

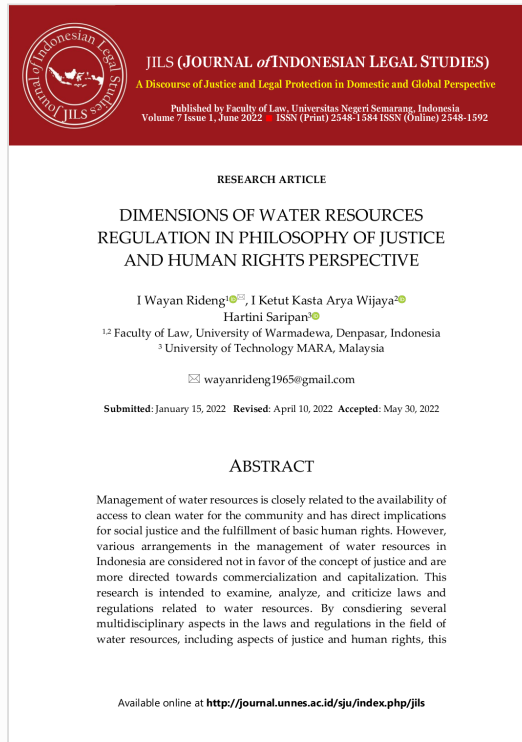


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Submission title: Dimensions of Water Resources Regulation in Philosophy of ...
File name: 53820-Article_Text-164905-3-10-20220612.pdf
File size: 728.01K
Page count: 26
Word count: 8,100
Character count: 44,276
Submission date: 16-Jun-2022 10:13PM (UTC+0700)
Submission ID: 1857974441



JILS (JOURNAL of INDONESIA LEGAL STUDIES)
A Discourse of Justice and Legal Protection in Domestic and Global Perspective
Published by Faculty of Law, Universitas Negeri Semarang, Indonesia
Volume 7 Issue 1, June 2022 ISSN (Print) 2548-1584 ISSN (Online) 2548-1592

RESEARCH ARTICLE

**DIMENSIONS OF WATER RESOURCES
REGULATION IN PHILOSOPHY OF JUSTICE
AND HUMAN RIGHTS PERSPECTIVE**

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Submitted: January 15, 2022 Revised: April 10, 2022 Accepted: May 30, 2022

ABSTRACT

Management of water resources is closely related to the availability of access to clean water for the community and has direct implications for social justice and the fulfillment of basic human rights. However, various arrangements in the management of water resources in Indonesia are considered not in favor of the concept of justice and are more directed towards commercialization and capitalization. This research is intended to examine, analyze, and criticize laws and regulations related to water resources. By considering several multidisciplinary aspects in the laws and regulations in the field of water resources, including aspects of justice and human rights, this

Available online at <http://journal.unnes.ac.id/sju/index.php/jils>

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Word count: 8100

Character count: 44276



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⁴ Available online at <http://journal.unnes.ac.id/sju/index.php/jils>

research also analyzes from the philosophical, legal, and sociological aspects. This research found and emphasize that the concept of Pancasila can be a legal political basis for the state's right to control water resources to be directed so that the management of water resources does not oppress those who are socially and economically weak, or the poor. The availability of water is constant, while the demand for water is increasing in quantity and quality, then what will happen is scarcity. At this stage of water scarcity, the principle of justice becomes very important in water management. Access to water justice is not individual or micro justice, but social or macro justice. Justice to get water as a human right cannot be left to everyone based on a market mechanism, but government intervention to ensure the fulfillment of the right to water, at least is very much needed.

Keywords: Water Resources, Justice, Human Rights; Social Justice

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HOW TO CITE:

Rideng, I Wayan, I Ketut Kasta Arya Wijaya, and Hartini Saripan. "Dimensions of Water Resources Regulation in Philosophy of Justice and Human Rights Perspective". *JILS (Journal of Indonesian Legal Studies)* 7, No. 1 (2022): 31-56. <https://doi.org/10.15294/jils.v7i1.53820>.

