

Water Resources Management In Order To Fulfil The Basic Needs Of The Community

by Indrati Rini

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Indrati Rini

Universitas Narotam, Surabaya

Email: indratorini1956@gmail.com

Alamat : Jl. Arief Rachman Hakim 51, Sukolilo Surabaya (60117)

Corresponding author: indratorini1956@gmail.com

Abstract. Water resources are a basic need of the community that must be fulfilled by the state. The fulfillment of water resources carried out by the central government and local governments have not been fulfilled to the maximum. There are several reasons the state is given the authority to manage water resources, and the way the government fulfills water resource as a basic need of the community, as well as the reality of the sufficiency of water resources in the community. The need for water resources, if it has not fulfilled met as a whole, then strategic steps are needed to overcome it.

Keywords: Community, Government, Water Resources Management.

INTRODUCTION

Basically, humans want to live and maintain their lives, so they always strive to be able to meet their life needs. Humans need water resources as a basic need in life in society and the state, including people within the scope of the Unitary State of the Republic of Indonesia.

In the 1945 Constitution, the legal ideal is stated (*rechtsidee*) of the Indonesian nation, "Then than that, to form a Government of the State of Indonesia that protects the entire Indonesian nation, that protects the entire Indonesian nation and all the blood shed of Indonesia, and to promote the general welfare, educate the life of the nation, and participate in the implementation of a world order based on independence, lasting peace, and social prosperity ... ". Thus, it is clear that the state is obliged to protect the entire Indonesian nation and promote general welfare, including realizing the fulfillment of the basic needs of the community, that is water resources. (Pembukaan Undang-Undang Dasar, 1945)

It is normatively defined that "water resources are water, water resources and water power contained in them". In this case, it is clear that water resources as a basic need of the community have been recognized in formal legality, but of course factually the community must be seen that the fulfillment of the basic needs of the community as a human right can be realized and managed properly by the state. In managing water resources, the state needs infrastructure, so that the obstacles and solutions are very much needed to achieve the fulfillment of basic needs of the community. (Undang-Undang No. 17, 2019)

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* Indrati Rini, indratorini1956@gmail.com

On the other hand, urban and rural communities in the use of water as a daily need are certainly different from one place to another. This can be seen in the form of the availability of infrastructure facilities fulfilled by the state, in this case actualized by the government, both the central government and local governments. In addition, the purchasing power of the public from one location to another also varies. Thus, there are some people who have not been adequately fulfilled, both for the availability of clean water and drinking water.

Based on the background of the conditions explained above, the author is interested in researching by proposing the formulation of the problems consisting of:

1. Why is the state given authority **in the management of water resources**?
2. How does **the government** realize the fulfillment **of water resources** for the community?
3. Have water resources as a basic need for the community been met?

RESEARCH METHOD(S)

This study applied a **type** of normative legal research is used, defined as a research that relies on the main source **in the form of** legal norms, **laws and regulations**. Meanwhile, secondary source **of** data is in the form of primary legal materials related to water resources. As stated by Supranto, "normative legal research, that is, "doctrinal research that is inclined to be qualitative based on secondary data". Legal data analysis is carried out in a qualitative normative manner from the legal data collected related to water resources management to meet the basic needs of the community (J. Supranto, 2003).

FINDINGS AND DUSCUSSION

Discussion of Water Resources Management

Water is a basic human need given and blessed by God for the entire Indonesian nation. Water, as a part of water resources is an essential branch of production that controls the lives of many people. An imbalance occurs, namely the availability of water that tends to decrease, while the demand for water is increasing in line with the dynamics of the community, both local, national, regional, and global.

The normative-constitutional legal basis is regulated in the 1945 Constitution, Article 18 A, Article 18 B, Article 20, Article 21, and Article 33. The essence of these basic provisions

is that there is a relationship of authority between the central government and local governments of provinces, districts and cities, which must be based on the law by taking into account the specificity and diversity of the region. This relationship is in the form of financial relations, public services, utilization of natural resources, and other resources between the central government and local governments, that are regulated and implemented fairly and harmoniously based on the law.

