

## GOVERNMENT RESPONSIBILITY TO PROTECT PEOPLE'S RIGHTS OVER THE CLEAN WATER

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### **Abstract**

Water plays a very important role in supporting human life and other living beings as goods that meet public needs. Water is one of the declared goods controlled by the state as mentioned in the constitution of the republic of Indonesia. The state control over water indicated that water management can bring justice and prosperity for all Indonesian people. However, in fact, water currently becomes a product commercialized by individuals and corporations. It raised a question on how the government responsibility to protect the people's right to clean water. This study found that in normative context, the government had been responsible in protecting the people's right over the clean water. However, in practical context, it found that the government had not fully protected people's right over clean water. The government still interpreted the state control over water in the form of creating policies, establishing a set of regulations, conducting management, and also supervision.

### **Keywords**

government responsibility, people's right, clean water

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## Introduction

The state and people of Indonesia should be grateful and thankful upon Allah, the Only one Almighty who had provided a lot of natural resources which bring so much benefits for their prosperous lives as the a gift. This country is granted with fertile soil that is good for various plants, and there are so much wealth beneath such as gold, silver, tin, oil, natural gas, coal, nickel, mangaan, uranium, copper, bauxite, and many other kinds of mine which could not be found in other countries across the globe. It has vast oceans, fresh air over years with brightful sun, and sufficient water for living without any attempt to import from other countries. All those natural wealth is much more than enough to make living for Indonesia and other countries around the world. Therefore, God warned by saying, 'Then, which of your God's grace that you deny?'.

As an independent country since 70 years ago, Indonesia should have been one of the world's developed countries. It is likely to happen due to the fact that Indonesia has both a lot of natural and human resources more than other countries. There are actually many efforts would have been done by Indonesia if it was supported by a good leadership model. In fact, however, it does not. Although having so much natural wealth, Indonesia's systems in government, politic, law, and economic had not been well-constructed. Thus, Indonesia is still identified as a developing country up to recent days. Its political system is still stuck in a pseudo democracy, presidential election, and transactional regional governmental election. It is not surprising to find many regional leaders who got caught with corruption issues since they had to play with similar patterns during their tenures and neglected their very first vision to reach welfare for all people.

One of the most important natural wealth and being the most vital for living is water. In general context, water is a public good, indicating that it is provided for all people. Its benefits for living are huge, such as for drinking, taking bath, washing, cooking, planting production crops (e.g. rice, corn, soybean, vegetables, etc.), and growing decorative plants (e.g. plants in private building or public building). Water is also fundamental for transportation to lift and deliver people and goods through ships, whether on river, lake, or sea between islands, nations, or continents. It is also identified as tourism objects for people such as waterfall, pools, water boom, etc. Water is useful for medical and business development since many corporations in Indonesia had been using water as their production materials for beauty products, processed foods, various kinds of packed-drinking water, and etc.

Indonesia, up to recent days, has considered water as a vital aspect to be well controlled and managed for the purpose of reaching people welfare. As a constitutional country, the importance of water, for the nation and the people of Indonesia, is governed by the state as mentioned in article 33 act (3) the Constitution 1945. In this case, law is functioned as a social control preventing any issue that the strong controlled the weak in terms of water as natural resource. In addition, law is also functioned as social engineering in ways of water management. Tracking the rules, water was set under the Constitution 1945, Law number 5/1960 on basic regulation of agrarian subjects, Law Number 11/1974 on irrigation, Law Number 7/2004 on water resources (repealed), and several government regulations (some of those were repealed) on water resource controlling.

Within a basic law instrument as mentioned in article 33 act (3) the Constitution 1945 that “earth and water and any natural resources beneath was governed by the state and utilized as much as for the people welfare”. In philosophical manner, the state requires for its natural resource, in terms of water, to be utilized as much as for the people of Indonesia. It is consistent with a philosophy of Indonesia that is *Pancasila*, particularly 5<sup>th</sup> moral principle: social fairness for all the people of Indonesia. In order to reach more real implementation of the article 33 act (3) the Constitution 1945, the government enacted the Law Number 11/1974 on irrigation which subsequently known as regulation of irrigation. Within its consideration, it mentioned that water along with its resources, including the natural wealth beneath is a gift from God the Only One Almighty and it had versatile benefits for human beings all the time, whether in economic, social, or cultural aspects; that the earth, water, and any natural wealth beneath is governed by the state and utilized as much as for the people welfare with fair and equal manner; that is utilization should be served for both the interests and prosperity of all people and for reinforcing development, social fairness, and independency leading to a fair and prosperous society based on *Pancasila*.