¹ Available online at <http://journal.unnes.ac.id/sju/index.php/jils>

INTRODUCTION

WATER IS A VERY important and vital need in human life and livelihood, for that, based on Article 33 paragraph (3) of the 1945 Constitution *jo.* Article 2 paragraph (2) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (*Undang-undang Pokok Agraria*, hereinafter as UUPA), states that the state has the authority to regulate and control it. The definition of controlled is used in the public aspect as formulated in Article 2 of the UUPA. Article 2 of the UUPA further gives the meaning of controlling as an act of regulating, planning, as well as managing and preserving it.¹ The state's authority in regulating and making policies in relation to earth, water and natural resources still does not reflect the values of justice so that it is felt that taking sides with the community has not provided overall benefits. John Rawls (1999) describes a state of justice as "*a normal condition in which human cooperation is possible and necessary,*" otherwise known as circumstances of justice (COJ), a formulation derived from David Hume. Hume himself calls COJ to illustrate that new justice is a relevant virtue only when there are a scarcity and people are not spontaneously moved in emotional bonds to lend a helping hand.²

The principle of justice has not been seen in the Water Resources Law Number 7 of 2004, seen from its orientation that focuses more on the sector of economic value by providing a very large opportunity for the private sector to work on it, so that through the Constitutional Court Decision Number 85/PUU-XI/2013 regarding the Application for Judicial Review of Law Number 7 of 2004

¹ Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jilid 1, JAKARTA: DJAMBATAN (2005).

² Eugene V Rostow, *The State and the Rule of Law in a Mixed Economy*, 72 COLUMBIA LAW REVIEW 788-792 (1972).

concerning Water Resources, the Law on water resources was canceled.³ Furthermore, the Government issued Law Number 17 of 2019 as a replacement for Law Number 11 of 1974 concerning Irrigation which was again enacted after the cancellation of Law Number 7 of 2004 concerning Water Resources.

The state in carrying out its duties for the welfare of the people, forming various laws and regulations is very important, because the intervention of the state in managing the welfare of the people in the legal, social, political, economic, cultural, environmental, and defense and security fields is carried out by establishing legislation is unavoidable.⁴ Therefore, in the formation of legislation, especially in the field of water resources, it is necessary to pay attention to the principles and norms in the formation of legislation.⁵ Thus the formation of legislation must take into account the principles of the formation of good laws and regulations, among others: based on the values of Pancasila, principles of the state based on law, principles based on the constitution, and principles based on legislation developed according to expert opinion.⁶

This research will be conducted using normative legal research, the use of normative legal research because it examines and analyzes laws and regulations related to water resources. When researchers review the laws and regulations that become studies, it will emphasize the philosophical foundations that exist in the legislation

³ I Gusti Ayu Ketut Giantari et al., *Development and revitalization strategies for traditional markets in Bali*, INT. J. SOC. ECON. (2018).

⁴ Hugo Tremblay, *Clash of Paradigms in the Water Sector-Tensions and Synergies between Integrated Water Resources Management and the Human Rights-Based Approach to Development*, 51 NAT. RESOUR. J. 307 (2011).

⁵ Christopher Schulz et al., *The value base of water governance: a multi-disciplinary perspective*, 131 ECOL. ECON. 241-249 (2017).

⁶ Peter Mollinga & Daphne Gondhalekar, *Finding structure in diversity: A stepwise small-N/medium-N qualitative comparative analysis approach for water resources management research*, 7 WATER ALTERN. 178-198 (2014).

studied, namely regulations related to water resources. Then the emphasis will also look at the aspect of justice and the perspective of human rights. This research will use a legislative approach and a philosophical approach, the reason used by the legal approach is used so that researchers can analyze and review the reason or ratio of the legis of the formation of legislation that becomes a study in this case is water resources. Based on the description above, there are several things that can be studied as issues or problems in this research, as follows: How is the formulation and construction of the philosophical foundation for the formation of legislation in the field of water resources in the perspective of justice and human rights?