In the regulation of water resources, Law Number 11 of 1974 was enacted. Subsequently, it was replaced by Law Number 7 of 2004 concerning Water Resources, then later would be canceled by the Constitutional Court. The cancellation by the Constitutional Council is based on the consideration that there are many shortcomings and have not been able to regulate thoroughly regarding the management of water resources, in accordance with the development and legal needs of the community. Currently, what in force is Law Number 17 of 2019 concerning Water Resources, as a positive law nationally.

Basically, water is all water that is found on, above, or below the surface of the ground, including surface water, groundwater, rainwater, and seawater. For this reason, water resources need to be managed by paying attention to water functions, consisting social functions, environmental functions, and economic functions in harmony. Thus, these functions must be realized in order to create synergy between regions, between sectors, and between generations to meet the community's needs for water.

The managers of water resource are the central government and local governments. These are synergistically serving and are responsible for the availability and adequacy of meeting the community's water needs. In line with the dynamics of community development, the increase in the population and various daily community activities, water resources management must be carried out seriously and professionally.

The management of water resources must also be guided by the underlying legal principles. The essence of legal principles, ethical guidance and guidance that contains values, is the reason for the birth of legal regulations (*ratio legis*)". Thus, the law that regulates water resources, which in its implementation must be based on these legal principles, in order to meet the needs of the community's live (Paton, 1981)

In applying the principle of public benefit for water resource management, the government must be able to provide the maximum benefit for the public interest or the interests of the community. Furthermore, the principle of affordability requires the government to

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realize the availability of water, which can be reached by every individual as a member of society, both in terms of location and economy. In addition, the government in managing water resources must apply the principle of justice, which is realized evenly to all levels of society in the country. Therefore, every citizen has the right to have the same opportunity to play a role in the management and use of water resources.

In the management of water resources, the government is also required to be based on the principle of balance, that its management must pay attention to the balance between social functions, environmental functions, and economic functions. Next, the government is also required to pay attention to the principle of independence, that water resource management is carried out by optimizing national resources. The management of water resources is also required based on the principle of local wisdom, that its management must pay attention to noble values, which apply in the life system of the community.

The principle of environmental insight must also be used as a basis, that the government is obliged to pay attention to the ecosystem and the carrying capacity of the environment. Water resources management must also be based on the principle of sustainability, that the utilization of water resources is carried out by maintaining the existence of water resources functions in a sustainable manner. This is closely related to the principle of sustainability which mandates that the government in managing water resources, not only for the benefit of the current generation, but also for the benefit of future generations.

The government must also pay attention to the principle of integration and harmony, that the management of water resources is carried out in a coordinated and integrated manner, by involving all stakeholders between sectors and between administrative areas, as well as realizing harmony for various interests and by paying attention to the nature of water dynamically.

Water resource management has the scope of being controlled by the state for the greatest prosperity of the people. This is in accordance with the mandate of the 1945 Constitution which stipulated that "The earth, water and natural resources contained therein, are controlled by the state, and are used for the greatest possible prosperity of the people". This is also in line with Jeremy Bentham's Theory of Utility Law, that the purpose of law is to provide the greatest benefit and happiness to the people as many people as the Republic of Indonesia as a citizen of the community. (Undang-Undang Dasar Indonesia , 1945)

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The national economy is based on economic democracy in the form of independence for all. Thus, the branches of production that are important to the state and which control the lives of the people, must be controlled by the state. This implies that if it is not controlled by the state, then the reins of production can fall into the hands of those in power, and the people who are oppressed by many of them. Water resources cannot be owned or controlled by individuals, community groups, or business entities. Only a company that does not control the lives of many people can be in the hands of one person. Thus, the earth and water, and the natural resources contained in the earth as the main source of the people's prosperity must be controlled by the state, and used for the greatest possible prosperity of the people. The authority of the state to manage water resources for the prosperity of the community has clearly been a juridical basis as a guideline for its application.

