

Unconstitutionality Privatization of Drinking Water Management

(Analysis of Water Resources Accessibility Based on Social Justice)

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Abstract

Permits to use water resources for business needs that produce drinking water is given priority to BUMN, BUMD, or BUMDes through the implementation of the drinking water supply system. At the same time, the private parties, it must be accompanied by certain strict conditions as regulated in Article 46 of Law 17/2019. This means that the private sector does not get equal participation space to fill the gap in fulfillment the needs of the people's right to drinking water, as well as violating the existence of economic democracy and proportional justice as regulated in Article 28D paragraph (1) jo. Article 33 paragraph (4) of the 1945 NRI Constitution. Legal issues in this research is, first of all, the legal framework for water resources management for the provisions of drinking water in Indonesia, and secondly, the formulation of water resources management for the provisions of drinking water through collaboration between the state and the private sector as efforts to fulfill the need for adequate drinking water. This research is legal research using statute approach, conceptual approach, and case approaches. The results of this research is, first of all, the legal framework for water resources management for the provisions of drinking water in Indonesia has been regulated drinking water management through the provisions of the 1945 NRI Constitution and Law 17/2019. However, these provisions do not provide space for equal participation for the private sector in the provisions of drinking water, which has the impact of not fulfilling the need for safe and adequate drinking water for the community. Second, in formulating water resources management for the provisions of drinking water through cooperation between the state and the private sector, 6 (six) things must be considered, are regulation, licensing, criteria for the private sector as manager of drinking water supply, rights, and authority, supervision, and sanctions.

Keywords: Drinking Water, Private Sector, State, Water Resources.

United Nations General Assembly in September 2015 in New York, United States, became a new historical point in global development, with the ratification of the Sustainable Development Goals Agenda as a global development agreement. This is done

because the problem of environmental damage is not only a national problem, but has become an international problem that must be handled with full commitment by countries in the world together. In order to achieve the Sustainable Development Goals (hereinafter referred to as SDGs), it was agreed that there are 17 (seventeen) indicators to be achieved: 1) No. Poverty; 2) Zero Hunger; 3) Good Health and Well-being GOAL; 4) Quality Education; 5) Gender Equality; 6) Clean Water and Sanitation; 7) Affordable and Clean Energy; 8) Decent Work and Economic Growth; 9) Industry, Innovation and Infrastructure; 10) Reduced Inequality; 11) Sustainable Cities and Communities; 12) Responsible Consumption and Production; 13) Climate Actions; 14) Life Below Water; 15) Life on Land; 16) Peace and Justice Strong Institutions; 17) Partnerships to achieve the Goal.

One of the indicators in the SDGs that rarely gets attention is indicator 6 (six), namely Clean Water and Sanitation. The goal of the 6th (sixth) SDGs indicator is to aspire to universal access to clean water and safe sanitation and focus on sustainable water management, water pollution control, and reducing the number of people without access to adequate sanitation facilities. This is in line with the underlying reason that water management must be regulated as well as possible for the welfare of the community. The reason for water management that must be managed as much as possible for the prosperity of the people, is also because humans need various things to sustain their lives, as stated by Feger and Smith that all living organisms are composed of 60% (sixty percent) water. In addition, water is needed by humans for bathing, washing, cooking, and sanitation. It is not surprising that getting clean water is a fundamental human right. For this reason, the state, as the highest unity, should manage water so that it provides benefits to realize the welfare of the Indonesian people, by paying attention to social, environmental and economic functions in harmony. Its management must also be

mobilized to realize synergy and harmonious integration between regions, sectors, and generations. Water management in Indonesia is regulated in the provisions of Article 33 paragraph (3) of the 1945 National Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 NRI Constitution) which essentially outlines that natural resources including water are controlled by the state and used for the greatest prosperity of the people. Furthermore, the regulation of water resources is regulated in Law Number 17 of 2019 concerning Water Resources (hereinafter referred to as Law 17/2019).

That as part of the vital needs of living creatures, human rights to water are qualified as non-derogable rights which cannot be separated or reduced in existence, so that its fulfillment must be carried out absolutely. This is as referred to in the General Comment Number 15 on the right to water which is part of the International Covenant on Economic Social and Cultural Rights (ICESCR) which has been ratified by Indonesia through Law Number 11 of 2005 concerning Ratification of the International Covenant on Economic, Social, and Cultural Rights (International Covenant on Economic, Social and Cultural Rights). In addition, in the General Comment Number 15, the right to water has also been recognized in the United Nations (UN) Resolution adopted at the United Nations Water Conference, which was held on 14 - 25 March 1977 in Mar Del Plata, Argentina and UN General Assembly Resolution 35/18 dated 10 November 1980 and 47/193 dated 22 December 1992 concerning The International Drinking Water Supply and Sanitation Decade (1981-1990) which recognizes the right of every person to have access to drinking water in both quantity and quality so that it is equal for every individual.