PHILOSOPHICAL DIMENSIONS FOR LEGISLATION IN THE FIELD OF WATER RESOURCES IN JUSTICE & HUMAN RIGHTS PERSPECTIVE

THE HISTORY OF WATER resources management arrangements still has a strong anthropocentric view, just as a resource that can be utilized as much as possible for human needs. This is certainly contrary to the eccentric environmental law.⁷ Water functions are vital for all living things cause the air arrangement must be done carefully to be useful for life on earth itself. The Law of Water Resources should be based on ecocentric thinking that places the interests of the environment equal to human interests. Water characteristics that make it different from other natural resources, therefore the arrangement must be adjusted to the air characteristics. In the

⁷ Muhammad Nadzir, *Prinsip Hukum dalam Pengelolaan Sumber Daya Air Secara Terpadu dan Berkelanjutan* (2019).

formation of the New Law must be based on the principle of justice and sustainability to achieve the fulfillment of the right to air in a fair and equitable.⁸

Hans Kelsen stated that law is included in the system of norms that are dynamic (*nomodynamics*) this is because the law is always formed and removed by institutions or authorities that are authorized to form and remove it, so that in this case it is not seen in terms of its enactment or formation.⁹

Therefore, the law is dynamic, the law will always develop and change as society develops, but still pay attention to the formal provisions that exist in forming or making laws. Similarly, the law made may not accommodate all the interests of the community or unfair, but still called the law as long as it meets the provisions of fomalitas in the formation of the law.¹⁰

The regulation of water resources has not reflected the value of social justice as stipulated in Article 33 of the 1945 Indonesian Constitution as a whole. The construction of policy direction in the regulation of water resources both Law No. 7 of 2004 and Law No. 11 of 1974 does not place Paragraph (1) of the 1945 Indonesian Constitution on "*The economy is structured as a joint effort based on the principle of family*", Paragraph (2) on "*Branches of production that distilling for the state and mastering the lives of many people controlled by the state*" and Paragraph (4) on the principles of maintaining the national economy.¹¹ Such construction will result in the construction

⁸ MICHAEL HAAS, INTERNATIONAL HUMAN RIGHTS: A COMPREHENSIVE INTRODUCTION (2013).

⁹ JIMLY ASSHIDDIQIE & MUCHAMAD ALI SAFA'AT, TEORI HANS KELSEN TENTANG HUKUM ((Jakarta, Sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006).

¹⁰ MICHAEL J ROUSE, INSTITUTIONAL GOVERNANCE AND REGULATION OF WATER SERVICES (2013).

¹¹ S Sarath Mathilal De Silva, "Linking Human Rights and the Environment." *Daily News* (June 2016), retrieved from < <https://www.dailynews.lk/2016/06/20/features/85126>

of legal politics on the concept of Rights Regarding the State (*Hak Mengenai Negara*, hereinafter as HMN) over Water Resources based only on Article 2 of the UUPA which places the state only as a regulator.

Water Resources is a social object that controls the lives of many people so that the branch of production is also important for the country. Thus, controlling the lives of many people should be controlled by the state and not otherwise controlled by private, domestic or foreign individuals or legal entities.¹² The philosophical basis is a consideration or reason that describes the regulation of the use of water resources which is formed by taking into account the views of life, awareness, and legal ideals which include the spiritual atmosphere and the philosophy of the Indonesian nation which originates from Pancasila and the Preamble to the 1945 Constitution.¹³

Philosophically, water is actually a public good that is given by God to humans to be used and enjoyed in order to carry out their lives. Thus, the concept of ownership of water resources is the common property of mankind (*res communis*) and therefore cannot be privately owned like a private good.¹⁴

The Constitution of the State of Indonesia has regulated matters relating to the control of natural resources, including water resources. State control (Indonesia) over natural resources obtains legitimacy based on Article 33 paragraph (3) of the 1945 Constitution. The basis for obtaining this authority in State Administrative Law is called

¹² Paul Jeffrey, *Distributive justice, stability, and sustainable water resources management* (2018).

¹³ Jati Nugroho, *Legal Pluralism as a Conflict Resolution Alternative of Law State and Local Wisdom in Water Resources Management Based on Social Justice (Case Study: in the Community of Water User Farmers the Regency of Lumajang East Java Province)*, 40 JIL POL'Y OB. 86 (2015).

¹⁴ Hamid Chalid & Arief Ainul Yaqin, *Studi Tentang Hukum Air Dan Problematika Pemenuhan Hak Asasi Manusia Atas Air Di Indonesia*, 48 J. HUK. PEMBANG. 411–435 (2018).

'attribution'.¹⁵ Normatively, state control of natural resources can be seen in Law No. 5 of 1960 concerning Basic Agrarian Regulations, Article 2 paragraph (2), which states: that the authority of HMN¹⁶ includes:

- a. Regulate and administer the designation, use, supply and maintenance of the earth, water and space.
- b. Determine and regulate legal relations between people and the earth, water and space.¹⁷
- c. Determine and regulate legal relations between people and legal actions concerning earth, water, and space.