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The people's right to water is guaranteed by the state to fulfill it as a minimum daily basic need. For this reason, the state prioritizes the people's right to water in fulfilling daily basic needs, people's agriculture, and the use of water for business needs to meet daily basic needs through the water supply system. Furthermore, the order of priority is the use of water resources to fulfill business activities for the public interest, and the use of water resources for other business needs that have been determined.

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In addition, people's right to water and the environment are not ownership rights over water, but are only limited to the right to obtain and use a number of water quota according to their allocation.

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Community rights related to water resources, including the right to obtain access to water utilization, the right to use water for daily basic needs, agriculture and non-business activities, the right to obtain benefits from water resources management, the right to obtain appropriate compensation. Appropriate losses for losses suffered as a result of the implementation of water resources management, the right to obtain information related to the management of water resources, the right to file reports and complaints to the competent authorities for the losses that befell him, relating to the implementation of water resources management. The implementation of community rights over these water sources is, of course, influenced by factors of legal compliance and legal awareness of the community.

Efforts to fight for community rights to water resources are in line with the statement that "there is a purpose to obtain resources, so the legal guidelines must inform how each member

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of the community acts in relation to each other in the pursuit of these resources". In this case, it is a resource in the form of water (Rahardjo, 1996)

The central government and local governments set the priority order of water fulfillment in river areas, taking into account water needs for the maintenance of water resources and the environment. On the basis of the state's assignment to the management of water resources, the central government and local governments regulate and manage water resources for the benefit of the community.

The duties of the central government in regulating and managing water resources include, among others, making national policies on water resources, and supervising the implementation of water resources management duties and authorities by local governments, provinces, and districts/cities. The tasks of provincial and district governments include, among others, regulating, determining and granting permits, the use of natural resources for non-business needs, and permits for the use of water for businesses in certain locations in the river area.

Management of water resources that is carried out in harmony, based on social, environmental and economic functions, the utilization of which is for sustainable use with the main priority, namely the fulfillment of the basic daily needs of the community. The stages of water resources management by the government include planning for water resources management, implementing the construction of water resources facilities and infrastructure, implementing the operation and maintenance of water resources, as well as monitoring and evaluating water resources management.

Funding for water resources management is determined based on the real needs of water resources management, which can be sourced from the State Revenue and Expenditure Budget, Regional Revenue and Expenditure Budget, and other legitimate sources in accordance with the provisions of applicable laws and regulations. Permits for the use of water resources for business needs can be granted to Regional-Owned Enterprises, Village-Owned Enterprises, Cooperatives, and private or individual business entities.

Communities, in addition to having rights to water resources, also have obligations, including protecting and maintaining the continuity of water resources functions, protecting and using water resources, providing access to the use of water resources on the land under their control, and providing opportunities for other water users to flow water through the land they control. and pay attention to the public interest.

On the other hand, community participation is highly expected in water resources management, including ¹⁰ the community has the same opportunity to participate, by channeling community aspirations, thoughts, and interests in water resources management. Community participation can be in the form of public consultation, deliberation, partnership, aspiration, supervision, and other participatory involvement.

¹⁰ In the management of water resources, in addition to containing administrative aspects, civil aspects, as well as criminal aspects. For the occurrence ¹ of criminal acts in the field of water resources, among other things it was determined ¹³ that "In addition to investigators of state police officials of the Republic of Indonesia, certain civil servants within government agencies, whose scope of duties and responsibilities in the field of water resources, are given the authority as investigators to conduct investigations of water resources crimes. The criminal threat is that anyone who deliberately causes damage to water resources and infrastructure, water pollution, or carries out activities that cause water damage, is threatened with ¹⁴ imprisonment for a minimum of three years and a maximum of nine years, and a fine of at least five billion rupiahs, and a maximum of fifteen billion rupiahs. This criminal provision is certainly intended for the community to participate in protecting and using water resources, complying with orders to use water resources to avoid criminal prosecution.