The definition of drinking water is water that has been processed or not processed and meets health requirements and can be drunk directly, as regulated in Article 1 number 5 of Law 17/2019. In essence, the state's obligation to fulfill water resources for drinking water is also regulated in

the provisions of Article 8 paragraph (2) of Law 17/2019, which states that: "In addition to the people's right to water which is guaranteed by the state as referred to in paragraph (1), the state prioritizes the people's right to water as follows: a. basic daily needs; b. people's agriculture; and c. use of water resources for business needs to meet basic daily needs through the Drinking Water Supply System." (Emphasis by the Author). Based on these provisions, it seems that the state is also responsible for the use of water resources for business needs.

Furthermore, referring to the provisions of Article 46 of Law 17/2019, it is explained that in the management of water resources for business, the following principles must be observed: "The use of Water Resources for business needs is carried out by observing the principles: a. not disturbing, not setting aside, and not eliminating the people's right to Water; b. state protection of the people's right to Water; c. environmental sustainability as one of the human rights; d. state supervision and control over Water are absolute; e. the main priority for the use of Water Resources for business activities is given to state-owned enterprises, regional-owned enterprises, or village-owned enterprises; and f. granting permits to use Water Resources for business needs to the private sector can be carried out with certain and strict conditions after the principles as referred to in letters a to e are met and there is still water availability. As for permits to use Water Resources for business needs using Water and Water Power that produce products in the form of drinking Water for basic daily needs, they are given to state-owned enterprises, regional-owned enterprises, or village-owned enterprises that organize the Drinking Water Supply System.

Thus, by referring to Article 46 paragraph (1) letters e and f in conjunction with Article 50 of Law 17/2019, it inhibits private participation in the provision of drinking water because of the provision of top priority for BUMN, BUMD, and BUMDes accompanied by the provision of certain and strict conditions. Due to this, in

reality the private sector does not get equal participation space in efforts to fill the gap in space to fulfill the people's right to drinking water, even though drinking water managed by the private sector also plays a role in fulfilling the needs of the community. As the legal adage: "facta sunt potentiator verbis" (free translation: "actions or facts are much stronger than words).

In this case, to prove the urgency of the need for an equal private role in providing drinking water, it can be reflected in the following data which is based on Bappenas data, access to clean drinking water in Indonesia is 87.75% (eighty seven point seventy five percent) with 6.8% (six point eight percent) is access to safe drinking water. The lack of access to safe drinking water is caused by the government's inability to meet the large costs that must be incurred in providing access to drinking water. Furthermore, based on statistical data released by IWI (Indonesia Water Institute), 65% (sixty five percent) of the community are transitioning from using groundwater as drinking water to bottled drinking water products. These data show the importance of the role of entrepreneurs in meeting the need for safe drinking water for the community.

That in the Constitutional Court Decision Number 53/PUU-VI/2008, the Constitutional Court also affirmed that the understanding of individualism and liberalism in the economic sector is not in accordance with and even contradicts the economic democracy adopted by the Indonesian nation, so that the economy as a joint effort is carried out by involving various parties, not only between entrepreneurs and the state, but also cooperation between entrepreneurs and the community, especially the surrounding community. The Constitutional Court Decision seems to contradict the provisions of Article 46 paragraph (1) letters e and f of Law 17/2019 which in essence there are efforts to limit the fulfillment of the need for clean and safe drinking water for the community by the private sector. This has the potential to harm constitutional rights. private sector as one

of the national economic actors that has been guaranteed in Article 33 paragraph (4) of the 1945 NRI Constitution, because by giving top priority to BUMN, BUMD, and BUMDes, the private sector has... not get the same opportunity in the management of drinking water resources for business needs. It should be understood that economic democracy is a way of making decisions in the economic field that involves all parties, where the results of these decisions must be aimed at the benefit of all parties. However, in this case, economic policies in the field of drinking water business do not provide benefits to the private sector.

Based on the description above, there are problems, namely: 1) The licensing procedure in Article 46 paragraph (1) letters e and f of Law 17/2019 is not in line with the principle of proportional justice as mandated by Article 28D paragraph (1) of the 1945 NRI Constitution, 2) The use of water resources for bottled drinking water business activities by the private sector does not conflict with the concept of the state's right to control, 3) Article 46 paragraph (1) letters e and f are not in line with the principle of economic democracy in Article 33 paragraph (4) of the 1945 NRI Constitution. 4) Article 46 paragraph (1) letters e and f of Law 17/2019 hinders efforts to fulfill the need for clean and safe drinking water for the community by the private sector, 5) Licensing as required by Article 46 paragraph (1) letter f of Law 17/2019 affects the investment climate in Indonesia.