The state authority as referred to in letter (a) is further elaborated in several articles in Chapter I of the UUPA, particularly Article 14. The elaboration of state authority in letter (b) is further regulated in Articles 4, 6-11 and the provisions in Chapter II of the UUPA. While the state authority in letter (c) refers to the provisions of Articles 12, 13, 26 and 49 of the UUPA.¹⁸

Basically, the right to control the state is a reflection of the implementation of the values, norms and configuration of state law that regulates the control and utilization of the environment and water resources or is an expression of ideology that gives authority and legitimacy to the state to control and utilize the environment and natural resources (in this case: water) within its sovereign territory.¹⁹ However, for more than three decades, the last there has been

¹⁵ Arnim Wiek & Kelli L Larson, *Water, people, and sustainability—a systems framework for analyzing and assessing water governance regimes*, 26 WATER RESOUR. MANAG. 3153–3171 (2012).

¹⁶ Yifan Ding et al., *Human-water harmony index: a new approach to assess the human water relationship*, 28 WATER RESOUR. MANAG. 1061–1077 (2014).

¹⁷ Lana D Hartwig et al., *Water colonialism and Indigenous water justice in south-eastern Australia*, 38 INT. J. WATER RESOUR. DEV. 30–63 (2022).

¹⁸ Julius Sembiring, *Hak menguasai negara atas sumber daya agraria*, 2 BHUMIJ. AGRAR. DAN PERTANAH. 119–132 (2016).

¹⁹ Ding et al., *supra* note.

manipulation of interpretations by the government as the organizer of state power on the concept of "*the right to control the State*".²⁰

Because water is a very vital and important need, it should be given equal access to all citizens in its fulfillment. Thus, the importance of water for human life, it is not surprising that **the right to water** today, both **at the global level** and at **the national level**, has been recognized as one of the human rights, namely the human right to water.²¹

The construction of policy directions in regulating water resources, both Law Number 7 of 2004 and Law Number 11 of 1974 does not place **Paragraph (1) of the 1945 Constitution of the Republic of Indonesia** concerning "*The economy is structured as a joint effort based on the principle of kinship*", Paragraph (2) concerning "*Branches and The production branches which are important for the state and control the livelihood of the people are controlled by the state*" and Paragraph (4) concerning the principles of the implementation of the national economy.²²

Such construction will result in the construction of legal politics regarding HMN over natural resources (water) based only on Article 2 of the UUPA which places the state only as a regulator. In fact, it is common knowledge that water, or natural resources (water) is a social object that controls the livelihood of many people so that its production branch is also **important for the state**. Thus, **controlling the livelihood of many people should be controlled by the state and not otherwise controlled by private individuals or legal entities, domestic or foreign.**

²⁰ Aisulu Sabyr et al., *The role of international conventions and covenants in achieving economic and environmental justice: A conceptual review*, 22 J. LEG. ETHICAL REGUL. ISSUES 1–8 (2019).

²¹ Charles Victor Barber, *The state, the environment, and development: the genesis and transformation of social forestry policy in new order Indonesia* (1989).

²² Mollinga and Gondhalekar, *supra* note.

Based on the existing provisions in the regulation of water resources that open the opportunity for privatization, so that it is not in accordance with the state's understanding of welfare. As a modern democracy, there are several economic functions that must be carried out in managing water resources, as stated by W. Friedman (1971): Among the economic functions now generally undertaken by the state in modern democracies, he concentrates on four: those in which the state is (1) provider of social services; (2) regulator of private economic activity, through the licensing of investment, the management of exchange controls, and the like; (3) entrepreneur of a nationalized public sector; and (4) Empire, seeking to meet the community's standard of justice in resolving conflicts and competing claims to economic resources, privileges and opportunities.²³

In the case of Water Concession, the Constitutional Court has already set six water limitation principles²⁴, namely: (1) Any exploitation of water shall not interfere with, override, let alone exclude the people's right to water; (2) The State shall fulfill the people's right to water. As considered above, access to water is one of its own rights, "Protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government"; (3) Must remember the preservation of the environment; (4) As an important production branch and which controls the livelihood of the people that must be controlled by the state, the supervision and control by the state on water is absolute; (5) As a continuation of the right to control by the state and because water is a matter of great control over the livelihood of the public, the main priority given by the exploitation of water is a State-Owned Enterprise or Regional-

²³ Nigel South, *Green criminology environmental crime prevention and the gaps between law, legitimacy and justice*, 65 REV. ZA KRIMINALISTIKO KRIMINOLOGIJO 373–381 (2014).