The government strives to meet the water needs of the community, as a mutua task in realizing the welfare and prosperity of the people. This is in line with the Welfare *State* Theory by Kranenburg which teaches ¹⁶ that the state must actively seek welfare, act fairly that can be felt by the entire society equally and balanced, not prospering a certain group, but prospering all people.

In an effort to meet the needs of water resources by the community, of course there are obstacles. Therefore, it is necessary to find a solution, The facts that have occurred show that there has been pollution of the Bengawan Solo River by factory waste in Central Java, East Java as well as the pollution of Kali Mas, and other areas. This condition can cause a decline in water quality, endanger public health, and damage the environment. The government must act decisively to solve this condition as best as possible, for the sake of *legal enforcement* in the field of water resources, so that people can again utilize water resources to the maximum, affordable and quality.

Local governments through regional regulations can allow the establishment of Regionally Owned Enterprises, including Regional Drinking Water Companies. The

establishment of the Regional Drinking Water Company, among others, is tasked with providing services to the community in accordance with its business scope, contributing to Regional Original Revenue, participating in improving the regional economy, and participating in realizing a healthy living environment. To achieve this goal, Regional Drinking Water Companies must be managed in accordance with the principles of good corporate *governance*. Activities that can be carried out by the Regional Drinking Water Company include producing drinking water, distributing drinking water to customers, and assisting in administrative tasks in providing community services.

In meeting the community's need for water for their own daily living needs, which is as much as 60 liters per day. This need is ¹⁶ carried out by the Regional Drinking Water Company. The community is in the position of consumers (*consumers*). Basically, "Consumers are people who use goods and or services that are available in society, either for the benefit of themselves, their families, other people, other living beings, and not for trading". Actually, in this case, the position of the community is a customer (Undang-Undang Nomor 8 , 1999)(customers), more than just consumers, because there is an element of sustainability, which is dealing with the Regional Drinking Water Company as a business actor. Legal relationship (*rechts relatie*) that occurs between the community as customers, and the Regional Drinking Water Company as a business actor. Precisely between the two there is an agreement to buy and sell drinking water, both of which have rights and obligations.

The community as customers certainly has to spend funds for their daily needs for water supply. Between business actors and customers, if there is a disadvantage, it can be resolved, either through litigation (court), or non-litigation (outside the court), including through deliberations between the parties, complaints to the Non-Governmental Consumer Protection Agency, or to the Consumer Dispute Resolution Agency in each district or city.

The occurrence of community difficulties over water resources, including during the long dry season, remote areas and other obstacles. Solutions must be provided by the government or local governments so that the adequacy of meeting water needs is well realized, for the sake of achieving community prosperity.

CONCLUSION AND RECOMMENDATION

From the explanation described above, the following conclusions can be drawn:

- a. The government, both the central government and regional governments, is given the management of water resources based on the 1945 Constitution, Law Number 17 of 2019, and other relevant laws and regulations, namely the power to realize social functions, environmental functions, and economic functions for as much as -Great welfare and prosperity of society.
- b. The government's ways of meeting the needs of water resources for the community, namely procedural steps based on positive law and legal principles, as well as the dynamics of development and community needs, both for the present and future generations.
- c. The fulfillment of water resource needs for the community has not been fulfilled optimally, both in terms of location, funds and infrastructure, and people's purchasing power.

Suggestions

- a. The government's authority to manage water resources is to be better integrated between the government's ability and people's purchasing power.
- b. The participation of the community using water resources, so that it is more facilitated and improved for the realization of the sufficiency of clean water and drinking water needs in daily life
- c. Settlement of problems or disputes over water resources by deliberation so that they are more utilized, and carried out as well as possible by the government or Regional Drinking Water Companies

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