A philosophical view upon water as a national asset which brings benefits for the purpose of people welfare, in fact, was bias. Currently, water has been a trade commodity. It functions for business and economic interests rather than social and living needs. Furthermore, many national and foreign companies have directly utilized water as their business fields which gave them huge profits.

In some cases, a licensing instrument provided by central/local governments as the legitimation of their companies for utilizing water brought a direct effect on

surroundings in which the people felt difficult to find clean water. In Sukabumi, for instance, there were some national and foreign companies utilizing groundwater as their primary materials to operate their business. It directly caused difficulty for people surroundings to find clean water. Another case happened in Jogjakarta. Many people there had been suffering for years from a difficulty to find clean water on their own wells after the local government approved a project hotel construction and groundwater utilization for the hotel operational. As the result, the people's wells became drained which brought them into a suffering to find clean water. Another case came from Balikpapan, East Borneo. The people of Gang Lestary Karang Bugis, Central Balikpapan, had an old 15-meter well that had been used for years as the only water resource for those people before Water Supply Company served clean water for them. After the local government established a license to packed-drinking water companies to utilize groundwater surrounding that well, the well's water became drained. This definitely made people feel difficult to find clean water, given that the well was the only substitution for them to get clean water when a service of Water Supply Company got troubled.

The difficulty to find clean water was also found in some big cities in Indonesia due to a changing climate like long-period dry session affecting on the decreasing production of local water companies in which made it unable to provide adequate clean water for all people. On the other hand, long-period rainy session would cause flood and avalanche which made the company got troubled to provide clean water. Another factor was the production resources that mostly came from river which currently had been contaminated with toxic waste, thus, the process of production took longer time and more cost to guarantee their service of clean water. Another factor referred to the cost. Almost all clean water services had put a high rate for their services, more precisely, in some regions, the rates kept raising every year up to 10% of previous rate. Regulation of Balikpapan Regional Government Number 3 of 2008 on Local Water Company in Balikpapan mandated the rate increasing of drinking water in 10% per year. The mandate became the base for the company direction to increase their rates up to 10% per year in every January in on-going year.

For people with sufficient financial, it is not a matter for them to get clean water with money on their hands. When the Water Supply Company was found troubled with their services, people with sufficient financial could utilize water services from providers with high cost, or even some of them decided to stay in hotel for a while. However, for those with insufficient money, they were forced to use contaminated

water for their living on which they found difficult to find any clean water. The local government commonly provided some tanks containing clean water which would be distributed to them who need for drinking and cooking.

Drawing on those cases, it is interesting to further examine the government responsibility in protecting the people's right over the clean water. Given there was a wide gap in which Indonesia is a country with huge amount of water resources. In one hand, no news ever reported that whether national or foreign companies got difficult to find clean water as the primary material of their business, however, in another hand, many people had lost their basic rights to get clean water for their living.

### **People's Right over the Clean Water as a Part of Human Right**

The term 'human right' was derived from two words including 'right' and 'human'. Some scholars identified them as basic rights and some others considered it as principal rights. Those three terms had similar essence. In deeper understanding, the term 'human right' was derived from Arabic, which the word 'right' derived from *haqun* indicating 'ture/straight' as opposed by *baatilun* indicating 'wrong/not true', and the word 'human' derived from the word *al-insaanun* which was identified as human or mankind. Universal Declaration of Human Right was ratified in 1948.

Indonesia has encounter many issues associated with human right in substantial manner which emerged since the people of Indonesia struggled their independence from colonialism. At that time, the colonizer did so much humiliation and oppression which was very contradictory with human values. In Dutch colonialism, for instance, the people of Indonesia were forced to work without any proper wage, known as *forced labor*. In addition, in Japan colonialism, the indigenes were forced to work without having any proper right, known as *romusha*. Such circumstance finally raised uprising actions that resulted in independence for the nation. The contextual concept of human right was mentioned in a proclamation of Indonesia's independence. Subsequently, in formal jurisdiction context, the notion of human right was mentioned in the preamble of Indonesia Constitution 1945.