²⁴ Salman M A Salman, *The human right to water – challenges of implementation*, 106 IN PROCEEDINGS OF THE ASIL ANNUAL MEETING 44–46 (2012).

2 Owned Enterprise; (6) If after all the above restrictions have been fulfilled and there is still water availability the government is still allowed to grant permission to private business as long as the government is still conducting water exploitation under certain conditions and strict.²⁵

Thus, considering that water includes the livelihood of many people, the State is given the authority to manage water resources in making policies that should pay attention to various factors, especially on the fulfillment of rights for the community. Guarantees for the fulfillment of these rights should be an important consideration in carrying out state and government functions.²⁶

REGULATION OF LAW IN THE FIELD OF WATER RESOURCES IN REALIZING PEOPLE'S WELFARE IN THE FUTURE

The formation of laws and policy formulations, between them, can completely fill and strengthen each other. Because with good interaction between these two things, it will produce a substantially established product, and produce a public policy product that is legitimated and obeyed massively by its stakeholders. In the process of legal formation can be seen how the flow and stages passed until the creation of a certain legal regulation, whether laws, government regulations and other laws and regulations.²⁷ Law No. 12 of 2011 which was later amended by Law No. 15 of 2019 on the Establishment

²⁵ Hubert H G Savenije & Pieter Van der Zaag, *Integrated water resources management: Concepts and issues*, 33PHYS. CHEM. EARTH, PARTS A/B/C 290–297 (2008).

²⁶ ROBERTO LENTON & MIKE MULLER, *INTEGRATED WATER RESOURCES MANAGEMENT IN PRACTICE: BETTER WATER MANAGEMENT FOR DEVELOPMENT* (2012).

²⁷ Tremblay, *supra* note.

of Laws and Regulations, in forming laws and regulations, must be based on the principles of good formation include:

- 1) The Philosophical Aspect is related to the ethical and moral values that apply in society.
- 2) Juridical aspects are related to the legal basis on which the authority of legislation is made.
- 3) Sociological aspects are related to how the laws and regulations that are prepared can be understood by the community, in accordance with the reality of the life of the community concerned.²⁸

The legal principles of the ¹⁵legislation in accordance with Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, can be grouped into 2 (two) namely *First*, the principle related to the establishment or process of the Laws and Regulations and; *Second*, the principle related to the material content or substance of the Laws and Regulations.²⁹

In the establishment of laws and regulations requires a principle or basis in forming a law of Indonesia based on Pancasila as its fundamental basis. The concept of Pancasila law state is the concept of the original Indonesian law state which became the main principle in the establishment of laws and regulations in Indonesia.³⁰

In a study of entitled Subak in the Perspective of Law in Indonesia, it was outlined that the laws and regulations related to irrigation where water management still does not provide guarantees of ³legal certainty and a sense of justice to the farming community, the

²⁸ John Rawls, *A THEORY OF JUSTICE (REVISED EDITION)* Massachusetts, The Belknap Press of Harvard University Press Cambridge (1999).

²⁹ Patrick Bond & Jackie Dugard, *Water, human rights and social conflict: South African experiences*, 1 LAW, SOC. JUSTICE GLOB. DEV. 1–21 (2008).

³⁰ Muhammad Azil Maskur, *Kebijakan Pengelolaan Air Pasca Putusan Mahkamah Konstitusi tentang Undang-Undang Sumber Daya Air*, 16 J. KONSTITUSI 510–531 (2019).

water needed by the community for agricultural needs and daily needs is still not a priority.³¹

Later in a comparative study related to water, the water regulation of some countries such as India in its constitution has regulated and provided protection and respect for indigenous peoples to water. Protection and respect for human rights, one of which is the fulfillment of the right to water, especially clean water, has become a goal in development in the world, namely the MDGs and SDGs. Similarly, the utilization of watersheds has begun to be done in cities in Indonesia with the aim to create clean rivers and provide benefits to urban communities so as not to directly participate in realizing a clean and healthy environment is part of human rights.³²

