

THE PEOPLE'S RIGHT TO WATER IN THE FRAMEWORK OF WELFARE STATE

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ABSTRACT:

Water resources management is a process that encourages integration between the development and management of water, land, and other resources. It aims to maximize socio-economic well-being and maintain ecosystem sustainability. Water resource management reform is one of the important actions to address poverty alleviation, food and energy security, and conservation of natural resources. This paper aims to study and analyze more deeply the integrated management of water resources. The goal of national development is the creation of a just and prosperous society based on economic democracy. The national development objective also develops an integrated and sustainable water resource management system that is based on an equitable order mechanism. This is intended to fulfill the people's basic needs for water. This is a legal research method by using conceptual, statute, and historical approaches. The result of the study can be concluded from political and economic factors as the main trigger for the birth of a new law. Legal policies should have adopted the five pillars of statehood to realize the welfare of the people namely; Democracy, Rule of Law, Protection of Human Rights, Social Justice and Anti Discrimination. The contribution of this paper is to provide recommendations to the executive and

legislative branches, namely institutions that have the authority to make laws, to issue laws that have futuristic values and are willing to carry out aspirations of the people. More important than all of these characteristics is that a good law is a law that can solve the problems of the people.

KEYWORDS: People's Rights; Social Welfare; Water Resources Management; Water resources; Welfare State;

BACKGROUND OF STUDY:

The regulation of water resources is implemented by various countries that have just declared their independence, including Indonesia, to fulfill the welfare of their citizens. Such arrangement, according to Bagir Manan, by quoting de Smith's view, is to provide features or characteristics to the basic law as well as the 1945 Constitution as a written basic law as well as the highest law in the order of the laws and regulations of the Republic of Indonesia.

Based on the debate among the founding fathers in the formation of a constitution for the State of Indonesia has been completed by the dynamics of the discourse of drafting the various constitutions of various countries. According to Bagir Manan, differences in views, as well as historical, political, ideological, economic, social and cultural backgrounds affect the formation of the Constitution, so that its formulation will not be separated from differences in historical, cultural and belief

backgrounds that live in the community or nation.

The legal policy formulated in Article 33 of the 1945 Constitution is to carry out the control and management of national natural resources. In planning, implementation and evaluation must be controlled by the state to achieve and improve the fulfillment of the welfare of its people. Control by the state is related to how the formulation of water resources management policies in the practice of administering constitutional life has been confronted with various types of constitutionalization typologies in the control and management of water resources.

According to Jimly Asshiddiqie that in formulating and implementing the intended policy is in line with the dynamics of the state in carrying out basic policies of water resource management that move based on national and state life. Implementation of state power in the management of water resources, especially newly independent countries such as Indonesia has sought to incorporate natural resource management policies into the constitution. The effort is a step to constitutionalize the management of water resources as a result of the discourse of various typologies in the implementation of state power in the management of water resources.

In connection with efforts to develop water resources management that can meet the needs of the people, the implementation of state power requires citizen participation through a democratic process that is arranged in the constitution. The administration of government in the field of control and management of natural resources of a country is inherently the management of water resources related to the position of the state and citizens with an interest in organizing the management of water resources in the life of an orderly and just state and state.

The purpose of an Indonesian state is how to prosper the people. To prosper the people, it requires inherent national development efforts to develop integrated and sustainable water resources. The pattern of water resources development is carried out by the government which is expected to create a just and prosperous society, based on economic democracy, by developing an integrated and sustainable water resource management system that is based on an equitable order mechanism.

The legal regulation on the control and management of water resources is aimed entirely at meeting the needs of the people as mandated by the Pancasila and the 1945 Constitution of the Republic of Indonesia. In Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the concept has been regulated water resources management, legal policies, and achievement of water resources management objectives for the welfare of all Indonesian people.

RESEARCH PROBLEMS:

- a. What is the basic concept of the welfare state in the welfare of its people?
- b. What is the integrated and sustainable water resource management policy in meeting the basic needs of its citizens for water?
- c. How is the principle of citizen participation in the management of water resources?

RESEARCH PURPOSES:

In line with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the concept of water resources management, legal policies and the achievement of the objectives of managing water resources for the welfare of all Indonesian people are contained in the Law on Resource Management Water which states that water resources are controlled by the state and used for the greatest prosperity of the people fairly. On the

control of water resources by the state in question, the state guarantees the right of everyone to get water for the fulfillment of daily basic needs and regulates the right to water.