When some issues related to human right had widely spread out, Indonesia also did huge reformation in its constitution to provide protection and appreciation of human right for all people of Indonesia. The assertion of human right was considered important as well. Therefore, in an amendment of the Constitution 1945, the regulation on human right was mentioned in a separate chapter, Chapter XA on Human Right. It

was a new chapter in the Constitution 1945. The provision of human right in Indonesia Constitution 1945 was identified as a big progress in a process of reformation for Indonesia and as an attempt to take the Constitution 1945 as a modern and democratic constitution (Sudarsa, 2014). In addition to the separate chapter, the notion of human right was also set in a decree of People's Consultative Assembly which represented people's voice in a democratic representative. The decree of People's Consultative Assembly Number XVII/MPR/1998 on human right was established on 13<sup>rd</sup> November 1998.

The precise concept of human right was still in debate up to recent days and had not been firmed on which it began to discuss and contested by human being. Struggling for human right had emerged since years ago, as what religion taught about the attempt of the prophet Ibrahim A.S. against a cruel ruler, the prophet Musa A.S. against the King Fir'aun and other narratives which showed huge efforts to freed human being from any oppression and tyranny of a cruel ruler (Nasution, 2014). Literature reviews on law introduced a philosopher, John Lock, born in 1632 and died in 1704. John Lock had introduced basic rights that belonged to human being, including: 1) right to live, 2) right to have independence, and 3) right to own something (Soehino, 2002). Currently, human right had broader concept comprising many aspects of live in society, nation, and state.

In legal context, the concept of human right could be found in some regulations both national and international. In national domain, the Constitution 1945 did not mention any border in defining human right. It just mentioned some guidelines of protecting and appreciating human right. The definition of human right could be seen in Indonesia's perspective and attitude on human right as unity and it was mentioned in a decree of People's Consultative Assembly Number XVII/MPR/1998 about human right in act (2) dealing with approach and substance, letter *a*. Human right was a basic right attached to the nature of human being. It was universal as a gift from God the Only One Almighty and functioned to assure their living, independence, and development as individual and society, and it could not be ignored, spoiled, or molested by anyone. Furthermore, the definition of human right could be seen in article 1 act (1) the Law Number 39/1999 on human right. The regulation mentioned that human right was a set of rights attached to the nature and the existence of human being as a creature of God the Only One Almighty and it was a gift that should be respected, upheld, and protected by the nation, the law, and the government, and every individual for the honor and protection of human's value and dignity. This legal

definition was a framework that led people who struggled for human right enforcement. Triyanto defined human right as rights attached on human being as their nature and it was fundamental as a gift from Allah that should be respected, appreciated, and protected by every individual, society, and nation (Triyanto, 2013).

Initially, the concept of human right was only associated with right to live, right to be free, and right to own something, however, along with its development, human right comprised many aspects such as right to have education and medication, right in politic, art, and culture, economic, and healthy environment. A responsibility to protect, uphold, and respect the human right was initially assigned to the state only. However, the development of the concept turned such responsibility into both the state and the third party (e.g. corporations and companies). An American professor, John Ruggie, introduced some guideline principles about business and human right, known as Ruggie's principles. Three pillars were mentioned in those principles as follows (Institut for Policy Reseach and Advocacy, 2014):

1. The state responsibility to protect human right
2. The company responsibility to respect human right
3. A need to have more access for victims of business violation to get recovery.

One human right which became the most current interest-related issue was a right to get clean water. In this post-modern era, water had changed from its original nature as public/*res commune* to private, although it was still under a legal instrument of licensing as its legitimation concept. In international context, water had become the most seductive business product for foreign investors. Many of them had successfully made such business in some countries in which good-quality water was abundant, like Indonesia. Thus, it was not surprising that many foreign investor controlled clean water business from its license, technology, marketing management, and market share. Mathias Finger and Jeremy Allounce, in their book entitled *Water Privatization, Trans-National Corporation and the Re-regulation of the water industry*, noted that:

*"the evolution of water resources management in the age of globalization. In it we show how, over recent years, water has evolved from being a common good and a public service into a commodity that is increasingly being managed according to economic principles"* (Finger, 2002).