The constitutional court's decision No. 85/PUU-XI/2013 opened up new hope in water resource management arrangements. Some of the main thoughts used to remove the old wrong practice are the state's awareness of water management responsibilities. The law in the field of water resources in Indonesia could not be separated from important issues including the right to water and water rights.³³

In the establishment of legislation, the value of local wisdom also serves as a community order in maintaining harmonious relations with water resources and the surrounding environment. This harmonious relationship has an impact on the protection of water resource functions and environmental balance to achieve sustainable management.³⁴

³¹ Dani Pinasang, *Falsafah Pancasila Sebagai Norma Dasar (Grundnorm) dalam Rangka Pengembangan Sistem Hukum Nasional*, 20 J. HUK. UNSRAT 1–10 (2012).

³² Chalid and Yaqin, *supra* note.

³³ Roro Yuniress Saharena Hutagaol, *Efektivitas Pasal 23 Huruf H Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia Terhadap Kepemilikan Kewarganegaraan Ganda Masyarakat Perbatasan Kalimantan Barat Dengan Sarawak (Studi Kecamatan Jagoi Babang Kabupaten Bengkayang)*, 3 J. FATWA HUK (2020).

³⁴ Hidayat Chusnul Chotimah, *Tata Kelola Keamanan Siber dan Diplomasi Siber Indonesia di Bawah Kelembagaan Badan Siber dan Sandi Negara [Cyber Security Governance and*

³ Indonesia is a state based on law, meaning all laws and regulations must be sourced to the 1945 Constitution as the highest basic law. All laws and regulations under the 1945 Constitution are an explanation of the principles of ideology, politics, economics, social, culture, and law which is the 1945 Constitution, therefore the laws and regulations have formal and material aspects.³⁵

The concept of the formation of laws and regulations must be in accordance with the concept of Pancasila law state. In addition, the concept of establishing good laws and regulations must prioritize the protection of human rights. The concept of establishing good laws and regulations must put forward the principle of equality before the law. The concept of the establishment of good laws and regulations must be in accordance with the principles of the formation of laws and regulations that have been previously established by law.³⁶

In the Indonesian state constitution, which is a guideline in the administration of the state, the provisions regarding the guarantee of the right to water for all Indonesian people are affirmed in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. State control over water as a natural resource of a national nature is for the fulfillment of people's welfare. Fulfillment of the welfare of all Indonesian people as a manifestation of the struggle of the Indonesian people to escape from colonialism which has created suffering ends and the obligation of the Indonesian people to realize prosperity is a

Indonesian Cyber Diplomacy by National Cyber and Encryption Agency, 10 J. POLIT. DIN. SAL. POLIT. DALAM NEGERI DAN HUB. INT. 113–128 (2019).

³⁵ ¹⁶ Putu Rai Yuliantini, Gede Dewa Sudika Mangku & Putu Pipit Pricellia Eka Putri, *Upaya Perlindungan Hukum Terhadap Perempuan dan Anak Korban Kekerasan Seksual di Provinsi Bali*, 7 in SEMINAR NASIONAL HUKUM UNIVERSITAS NEGERI SEMARANG 367–380 (2021).

³⁶ Geoffrey J Syme, Blair E Nancarrow & Janet A McCreddin, *Defining the components of fairness in the allocation of water to environmental and human uses*, 57 J. ENVIRON. MANAGE. 51–70 (1999).

consequence of the agreement of all Indonesian people to establish a state called Indonesia.³⁷

In the context of the Indonesian state, those relating to earth, water and natural resources have been regulated in the constitution, namely the 1945 Constitution of the Republic of Indonesia Article 33 paragraph 3 whose purpose is to realize the greatest prosperity and prosperity for the community, this means that the earth, water and wealth nature is functioned to realize social justice.³⁸ Indirectly that Article 33 paragraph 3 contains the greatest benefit. When analyzed with the theory of Jeremy Bentham and John Stuart Mill, the flow of utilitarianism, which puts benefit as the main goal of law. Benefit here is defined as happiness. For this reason, it is strived for that happiness to be enjoyed by as many individuals as possible in the society (the nation) (*the greatest happiness for the greatest number of people*). In line with the historical school of law, one of the schools of law that influenced the development of law, which was developed by Frederich Carl von Savigny, it is further said that law is not made but grows and develops together with the community and grows by itself from public awareness.³⁹