RESEARCH METHODS:

This research is essentially a normative legal research. This study goes to the position of the state which is in line with the concept of the welfare state in fulfilling the basic needs of its citizens for water, both contained in the law on management of water resources and other regulations in the field of water resources as mandated by the 1945 Constitution which aims as much as possible the prosperity of the people. A research approach is a conceptual approach and legislation. Through this approach is expected to be able to explain objectively the issues raised in this study.

Normative legal research is library law research. Thus the source of legal material for this research includes primary legal material, which is the legal material contained in the legislation. Next, secondary legal materials, namely legal materials that explain primary legal materials, such as draft laws, research results and the views of legal experts. Tertiary legal materials, namely legal materials that guide on primary and secondary legal materials, such as dictionaries and encyclopedias.

The method of collecting legal materials for the assessment of the welfare state's position to realize the fulfillment of people's basic needs for water. The legal basis for managing national water resources as contained in the 1945 Constitution is to identify collected legal materials that will be systematically processed as informative legal materials in analyzing the legal research issues of the basic concept of the welfare state in welfare its people.

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The steps of this research are carried out by describing and analyzing the contents and structure of positive law to produce an actual picture of the development of water resources law according to Article 33 of the 1945 Constitution. Which rests on the conception and legal principles.

DISCUSSION:

A. The State Law of Welfare (Welfare State) in Fulfilling the People's Welfare for Water:

According to Winda Roselina Effendi by quoting Hendra Nurtjahyo's view that the state was formed on the process of fulfilling the elements to the fulfillment of other elements. The completion of this state element raises the capacity as a political entity as well as a legal subject. The process of establishing a state is primarily related to the conditions of population, territory, and government as the basic elements that must be met for the existence of the state. The next element is secondary namely recognition of the existence of the state by the international community.

The embodiment of the concept of a Welfare State has been outlined in the administration of state life based on the legal order, especially the newly independent state which can be qualified as a developing country. Implementation of the conception of a welfare state based on the law has shown the character as a rule of law. Thinking about the rule of law qualifies both as a material rule of law and a formal rule of law. The mention of material

state law is further classified as a welfare state or welfare state.

The law is the basis for the administration of community, nation and state life. Law exists in human life as stated by Wilhelm Lunstedt in Soemardi argues law is nothing but the very life of the mind in organized groups and the conditions which make possible peaceful co-existence of masses of individuals and social groups and the corporation for other ends than mere existence and propagation. Moving on to Wilhelm Lunstedt's view that law is nothing but human life in organized groups in the form of society, nation, and state.

The people as an element of the formation of the state have opened a space for peaceful co-existence based on certain situations and conditions. The purpose of collaboration carried out by individuals in a variety of forms of existence that have been carried out by citizens through the spread of individuals in social groups. Fulfillment of welfare obtained together based on the beliefs of most people in social groups, namely the will or hope of individuals in developing a decent shared life.

According to Bisariyadi, the discourse about how much the state plays its role in this context is always in a long debate space. Some are of the view that the state does indeed play a dominant role without the need to take over the entire role or the subsequent view that state involvement in implementing this is direct. While Jimly Ashiddiqie stated that a state that seeks to improve universal welfare universally and comprehensively to its citizens so that in the end the position and function carried out by the state is referred to as an interventionist state.

According to Esping-Anderson in Darmawan Triwibowo and Sugeng Bahagijo that the welfare state rests on the duties and functions that the state intends to carry out in meeting the basic needs of its citizens universally and comprehensively. The services

provided by the Government are responsive in managing and carrying out economic activities to fulfill the state's responsibility in ensuring their availability and affordability in meeting the basic needs of citizens at a certain level.

The conception of the welfare state in the 1945 Constitution can be found in several articles in detail, especially those relating to socio-economic aspects. With the inclusion of the national economy and social welfare in the 1945 Constitution of the Republic of Indonesia, according to Jimly Ashiddiqie that the Indonesian Constitution can be referred to as an economic constitution as well as a social constitution.

Based on state theory in the welfare state according to Wina Roselina Effendi by quoting Edi Suharto's opinion that Indonesia in the concept of welfare refers to the concept of social welfare development, which is a series of planned and structured activities aimed at improving the standard and quality of human life. As a process to improve the welfare conditions, the term true welfare does not need to use the word social, because it refers to the sector or sector included in the area of social development.