Water as substance created by Allah SWT, the Only One Almighty, was the essence of life. Every creature was created from water. In Al-Qur'an (the primary source of



Islamic Law) Surah Al-Anbiyaa' verse (30) Allah said "*Waja'alna minalmaai kulla syai'in hayya*" meaning "and (that) We made out of water every living thing." In biology, organism was classified into three including human, animal, and plant. Based on that verse, those three creatures were derived from the same substance, water. The essence of human creation was derived from water, as mentioned in Surah Al-Furqaan verse (54) Allah said "*Wahuwalladzii khalaqaminalmaa'i basyaran faja'alahu nasabawwashihraa wakaana rabbuka qadiiraan.*" meaning "And He it is who out of this [very] water has created man, and has endowed him with [the con-scioussness of] descent and marriage: for thy Sustainer is ever infinite in His power." Furthermore, animal was also created from water as Allah SWT said in Surah An-Nuur verse (45) "*Wallahu khalaqa kulla daabbatimminal maa'i*" meaning, "And it is God who has created all animals out of water". Similarly, plant could grow since Allah gave them rain for them to grow, as mentioned in Surah Al-an'aam verse (99), "And He it is who has caused waters to come down from the sky, and by this means have We brought forth all living growth, and out of this have We brought forth verdure. Out of this do We bring forth close-growing grain; and out of the spathe of the palm tree, dates in thick clusters; and gardens of vines, and the olive tree, and the pomegranate: [all] so alike, and yet so different! Behold their fruit when it comes to fruition and ripens! Verily, in all this there are messages indeed for people who will believe!"

Based on Al-Qur'an, the existence of human beings since they were born till died would always be inevitably inseparable from water. At the time they were in their mothers' womb, they took amniotic fluid as their source to keep alive, at the time they were born, it would be substituted by their mothers' breast milk, and soon since then they would gave a touch with water to clean their bodies from any dirt. Since they were kids, growing up as teenagers, becoming adult, and getting old, they would always need water. Moreover, the primary substance inside the human body is water. In fact, human would never be able to live without water although they had stock for food. Thomas V. Cech proposed that:

*"The human body is like the surface of the earth in the sense of the almost 75 percent of our body weight is composed of water. We can live about 40 days without food before starting to death, but only about 3 days without water before we die of dehydration. Human require an abundant and clean supply of water to survive"* (Cech, 2010). As well as after humans just died, they would be bathed using water, cleaned up from any dirt that embedded within their body



Human being as social creature could not live alone. In this post-modern era, human live with others as society, in wide-scale, it could become a country. A country was established with a purpose to protect and preserve its people rights. In doing so, the state would establish a set of regulations functioned to rule and protect its people. Therefore, the state relied its sustainability on a set of regulation, known as constitution, and defined the state as a constitutional country (*rechtstaat*) and not based on particular governance (*machtstaat*). Laws set in a country derived from law about country. It indicated that there would be no law without a country to be previously established as the antecedence. Law was intentionally established for the purpose of sustainability of the country since it did not solely refer to itself, whereas, it should meet all elements and concepts reinforcing its position (Ismatullah, 2009).

Indonesia, as a country, has clearly declared itself as a constitutional country, mentioned in article 1 act (3) Indonesia Constitution 1945 that "Indonesia is a constitutional country". As a constitutional country, it was always based on legally formal laws. Furthermore, the Constitution 1945 was considered as a basic rule (constitution) although people as society, in their daily routines, still considered customary laws which existence was assured by the constitution of the country. Water is vital for peoples' lives. Hence, the state should control the utilization in order to prevent any violation in societies.

The need of clean water is a part of human right. Every human being always needs clean water for their living. Therefore, it was a must for the country to protect and assure this individual right over the clean water as the part of fulfillment of human right. In constitutional context, the right to survive with a proper living was clearly set in article 28A the Constitution 1945 that every people had right to live and survive for their living. One attempt to survive for living was by obtaining clean water for daily consumption. Water provided by Allah SWT in this earth for human to make living referred to a public good and every individual had right to obtain that public good for their living.

The human's need of water is vital and real. This nature is fundamental since human could not live in prosperous manner without water. One measure of people welfare could be seen from the fulfillment of clean water for their live. It does not matter how much clothing, food, and housing needs have been completed, but as long as the vital needs of water is not completed yet, it would raise problems. A legal basis for human right dealing with clean water was set in article 28H the Constitution 1945 that "every

people had right to live in prosperity physically and mentally, have good housing and environment, and have health service.”