In the context of a legal state, Pancasila has a position as a legal ideal (*rechtsidee*) which according to Bernard Arif Shidarta is an idea, initiative, creativity and thought regarding the law or perception of the meaning of law which contains three basic foundations, namely justice, usability and legal certainty.⁴⁰ Bernard Arif Shidarta explained that the core of the legal ideals of Pancasila as the legal ideals of the Indonesian nation has core values, namely, divinity in one and only, respect for human dignity, national insight and insight into the

³⁷ Nugroho, *supra* note.

³⁸ Harsono, *supra* note.

³⁹ Syme, Nancarrow, and McCreddin, *supra* note.

⁴⁰ Bernard Arif Shidarta, *Ilmu Hukum Indonesia: Upaya Pengembangan Ilmu Hukum Sistemik Yang Responsive Terhadap Perubahan Masyarakat*, GENTA PUBLISIHING (2013).

archipelago, equality and feasibility, social justice, moral character and noble character. and participation and transparency in public decision-making.⁴¹

Jimly Asshidiqie argued that the precepts in Pancasila became the ideological philosophical basis for realizing the ideals of the state, namely: (a) protecting the entire Indonesian nation and the entire homeland of Indonesia; (b) improve general welfare; (c) the intellectual life of the nation; and (d) participate in carrying out world order based on freedom, eternal peace and social justice. Furthermore, Jimly Asshidiqie positioned Pancasila as the *Staatsfundamentalnorm* which was first conveyed by Notonagoro.⁴² Pancasila as a view of life and the basis of the state is seen as a legal ideal (*rechtsidee*) as a guiding star for law formation and law enforcement. This position requires that the formation of positive law is to achieve the ideas in Pancasila and can be used to test positive law.⁴³ Thus, in the formation of legislation or in the formation of laws in the field of water resources, Pancasila is the *Staatsfundamentalnorm*. For this reason, in the formation of law, its application and implementation cannot be separated from the values of Pancasila.⁴⁴

Philosophically, the need to reposition the meaning of Pancasila both conceptually and contextually as a philosophical ideological foundation becomes the mainstream in the management of water resources based on Pancasila values. Pancasila should be interpreted in its entirety and comprehensively. This means that Pancasila is a

⁴¹ Hartwig et al., *supra* note.

⁴² Jimly Asshiddiqie, *PENGANTAR ILMU HUKUM TATA NEGARA* (Jakarta, Sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006).

⁴³ Nugroho, *supra* note.

⁴⁴ Diane Elson, *Gender justice, human rights, and neo-liberal economic policies*, *GEND. JUSTICE, DEV. RIGHTS* 78–114 (2002).

must in the formation of legislation as a principle or basis both conceptually and in its implementation.⁴⁵

The existence of universal values in Pancasila should be imprinted in every aspect of community life, nation and state. These values are the foundation for sustainable development. Development ¹⁷ must be based on the basic values of Pancasila. Within this framework, the values of Pancasila are realized to bridge the reality of society, nation and state with ideals which are the hopes and aspirations of the Indonesian nation. The existence of Pancasila ethics is needed to condition the government and people to always be at the original goal of establishing the nation.⁴⁶

The Principles of Justice and Sustainability are two very important environmental law principles related to the utilization of natural resources. The Principle of Justice speaks of how humans should behave in each other in relation to the universe and how social systems must be organized to positively impact the environment.⁴⁷ The principle of Justice emphasizes equal access for all members of the community to utilize natural resources and to be involved in decision-making related to natural resource management. Included in it is providing equal opportunities for future generations to utilize these natural resources, this is referred to as intergenerational justice.⁴⁸

The Principle of Sustainability is a principle that supports intergenerational justice. This principle comes in line with the fact that

⁴⁵ William Nikolakis & R Quentin Grafton, *Law versus justice: The strategic aboriginal water reserve in the Northern Territory, Australia*, 38 INT. J. WATER RESOUR. DEV. 11–29 (2022).

⁴⁶ Heliodoro Ochoa-García & Stephan Rist, *Water justice and integrated water resources management: constitutionality processes favoring sustainable water governance in Mexico*, 46 HUM. ECOL. 51–64 (2018).