The legal study of the validity of the concept of the welfare state can be further explained both in the perspective of ideology, the administration of democracy and the political power that will be developed by the parties concerned. According to Wina Roselina Effendi, the rapid development of the concept of the welfare state was due to the influence of economic globalization which changed the concept of the welfare state with an initial definition that recognized welfare state as a form of improvement from the effects of the world war shifted to the demands for the state to prioritize the policy focus that leads to the fulfillment of social welfare. The concept of Welfare state describes a system where the

state takes full responsibility for the welfare of its people.

According to Soemirat in Eram Tunggal P that water is one of the natural resources that have a very important function for human life, as well as to advance public welfare, so that water is the basic capital and the main development factor in fulfilling the state's responsibility towards its people. Based on the concept of water as a basic human need, in the context of community, nation, and state life, a legal arrangement has been stated which states explicitly that water resources are controlled by the state and used for the greatest prosperity of the people.

According to the Research and Development Institute for Resources and the Environment that water resources are a source of livelihood that is very important for life. Water is the source of life, there is no water, so there is no life, as would have briefly understood the importance of the position of water in human life. The need for water is increasing along with increasing population growth and various activities/human activities in their lives. Thus it has been stated the importance of water resources for life so that integrated and sustainable management of the existence of these water resources is needed.

Water is an important thing for human life so that water has a social function. Therefore, the use of water is prioritized first for the benefit of the community rather than only the interests of individuals. However, based on certain situations and conditions which along with its development have shown the water to be something that has an economic function, which means that water has become something that can be economically beneficial. These two functions are of course different and antinomic, that is, they are arguing with each other in conditions when the water source is reduced. The availability of water resources is limited on one side and the increase in water demand, on

the other hand, has led to competition among users of water resources that have an impact on the strengthening of the economic value of water and the occurrence of water conflicts.

Based on the situation and condition of the imbalance of water availability with human needs, it has the potential to cause conflicts of interest between sectors, between regions, and various parties related to water resources. For this reason, arrangements for managing water resources are needed that can protect the interests of the community to meet the basic daily needs and irrigation of people's agriculture. Water is a basic human need whose existence is regulated in the constitution, namely in article 33 paragraph 3 of the 1945 Constitution that the earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The Constitution has regulated and is evidence of an agreement between the implementation of state/government power and its citizens.

In the considerations with the enactment of Law No. 17 of 2019 concerning Water Resources, it has been stated that water is a basic necessity of human life given by God Almighty for all Indonesians. Furthermore, consideration was made, that water as part of water resources is an important production branch and controls the livelihoods of the people controlled by the state to be used for the greatest prosperity of the people following the mandate of the 1945 Constitution of the Republic of Indonesia. Next consideration, that in facing the imbalance between the availability of water which tends to decrease and the increasing need for water, water resources need to be managed with due regard to social, environmental and economic functions in harmony to create synergy and integration between regions, between sectors and between generations to meet the needs of the people over the water.

According to Bunasor Sanim, synchronization of regulations both in the constitution and the convention has shown the similarity of ideas that water is a basic human need. Therefore, every human right is to get water and easy access to water for life. Besides being a basic human need, water is also a public good that is not owned by anyone, but in the form of shared ownership (global commons or common resources). Water resources management is carried out collectively and will not be traded to obtain benefits that are both individual and group-specific interests. The state is obliged to provide equal and balanced water needs, without any difference in access and discrimination to all members of society.

With the enactment of Law No. 17 of 2019 concerning Water Resources and International Covenants which in general have governed the concomitant and in line provisions that provide space for water not only public goods in the traditional paradigm but are organized with a new perspective that is an integrated and sustainable water management paradigm. Implementation of integrated and sustainable water needs according to Bunasor Sanim, is related to intrinsic value based on the assumption of limited and scarcity water and the need for funding or investment for clean water supply to fulfill the right to water every citizen.

B. Legal Policies for Integrated and Sustainable Management of Water Resources in Fulfilling the Basic Needs of the People for Water:

Legal Policy as a statement of the will of the state authorities regarding the laws in force in their territory and regarding the direction of development of the law to be built. The legal policies of the State of Indonesia which have directed the objectives are set in the Indonesian legal system. The legal policies listed in the Preamble to the 1945 Constitution

are as follows that in order to establish an Indonesian Government, the Independence of the Indonesian people was compiled in a Constitution of the Republic of Indonesia.