Given the importance of water for living, the government should seriously concern on water management. Water is vital for people to live. It is the people’s right to have water for their living and it should be protected by constitution since water, even in minimal amount, is necessary for both personal needs and irrigation for farming. Furthermore, in international context, the document of the United Nation in General Comment Number 15/2000 considered water as legitimate human right (Siahaan, 2005).

Human being are unable to create water, however, they are assigned to utilize it well. As caliph on this earth, human beings are required to preserve the earth and forbidden to make any damage since it is actually considered as giving damage toward themselves and others. Water violation could vary such as contaminating the groundwater, river, and sea using toxic wastes. Another indirect violation could be in the form of governing or dominating the clean water resources, things that only human could do. In this recent day, many companies had done such violation. Thus, Allah SWT forbids all human being to make any violation on this earth.

Whether aware or not, river is nowadays contaminated. The volume of groundwater has been decreasing. Flood and avalanche happened in frequent time when rain session came. The lack of clean water often happens in city. Water is getting scarce. Thus, it needs to be controlled by the government. In the context of paradigmatic level, such control by the state over water sources should relate to governance and management context which purpose was for as much as the people welfare in order to respect, to protect, and to fulfill the people’s right over water which has been universally considered as human right (Fadjar, 2005).

### **Government Responsibility to Protect the People’s Right over the Clean Water**

The purposes of establishing Republic Indonesia as a nation is to protect people of Indonesia as nation and homeland and to promote the general welfare, enrich the life of the nation, and participate in conducting the world law. Providing clarity on the national purposes is very critical since it would be the basic line for the country to step forward. There had been a long debate among the scholars dealing with the aims and function of the country. Some of them tended to consider the concept of the state aims, and some other tended to see the state function. The aim of the state focused on the

ideal goals referring to the vision of the country, and the function of the state focused on more practical action referring to the mission of the country. After describing the aim of Law based on Plato's, Aristotle's, Harold J. Laski's, and John Locke's views, Aminudin Ilmar argued that the aim of a country was at least to provide welfare for the people. In theoretical manner, it could be suggested that all countries actually had similar aim which was to provide welfare for their people (Ilmar, 2012). This noble aim was then mandated to the government in executive, legislative, and judicative based on each role they played in developing country and nation. The manifestation of commitment for this mandate could be seen when the officials of the government took their pledge before conducting their function. The pledge was legally and formally mentioned in the Constitution 1945 and other regulations.

Country is a legal entity which is much stronger than any other legal entities. The power of the state is that it has power to push particular parties to do or not do certain things under the regulations established. Another power is that governing or controlling something based on regulations established. The real act of the state control based on regulation was mentioned in article 33 act (3) the Constitution 1945 that "the earth and water and any natural wealth beneath was governed by the state and utilized as much as for the people welfare."

The government's control over the earth, water, and any natural wealth beneath did not mean that people would lose their right to have and utilize the all wealth. Instead, the government did controlling to provide welfare for all people of Indonesia as the ideal of the nation.

Dealing with the management of water source, it was also mentioned in the Constitution 1945 that it (the source) was governed by the state and utilized as much as for the people welfare. Thus, the government responsibility to protect the people right over water was by establishing policies and controlling over the source. Article 7 act (1) the Law Number 12/2011 on the enactment of regulation was used as the base to establish policies (*beleid*). This article noted that kinds and hierarchy of law comprised:

- a. The Constitution of Indonesia 1945;
- b. Decree of People's Consultative Assembly;
- c. Law/Regulation in Lieu of Law;
- d. Government Regulation

- e. President Regulation
- f. Provincially Local Regulation; and
- g. Regency Local Regulation

In article 8 act (1) the Law Number 12/2011 on the enactment of Regulation mentioned that in addition to article 7 act (1), the form of regulation also included the regulation established by People's Consultative Assembly, House of Representative, House of Local Representative, Supreme Court, Constitutional Court, State Audit Agency, Judicial Committee, Bank Indonesia, Minister, Bodies, Institution, or similar committee established under the law or the government with a mandate from the Regulation, House of Provincial Local Representative, Governor, House of Regency Local Representative, regents, and related head of local areas.

Policies and regulations by the state as the government responsibility in protecting people's right over clean water, in the first-level, was conducted by including a concept of regulation policies of water resource under the article 33 act (3) the Constitution 1945. As the subsidiary, the Law Number 5/1960 on basic regulation of agrarian subjects (subsequently known as UUPA) was then used as well.