⁴⁷ Gérard Francillon, *BALI TOURISM, CULTURE, ENVIRONMENT*, (Denpasar: University of Udayana, 1979).

⁴⁸ Claudia Pahl-Wostl, Joyeeta Gupta & Daniel Petry, *Governance and the global water system: a theoretical exploration*, 14 GLOB. GOV. 419 (2008).

limited economic resources, social, cultural, and environmental aspects are long-term dimensioned aspects, and that development takes place in an intricate ecosystem space.⁴⁹ This principle emphasizes on the choice of alternative development of more resource-efficient and able to synchronize aspects of conservation with the wise use aspect.

Based on the above principles, in addition to the utilization of conservation becomes an important thing to be regulated in the management of water resources. Because conservation will ensure the availability of water resources and ensure the utilization of water resources by future generations.⁵⁰ This is in line with the results of research on the **management of water resources which shows that the problem of water resources management in Indonesia is related to three things namely Availability, Utilization and Distribution.**⁵¹

The policy of national water resources leads to three things, namely the conservation of water resources, the utilization of water resources and the control of water damages. This is reflected in the articles of Law No. 7 of 2004, but in practice the conservation programs of water resources have not received full attention when compared to programs related to the utilization of water resources. Re-enactment of Law No. 11 of 1974, increasingly marginalize the water conservation programs because the focus of Law No. 11 of 1974 is the utilization of water resources, especially for agriculture.⁵² Therefore, new laws regarding water resources based on justice and sustainability principles should be immediately made. Because

⁴⁹ J A G Cooper & John McKenna, *Social justice in coastal erosion management: The temporal and spatial dimensions*, 39 GEOFORUM 294–306 (2008).

⁵⁰ Dik Roth, *Environmental sustainability and legal plurality in irrigation: the Balinese subak*, 11 CURR. OPIN. ENVIRON. SUSTAIN. 1–9 (2014).

⁵¹ Elson, *supra* note.

⁵² Stephen Tully, *A human right to access water? A critique of General Comment No. 15*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS 345–373 (2017).

through these two principles the community's need for water resources can be met fairly and equitably.

Thus, based on the above description of water resource management based on the values of Pancasila above, the model for regulating water resources in future legislation is related to the water resources law to better accommodate community participation, especially indigenous peoples who historically, Philosophically, geographically and genealogically in their daily lives they still give respect, protection and fulfillment of the right to water for others, the environment and the Creator in their daily lives.⁵³

For the establishment of the Law both from the legislature and the Government in the formation of legislation in the field of water resources it is advisable to include a philosophical basis in the consideration of letter a, the formula of which is as follows: **that water is a basic need of human life** given by God Almighty for it in its declaration must provide a sense of justice and respect for **human rights in the fulfillment of the right to water** for all nations. Indonesia, which previously formulated **that water is a basic need of human life** given by God Almighty for all Indonesians.⁵⁴

For the public it is fitting to know that the fulfillment of **the right to water is part of human rights**, when **the State neglects the fulfillment of the right to daily needs of water**, the community should be able to demand to be given the fulfillment of water.⁵⁵

⁵³ Schulz et al., *supra* note.

⁵⁴ Sanjay Sharma & Audun Ruud, *On the path to sustainability: integrating social dimensions into the research and practice of environmental management*, 12 BUSINESS STRATEGY AND THE ENVIRONMENT 205–214 (2003).

⁵⁵ Sembiring, *supra* note.

CONCLUSION

The existence of universal values in Pancasila should be reflected in every aspect of community life, nation, and state. These values are the foundation for sustainable development. Development ¹⁷ must be based on the basic values of Pancasila. The regulation of water resources based on Pancasila values, then the model for regulating water resources in future legislation is related to the water resources law to better accommodate community participation, especially indigenous and tribal peoples who are historically, philosophically, geographically, and genetically every day they still give respect, protection and fulfillment of the right to water for others as a fundamental rights and social justice. This study concluded that Article ¹ 2 of the Water Resources Law emphasizes the principle of justice for every water user in our country, which stipulates that one of the principles of water resource management is the principle of justice. The justice referred to in the law means that the management of water resources is carried out on the basis of equality in all social levels of society. To ensure that all citizens play a role and have equal opportunities to achieve real results.

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