Legal Policy to enact past laws (before independence) contained in article II of the Transitional Rules of the 1945 Constitution (before amended), which states that all state bodies and existing regulations are still in effect immediately, as long as new ones are not implemented according to the law. After being amended, the legal policies to enact past laws before independence or before the amendments to the 1945 Constitution, are listed in Article I and Article II of the transitional rules of The 1945 Constitution. The enactment of colonial laws and regulations was intended to be temporary in order to avoid a legal vacuum as long as it did not conflict with the spirit and spirit of the Proclamation of August 17, 1945, based on the 1945 Constitution.

Permanent legal policies are legal attitudes that always form the basis of the policy of the formation, implementation, and enforcement of the law. The legal policies of the management of permanent water resources are contained in the constitution as the basis for their administration. In connection with the importance of water which is a basic human need so that its existence is regulated in the constitution, namely in article 33 paragraph 3 of the 1945 Constitution that the earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

Temporary legal policies are intended as policies determined from time to time by needs (conditional). Since it was enacted in 2004, namely Law Number 7 of 2004 concerning Water Resources, several tests have been conducted in the Constitutional Court, namely Case No. 058-059-060-063 / PUU-II / 2004, Case Number 008 / PUU-III / 2005 dated July

19, 2005, and Case Number 85 / PUU-XI / 2013 dated February 18, 2015.

Through Decision of the Constitutional Court Number 85 / PUU-IX / 2013 the Law No. 7 of 2004 concerning Water Resources has been revoked and the Law Number 11 of 1974 concerning Irrigation has been re-enacted. With the enactment of Law Number 11 of 1974 concerning Irrigation, in fact, it is already not in accordance with the current condition of water resources management. In connection with the re-enactment of the law on irrigation as a legal policy and legal product that is temporary because there are still many shortcomings and have not been able to regulate the overall management of water resources.

In the context of establishing a temporary political policy on water resources management, the legal policy on water resources management leads to legal reform to realize a national legal system that can meet the needs of the situation and conditions of the Indonesian people. Arrangements regarding water resources are carried out so that the management of water resources is carried out based on the principles of public benefit, affordability, fairness, balance, independence, local wisdom, environmental insight, sustainability, sustainability, integration, and harmony, as well as transparency and accountability.

Article 5 of the law on water resources determines that water resources are controlled by the state and used for the greatest prosperity of the people. Inclusion of Article 5 regarding the right to control the state as a legal policy that is permanent which is a legal attitude that always becomes the basis of policy formation and law enforcement. The legal policy of permanent water resource management contained in the constitution have been spelled out in water resources legislation.

Developing countries have the character of the Law as a modern welfare state, in essence, trying to provide social welfare guarantees to their people. Likewise, Indonesia has regulated state guarantees about people's rights to water based on Article 6 of the law on water resources, which is to meet the minimum daily basic needs for a healthy and clean life with sufficient quantities, good quality, safe, secure sustainability, and affordable.

As a further elaboration of Article 33 of the 1945 Constitution, which regulates the right to oversee the state of water resources, it has also been regulated in Article 7 that water resources cannot be owned and/or controlled by individuals, community groups, or business entities. In the explanation that what is meant by "cannot be owned and/or controlled" is an individual, community group, or business entity that only has access or opportunity to use the water resources provided by the government. Including those which cannot be owned and/or controlled are water sources that are in private or business-owned plots. However, landowners can still use water from a water source in their yard to meet their daily basic needs. Landowners who will use water from a source of water in their yards for business purposes are carried out based on permission from the government.

In connection with the enactment of laws and regulations in the field of water resource management in Indonesia, it is clearly stated that water is controlled by the state and is used for the greatest prosperity of the people. Observing the formulation of article 33 paragraph (2) by using a rights-based perspective, it can be seen that the enforcement of the state's right to control water under state power and is used for the greatest prosperity of the people. In principle, the management of water resources by the state related to this right to water is a

limitation on the management of water resources by certain individuals or groups.

The restriction provisions are related to the Elucidation of Article 7 of the law on water resources which is essentially unable to be owned and/or controlled by individuals, community groups, or business entities. Individuals, community groups, or business entities only get access or opportunities to use water resources provided by the government. Including those that cannot be owned and / or controlled are water sources that are in private or business-owned plots.