Regulation which oriented to the government responsibility in protecting the people's right over water could be seen in several articles under UUPA. Article 1 UUPA mentioned that all Indonesia territory was a homeland for all people of Indonesia and united as a nation. In article 2 UUPA mentioned that all the earth, soil, water, and spaces along with all natural resources beneath in the territory of Indonesia was considered as a gift from God the Only One Almighty, and those all wealth was national wealth. A legitimation that all natural wealth in Indonesia is a gift from God the Only One Almighty indicated that those all wealth was provided for all indigenes that lived in Indonesia, hence, the people of Indonesia through their government should control and manage those natural wealth for common benefits, and it is their responsibility as caliph/creature who live on earth.

In article 2 act (1) UUPA, it was noted that under the article 33 act (3) the Constitution 1945 and under the article 1, the earth, water, and space along with all natural resources beneath was governed by the state in the supreme level as an organization of all people. The term 'governed' here, particularly in regard to water as studied here, raised right and authority by the government. Both right and authority the government

held was mentioned under the article 2 act (2) letter *a*, *b*, and *c* UUPA. This article noted that the state control mentioned in in act (1) of this article gave authority to:

- a. Control and establish allotment, utilization, supply, and preservation of the earth, water, and space.
- b. Decide and control the legal relationships between people and the earth, water, and space
- c. Decide and control the legal relationships between people and legal actions dealing with the earth, water, and space.

The state control and authority in the context of water resource was intended to reach the people welfare as mentioned in article 2 act (3) UUPA. The article noted that the authority derived from the state control mentioned in act (2) of this article is used as much as for the people welfare, in terms of nation, prosperity, and independence of the people and of Indonesia as a legal, independent, sovereign, fair, and prosperous country.

After implementing UUPA in 14 years long, the government considered to set a separate regulation dealing with water resource. In 26<sup>th</sup> December 1974, Law of Irrigation was officially established by president Soeharto and prevailed as law. Article 2 in Law of Irrigation noted that water along with its sources, including the natural resources beneath as intended in article 1 Number 3, 4, and 5 of the regulation had social function and was used as much as for people welfare. The social function over water was the only function of water in a broad frame and was legally and formally given and mentioned in this Law of Irrigation. Furthermore, article 2 in Law of Irrigation stated that in order to reach such social function, water along with its resources was allotted to provide the people needs in every aspect, both material and spiritual.

The utilization of water for business mentioned in Law of Irrigation provided adequate spaces as long as it was consistent with the regulation of the government. The article 11 act (2) Law of Irrigation noted that “corporation, social agencies, and/or individual who conduct business related to water and/or the sources of water had to ask license from the government by taking the principles of joint ventures and kinship.” With that base, many domestic and foreign companies were held and they used water as their business product. The utilization of licensing instrument was a part of manifestation of the state control. The state control over water mentioned in article 3 act (1) Law of

Irrigation stated that water and its sources along with the natural wealth beneath as intended in article 1 Number 3, 4, and 5 of the regulation was governed by the state.

Deriving from the governance of water by the state, the authority for the government raised. Details of the government authority over water in article 2 act (2) Law of Irrigation included the state control mentioned in act (1) that provided authority toward the government to:

- a. Manage and develop the utilization of water and the resources of water;
- b. Establish, ratify, and/or provide license based on planning and the technical planning of water and irrigation controlling;
- c. Control, ratify, and/or provide license for allotment, utilization, supply of water and/or the resource of water;
- d. Control, ratify, and/or provide license for enterprising water and/or the sources of water;
- e. Decide and control legal actions and legal relationships between individual and/or corporation in issues of water and/or the sources of water.

After implementing the Law of Irrigation for 30 years long, it was substituted by Law Number 7/2004 on water resource, subsequently known as UUSDA. This current regulation provided more protection of individual and societal rights to get water. As mentioned in article 5 UUSDA, the state assured the right of every people to get water for their basic needs at least in their daily to reach a healthy, clean, and productive life.

The function of water resource mentioned in UUSDA was broadened in article 4. This article noted that water resources had social, living environmental and economic functions which were organized and realized in harmony. These three functions actually corresponded to the current development that water was not solely for the people basic needs but also for living environment in order to preserve plants. Additionally, the economic function took longer time to organize. In this case, water was utilized for individual, societal, and company business interests.

