked an essential legislative milestone concerning the management and regulation of water resources. There has been a six-year gap between this law and its predecessor. There are 16 chapters and 79 provisions in the relevant legislation. The Water Resources Law of 2019 has fewer articles than the Water Resources Law of 2004, which is in contrast. Certain elements must be included in the chapters on dispute resolution and community and organizational lawsuits, or they have been combined with other sections. Furthermore, an additional branch was formed that explores the subject of state authority and peoples' inherent rights regarding water resources. Environmental factors are incorporated into the cost assessment of water resource services. Permits must be obtained before using water resources for commercial purposes, and stakeholder recommendations must be approved. This legislation also creates state control and management over water resources. However, the law's derivative provisions have yet to be implemented by the October 2021 deadline, raising questions about the legislation's practicality. Only recently have the laws about derivatives been made public. Moreover, these restrictions are a part of the updated amendments to Law Number 11 of 2020 concerning employment creation.

To create jobs, the federal government and the DPR worked together to enact Law No. 11 of 2020. The Omnibus Law method was used to draft the relevant legislative measure. Since it started the privatization process, this has been a significant turning point in the evolution of Indonesia's water management system. It is crucial to remember. Nevertheless, water is regarded by Article 33 of the 1945 Constitution as an essential natural resource that has a substantial impact on the livelihoods of many people. Therefore, it is mandated that the state shall continue to be in charge of water resources instead of letting private citizens or commercial organizations handle this duty. Consequently, it is still being determined if the state's control over water resources is being rejected, given the consistency of copyright laws and water resources legislation as part of the legal system. To determine whether a legal product deviates from legal principles, it is imperative to establish a basis for its development. Political law places excellent weight on social fairness, as expressed in Article 33 of the 1945 Constitution. The 2020 Law Number 11 brought about several changes to the water resource regulations. Prominent changes comprise the rebranding of permits for the use of water resources as approvals and the obligation to follow the guidelines, policies, practices, and standards set forth by the Central Government to benefit water resources.

It is argued that the state's authority over water resources needs to be given more weight. The discussed topic is intrinsically linked to water, frequently referred to as a *res commune* or an essential resource by several people. Water resources are becoming a valued commodity due to the economic demands of human society, which presents a promising business opportunity.[10] The management of water resources faces a challenging situation. Article 33 of the 1945 Constitution outlines the ideal framework for regulating political law regarding the state's jurisdiction over natural resources. To maintain social justice as a guiding principle in political growth, the state should control large sections of the economy and impact many people's lives. Within Indonesia's national legal framework about natural resources, the legislation concerning the authority to govern the state is an integral part of the legal development of the nation. There have been instances of privatization in the management of drinking water. The remark above seems to contradict the idea that water is a social entity that affects many people and requires government regulation to guarantee its best use for the general welfare of society. Article 8 of the amended Water Resources Law states that an individual's right to water is a limited right to obtain and use a certain amount of water as determined by government laws rather than a right of ownership.[11]

According to the provisions of Article 8, paragraph 4 of the Water Resources Law, as amended by the Job Creation Law, there is a possibility that water resources will be used for business purposes, changing the status of water from a public resource to a private resource used for business purposes. The use of water resources for other commercial services as allowed by business license requirements To distribute water resources for commercial uses, the central government's decision-making authority must set priorities. The Central Government or Regional Government must follow the guidelines, policies, practices, and standards set forth by the Central Government when deciding which water allocation priorities to prioritize, as stated in paragraph 5 of the amended Water Resources Law, specifically Article 8 paragraph 6. The water requirements for maintaining water sources and protecting the environment must be considered during this prioritization process.

It is crucial to understand how water resources are managed within the parameters of the Water Resources Law, the Job Creation Law, and the regulations that stem from these laws, as Article 33, paragraphs (2) and (3) state that managing water resources is critical. This strategy strongly emphasizes the state's management of water resources, emphasizing the need to prioritize social needs—like the livelihoods of many people—and encourage community participation in planning, preserving, and funding irrigation benefits. It should be noted that the regulations do not heavily restrict water use for industrial purposes. The existence of multiple private firms involved in water management underscores legal loopholes that could enable these entities to continue privatizing water supplies. There is no explicit ban on the privatization of water resources in the Job Creation Law. Optimization is required for the term "controlled by the state" in Article 33, paragraph (2) of the 1945 Constitution.

A concern that emerges from the investigation is the overemphasis on the requirement that state-owned or regionally-owned businesses play a significant role in water management.[12] The preceding problem is continued in this one. The phrase "controlled by the state" is regarded in this context to mean that businesses owned by the state or a region should remain dominant. This interpretation, however, needs to consider another facet of Article 33 of the 1945 Constitution, which deals with the use of resources to the most significant advantage of the people. As a result, there is a need to emphasize state control over water resources more. The idea being discussed is intrinsically linked to the concept of water, sometimes referred to as a res commune or shared resource, and is essential to the survival and welfare of many people. Water resources are a valuable commodity with enormous potential for utilization in the business sector due to the economic demands of human society.[13] The ownership structure of private water management companies should be reevaluated to lessen the impact of private sector players.

Article 19 of the Water Resources Law, as amended by the Job Creation Law, provides provisions allowing for the control of water resources by multiple bodies. These organizations include state-owned and regional-owned businesses that work in water resource management and technical implementing units connected to ministries or regions (as defined in Article 1, Paragraph 21 of the Job Creation Law). The Job Creation Law's provisions incorporate the phrase "controlled by the state" found in Article 33, paragraph (2) of the 1945 Constitution. To maximize social well-being, water resources—a vital part of the total resource system—must be efficiently managed by the state since they are essential to maintaining livelihoods.

## V. CONCLUSION

Water resources are essential to natural resources that must be protected and used to their fullest potential to promote societal progress and well-being. The 1945 Constitution's Article 33, paragraph (2) calls for the phrase "controlled by the state" to be optimized. When private companies own and control water entirely, its value is diminished. The state's primary duty is to govern water resources and ensure they are used as best they can for the benefit of the people, as required by the constitution. It is commonly believed that optimizing and effectively using water resources can significantly improve societal well-being... The government published Law Number 17 of 2019 in 2019 regarding water resources. Law Number 11 of 2020, also called the Job Creation Law, later revised this law. Philosophically speaking, one could contend that whereas Article 33 of the 1945 Constitution permits privatization and commercialization by private companies, the law above's application of the provision could be better. The community may suffer due to this circumstance, especially those who depend on water for their daily needs. Apart from the previously noted worry, a fundamental problem with the law changes is the reduction of regional autonomy rights when managing water resources. The government's attempts to streamline authority and prioritize state objectives, especially when it comes to managing water resources and considering the resources' economic worth, are to blame for the reduction of rights to regional autonomy. The restraint on local independence that has been seen exposes disparities in regulations, especially concerning the Job Creation Law's supervision of the use of water resources. This is significant since the 1945 Constitution's Article 33 outlines the optimal guidelines for using water resources.

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