Based on the application of the principle of a rights-based approach to water in Indonesia is the control by the state and may not be handed over to individuals following the provisions of Article 7 of the law on water resources. Apart from the different aspects of legal history, the granting of use rights in the management of water resources can reduce the existence of the state as the organizer of power in the field of water resources. In the legal considerations of the Constitutional Court Decision has interpreted the State's Right to control not in the sense that the State has (*eigensdaad*), but in the sense that the State formulates policy (*beleid*), regulates (*regelendaad*), carries out (*bestuurdaad*), carries out management (*eu beheersdaad*), and conduct supervision (*toezichthoudendaad*), all of which are aimed at the maximum possible for the prosperity of the people.

The basic legal concept regarding the State's Right to Control has been contained in Article 33 Paragraph (3) of the 1945 Constitution, namely that the earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. The concept of the right to control by the state becomes the basic concept in legal policies both permanent and temporary in the management of water resources in Indonesia.

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The concept of the right to control by the State as stipulated in Article 2 Paragraph (2) of the Agrarian Law, basically requires that the concept of being controlled by the State encompass the meaning of control by the State in the broad sense stemming from the conception of Indonesian people's sovereignty over all sources of wealth "earth and water and natural resources contained therein". The State's right to control originates from the common (public) ownership by the Indonesian people of the said natural resources. Therefore, the definition of terminology of the right to control the state contained in Article 33 Paragraph (3) of the 1945 Constitution which is further elaborated in Article 2 Paragraph (2) of Law No. 5 of 1960 and Law No. 17 of 2019 concerning Water Resources is not on weighting of ownership so that the state is defined as the owner (*eigenaar*) so that the meaning can lead to no guarantee for the achievement of the objectives of the right to control, namely the maximum prosperity of the people.

The problem that should be described is related to the state as the subject of public law along with its entitled authority and material object, namely water. In applying the basic legal concept of the right to control the state it is not in the sense that the state as the subject of public law is in control (*bezitter*) and at the same time has (*eigenaar*) but the state is only the subject of law that controls (*bezitter*).

Inaccuracies in the use of the conception of law into the laws and regulations as a subject of public law with the right to authority, have resulted in among other things in the form of imbalances in the control and ownership of water resources; uncertainty in the control and ownership of water resources; injustice in relations both in the management and use of water resources; and uncertainty, inequality and mismatch in the allocation of space and utilization of water resources.

The authority to control water resources based on their nature and in principle is the duty of the central government. However, the implementation of the state's right to control can be authorized to the autonomous regions and the customary law community, as long as it is needed and in accordance with national interests. Its implementation is based on regional autonomy and medebewind, namely the assignment of tasks from the central government to the regions and villages in the context of the implementation of regional government. The basis for obtaining state authority is referred to as 'attribution'. This attributive authority, is the authority that is obtained by attribution is original derived from statutory regulations. In terms of attribution, the recipient of the authority can create new authority or expand existing authority.

The concept of the state's right to control is derived from the theory of state sovereignty (sovereignty state theory). Sovereignty is a special attribute or feature and even becomes a main thing for every unit that has power like the state. Moving on to the theory of state sovereignty gave birth to the concept of state control over the entire region and its contents. Based on this sovereignty, the legal status of assets that are the rights of citizens depends on the legal policies of the sovereignty holder.

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implementation of the state's right to control can be authorized to the autonomous regions and the customary law community, as long as it is needed and by national interests. Its implementation is based on regional autonomy and "medebewind", namely the assignment of tasks from the central government to the regions and villages in the context of the implementation of the regional government. The basis for obtaining state authority is referred to as 'attribution'. This attributive authority is the authority that is obtained by attribution is original derived from statutory regulations. In terms of attribution, the recipient of the authority can create new authority or expand existing authority.

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In connection with the enactment of laws and regulations in the field of water resources in Indonesia, it is clearly stated that water is controlled by the state and is used for the greatest prosperity of the people. Observing the formulation of article 33 paragraph (2) by using a rights-based perspective, the control of the right to water is in the hands of the state and is used for the greatest prosperity of the people. Thus the state has authority over the right to water and then plans on how to fulfill the right to water as a state obligation to its citizens. The limitation of the state's management of the right to water is the prohibition to leave the management of water in the hands of individuals.

Through a rights-based approach to water is controlled by the state and may not be handed over to individuals. Drawing on this line of thinking is based on different aspects of the history of law, the granting of rights in the management of water resources significantly results in limited state control related to the policy function and administration, regulation, management and supervision in the administration or management of water resources with the aim of great prosperity of the people. Indeed, the meaning of being controlled by the state is not supposed to be owned but it goes further than that where the state is domiciled for the implementation or management of water resources that is integrated and sustainable so that the functions of policy formulation and management, regulation, management, and supervision are optimized.