There had been tight debate and polemic since the discussion of RUUSDA. Some of people considered that if RUUSDA was ratified, liberation of water resource in Indonesia would occur. On the other hand, the government saw that the organization of water resource in RUUSDA would be more comprehensive and provide assurance for people's right to access water. Therefore, in 18<sup>th</sup> March of 2004, RUUSDA was

ratified as regulation and was signed by the president of Indonesia at that moment, Megawati Sukarno Putri.

No longer after UUSDA officially established, some of Indonesian people sued that draft law to the Constitutional Court. The Court, then, established a verdict for the issue number 058-059-060-063/PUU-II/2004, and the issue Number 008/PUU-III/2005. Based on that verdict, the Constitutional Court objected the lawsuit. However, the verdict was conditionally constitutional in nature, indicating that the lawsuit could be re-filed to the Constitutional Court if the government did not follow the lead and direction provided by the Constitutional Court in terms of organizing the implementation of UUSDA. In 2013, some of Indonesian people including Muhammadiyah re-sued UUSDA to the Constitutional Court. After have a very long court session process, the Constitutional Court finally established a verdict toward UUSDA on 18<sup>th</sup> February of 2015. The verdict acceded the lawsuit and considered for UUSDA to be invalid. It re-imposed the Law of Irrigation while waiting for the government to establish new regulation of water resources by considering that verdict, as mentioned in the Constitutional Court verdict Number 85/PUU-XI/2013.

Another form of the government responsibility to protect the people's right over the clean water was by conducting management (*bestuursdaad*) in terms of providing various licenses to parties who were willing to utilize the water resources for their various interests, such as for business, transportation, water tourism, etc. as the compensation, those parties had to pay taxes to the government and it was used to develop the country.

Furthermore, the government responsibility to protect the people's right over the clean water was by supervising (*Toezichthoudensdaad*) those all licenses and utilization of water resources, both the surface-water (e.g. river and lake) and the ground-water that needed pumping technology. Supervising was important to conduct since water belonged to public. Through well-controlling, water would keep long lasting and useful for all creatures.

Another form of the government responsibility to protect the people's right over the clean water was by conducting execution (*baheersdaad*). In this case, the government created a corporation which capital was fully funded by the central/local government separated from State/Local Budget. That corporation was Water Supply Company, built in every regency or city in Indonesia. Water Supply Company produced clean water which could be directly utilized by all people of Indonesia.



Creating that Water Supply Company was based on the local regulation by separating the wealth from the local wealth. Water Supply Company was professionally managed, intended not only to provide service for the local people, but also to gain profit for the purpose of local development.

The government responsibility was also through cooperation with domestic and foreign investors in order to control water resources that could bring benefits for people in terms of water service as conducted by the local government of Jakarta that created a consortium company between the local government and domestic & foreign companies under the name of PT Palyja. This company provided clean water supply for people of Jakarta.

Local governments' controlling on water resources by creating Water Supply Companies, in fact, concerned more on investment function rather than service function, since the actual purpose of creating such companies was to gain profit. Whereas, what the government should actually concerned on was providing clean water for all people in order to reach as much as people welfare.

### Conclusion

Water is vital for humans' live. As the ideal of this country wanting to reach people welfare, Indonesia realized the importance of water as a fundamental national asset for fulfilling the people's needs. Therefore, water should be well-managed and in fair manner. The article 33 act (3) the Constitution 1945 provided a base for the state to control, manage, and utilize water resources for as much as the people welfare.

The people's right over the clean water was assured by positive legal norms and it became the part of human right. Hence, it was the government responsibility to protect, respect, and enforce that right.

The government responsibility as a mandatory from the country to protect the people's right over the clean water was conducted by establishing policies (*beleid*), enacting a set of regulations (*regelendaad*), carrying out management (*bestuursdaad*) and supervision (*toezichthoudensdaad*) dealing with the water resources. However, what the people more expected to realize was the government actions in terms of execution context (*beheerdaad*) directly conducted to water resources, and as the result, it would bring out implications for the fulfillment of the people's right over the clean water, which was not fully conducted yet up to recent days. Water Supply Companies that had currently been established in every regency/city was more for-profit-oriented rather than

service-oriented. Therefore, it was suggested for the government to create Technical Implementation Unit which task was to manage clean water for all people in every regency and city without spending any high financial cost, hence, the people welfare would soon turn into reality.

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