C. Principles of Community Participation in Water Resources Management According to the Welfare Law State:

As we all know that water is a natural resource that is necessary not only for human life but also for other living things and their environment. In the environmental system according to Jundiani, water is a major element in life. The human need for water always increases from time to time, not only because of the increasing number of people who need the water but also because of the increased intensity and variety of water needs. Next, in the study of the hydrological cycle, the amount of water available on Earth that can potentially be utilized by humans is still the amount. As a natural resource, the availability of water in both quantity and quality varies according to time and space.

Water as a natural resource to meet the needs of living things on this earth, so various efforts are needed in their use and protection to be more efficient and effective for life.

According to Jundiani, through the development and wise management of water resources, water resources have extensive benefits for the life of creatures on earth. The thing to note is that the conditions of high rainfall, irrigation and irrigation have a wet climate, so that most people in Indonesia assume that the water resources available in the Bumi Nusantara region are unlimited supplies. The reality has shown that supplies have become increasingly scarce, especially over time, place and quality.

The conception of the hydrological cycle contained in sustainable development was conveyed through the report *Our Common Future* prepared by the World Commission on Environment and Development, as a base for the implementation of integrated and sustainable management of water resources. In the foreword to the *Our Common Future Report*, Gro Bruntland in Bruce Mitchell explained that the specific framework of the task of the UN assembly is to propose a long-term environmental strategy to achieve sustainable development and identify how relations between people, resources, the environment, and development can be integrated in policies national and international.

The term sustainable development that has been developed by the Bruntland Commission according to Asit K. Biswas in Jundiani that the commission defined sustainable development is a somewhat amorphous and ambiguous way as the development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. This means that the Bruntland Commission in explaining the concept of sustainable development is still ambiguous and not concrete because basically, the development is an effort to meet the needs of the present without reducing the ability of future generations.

The model of legal development based on the state or national law, namely through the unification and codification of the law, is in great demand by the authorities in newly independent countries. These efforts to unify the law not only accommodate local legal traditions but also adopt a legal order to enter the modern state.

Soetandyo Wignyoebroto in Jundiani, these efforts are referred to as legal development. The model of law development oriented to state law is not well received by the people who already have legal values from the rules that are obeyed together namely *ius constituendum* so that this can lead to legal gaps which result in the law being disobeyed by the people.

The concept of sustainable and community-based water resources management to meet the needs of the growing community in the international community can be used as a reference for developing national water resources management laws. According to Jundiani, that this can be understood as the problem of water in the present and the future is a problem of the world community so that joint action is needed to overcome it based on the concept of sustainable water management and populist based so it is expected to meet all the needs of the community.

Concrete steps needed by the parties concerned are following up the management of the said water resources towards the management of water resources based on environmental, sustainable and community-based principles. Thus the legal experts and environmental experts continuously support the effort to enlighten thinking in developing water resources law as mandated by Article 33 paragraph 3 and paragraph 4 of the 1945 Constitution as a Green Constitution.

Substantial values of the various constitutions are influential in line with the development of integrated and sustainable

water resources management thinking. Convergence between the constitutional systems in the field of water resources management has influenced the views of thinkers who are the reference for decision makers / policies for managing national water resources so that finally changes have been formulated in Article 33 of the 1945 Constitution. Values reflected and actualized in the regulation of Article 33 paragraph 4 of the 1945 Constitution which includes the value of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and integration of national natural resource management in developing legal arrangements for national water resources.

The values that are reflected and actualized are essentially related to human relations and the environment according to Fuad Amsyari are as two components in a mutually reinforcing building. Humans are very dependent on the environment and vice versa environmental conditions are determined by human activity. But seen from the human side, the environment is something passive, whereas humans are active so that the quality of the environment is very dependent on human quality.

According to Jundiani, human wisdom is rooted in rejecting human morality. Therefore the appropriateness of an action on resources and the environment has contributed in binding and sanctioned arrangements. This legal sanction needs to be given because to make people aware so they can behave back to human wisdom in interacting with natural resources and the environment.

In its history water has been considered as the main natural resource for human survival. This can be understood, why the habitat and development of human civilization often start along the river in several strategic large rivers. Human needs for water including drinking

water, agriculture, and transportation as an important requirement in undergoing survival. Prosperity and survival, in general, depend on the continuous availability of water. Management of water resources that is not integrated and sustainable according to Jundiani will lead to catastrophic floods, droughts, and pollution, which in turn has led to misery, often even causing death to humans and the destruction of various kinds of living things on earth.

As stated by Asit K. Biswas regarding environmental aspects in the development of water resources that: 'Interest in the environmental aspects of water development has also fluctuated with time during the past three decades. Not surprisingly, this interest has paralleled the overall interest in environmental issues'. From this statement at least there appears to be a new development in the study of environmental aspects of the development of water resources which has increased recently. With the increase in the study, it means that attention to aspects of water resources development has had the same level as the general problems that occur on environmental issues.

The legal policy on the control and management of national natural resources must be controlled by the state. Control by the state is related to the formulation of water resources management policies which in the practice of state administration have been confronted with various types of constitutionalization typologies in the control and management of water resources. According to Jimly Asshididdiqie, the formulation of the policy is in line with the dynamics of the state in carrying out water resources management policies that are based on the life of the nation and state.

From the perspective of the national development strategy in the newly independent countries, through this paradigm

of economic growth, the various policies implemented including the management of water resources as happened in Indonesia are oriented towards meeting economic growth alone. Thus to support this economic growth in national development is through a repressive legal strategy and instrumentalist positivist nature.

The embodiment of the repressive law model according to I Nyoman Nurjaya in Jundiani is a law characterized by a security approach, emphasizing sanctions and prioritizing the existence of state/government apparatus. So that the juridical consequence that arises is that every citizen who accesses and utilizes water and its source that has been done for a long time and does not meet the formalities determined by the Government, can be qualified or stigmatized as violators of the law.

In the repressive legal order, the law as a tool in exercising repressive power from a sovereign government, so as to be able to carry out political power and authority originating from the state through legislation. In repressive legal types, state law and law and politics are inseparable so that the instrumental aspects of the law are more prominent than the expressive aspects. The existence of repressive water resources management law so far has been inseparable from the ideology of the right to control the state embraced by Article 33 paragraph (3) of the 1945 Constitution.

In this very dominant position, the State is personified as the Government alone, whereas it should be the people who are the main element in a country. In this context, the State is the sole interpreter of the planning, regulation, and implementation, supervision and evaluation of legal policies on water resources management. The consequence of using government-based resources control and management is that the people's position is not aligned with the government in the life of the

nation and state. This means the formation of sub-ordination relations between the people and the government, or in other words that the people are in an inferior position and the government is in a superior position.

Through the concept of sustainable development in the management of water resources, it can finally be accepted even though it is known that it has not been fully implemented in meeting the basic needs of water. Measured steps are to follow up on the management of the said water resources towards a new paradigm of water resources management based on environmental, sustainable and community-based principles. The new paradigm in the management of water resources has provided space for people's participation, which means the management and supervision of the people who are able to regulate and manage themselves (self regulating).

CONCLUSION:

1. The basic conception of the welfare state in fulfilling the people's basic needs for water lies in the values and perspective of the constitutionality that has been established in the 1945 Constitution. The values are reflected and actualized in the regulation of Article 33 paragraph 4 of the 1945 Constitution which includes the value of togetherness, fair efficiency, sustainable, environmentally friendly, independence, and maintaining the balance of progress and integration of national natural resource management in developing legal arrangements for national water resources.
2. Basic policies for managing water resources in legislation as an elaboration of the 1945 Constitution have fulfilled constitutional requirements so that they can become a permanent basis for policies.
3. In developing the management of water resources that meet the needs of its people,

the state requires citizen participation through a democratic process that is arranged in the constitution so that the implementation of management activities is intended in the life of an orderly and just state and nation.

SUGGESTIONS:

1. The State should be based on a law that develops its conception as a welfare state in fulfilling the people's basic needs for water and has laid down the values and perspective of constitutionality that has been built in the 1945 Constitution.
2. It should be a basic policy that is permanent which places the law as the highest (supreme) as the basis of government policy in the management of temporary water resources that are developing conditional policy arrangements into its implementing regulations.
3. There should be a commitment and political action from the government to realize community-based water resources management by placing the people as subjects and participating in the planning, implementing, evaluating, controlling and improving them into the legislation as *ius constitutum*, *ius positum*, *ius operatum*, and *ius constituendum*.

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