As time goes by, according to the legal adage: "lex equitabile good ; appetite perfectum ; est norm recti (free translation: "The law rejoices in equity ; it covet perfection ; it is a rule of right.") , in order to try to perfect the existing law, then to overcome the problems related to the state privatization in the management of water resources for drinking water which is not fair, then an analysis will be made regarding how the legal framework management of water resources for the provision of drinking water in Indonesia and the formulation of water resource management for the provision of drinking water

by cooperation between the state and the private sector as an effort to fulfill the need for clean drinking water.

To ensure that there is novelty in this article, several similar articles will be described. First, article written by Wahyu Fahmi Rizaldy, entitled Paradigm and Regulation of Water Resources Management after the Birth of Law Number 17 of 2019. In the article the focus problems and their discussion is related with The legal paradigm of Water Resources management based on Law Number 7 of 2004 with Law Number 17 of 2019 and the problems of applicable government regulations with the birth of Law Number 17 of 2019 concerning Water Resources. As for the differences with article This is in article This will analyze in a way comprehensive related management source allocated water power special for drinking water, while in the article the discuss management source water power in general.

Second, an article written by Agus Surachman, entitled Management Post Water Resources cancelled Constitution Number 7 of 2004 concerning Water Resources. As for the research the discuss about birth Constitution Number 7 of 2004 and its impact cancellation Constitution Water Resources. This is very different. with study this is what will be discuss about legal framework management of water resources for the provision of drinking water in Indonesia and the formulation of water resources management for the provision of drinking water by cooperation between the state and the private sector as an effort to fulfill the need for clean drinking water. Based on the description above, this study has novelty.

LEGAL ISSUES

Formulation problem in study, are:

1. How is the legal framework management of water resources for the provision of drinking water in Indonesia?
2. How is the formulation for managing Water Resources for the provision of Drinking

Water through cooperation between the state and the private sector as an effort to fulfill the need for clean drinking water?

RESEARCH METHODS

This research is a doctrinal research. According to Rita Abhavan Ngwoke, Ibiene P Mbano, and Oriaifo Helen study law : “ Doctrinal Legal Research Methodology is a thorough and critical inquiry or investigation into legal rules, doctrines, principles, and concepts. It involves a severe methodical exposition, analysis, and critical evaluation of legal rules, principles, and philosophies and their inter-relationships.” From opinion said, can understood that study law is research that analyzes related rules, principles, concepts and philosophy law. The approach used in study law This There are 3 (three) , namely approach statute approach used For analyze regulation related legislation For answer issue existing laws, such as the 1945 Constitution of the Republic of Indonesia, Law 17/2019, and so on. Second, the approach conceptual approach used For analyze concepts and doctrines law For answer issue existing laws, such as draft right control the country, democracy economy, control source water power through provision of drinking water. As for approach case approach is used for analyze consideration law (ratio decedendi) in the case of law in force law remain (inherent in the spirit) which is deep matter this is decision court constitution

The data used is data in the form of material primary law and materials law secondary. Material primary law consists of from all regulation legislation and decisions relevant courts with the problem studied. Whereas material law secondary used is literature results related research with study This. Ingredients law the collected through studies library and search document For gather related information with study This. The data that has been collected Then described and interpreted in accordance with the problem being studied For furthermore

systematized, described, and explained in argumentation existing laws.

RESULT AND DISCUSSION

A. Legal Framework Water Resources Management for Drinking Water Supply in Indonesia

Legal framework refers to the collection of laws, regulations, policies, and institutions that govern and direct a particular area or field of activity. The legal framework provides structure for the organization, operation, and regulation of various systems, including individuals, organizations, and governments. In drinking water management, several related laws and regulations and related court decisions are described.

There is a difference between Packaged Drinking Water (hereinafter referred to as AMDK) and the provision of drinking water through the Drinking Water Supply System (hereinafter referred to as SPAM). Referring to the Explanation of Article 50 of Law 17/2019 which states "Packaged drinking water (AMDK) is a manufactured product to meet market segments for practicality and lifestyle", Packaged Drinking Water (AMDK) products are not included in drinking water for daily basic needs. Meanwhile, based on the explanation of Article 50 of Law 17/2019 which states, "Drinking Water for daily basic needs is Drinking Water provided through the Drinking Water Supply System, excluding Packaged Drinking Water". Based on this description, there is a clear difference between AMDK and SPAM. In addition, referring to these provisions, AMDK products are qualified as industrial commodities and are not included in the drinking water for daily needs provided by the state through SPAM. This has implications for access to managing AMDK, where both private parties and state-owned companies should have the same ease of doing business.

As for drinking water management, as regulated in Law 17/2019, it seems to contain the

meaning that drinking water management is prioritized to be managed by the state, namely BUMN, BUMD, and BUMDes. In addition, the private sector is given the opportunity in terms of drinking water management, but with stricter requirements. According to the author, this is not in accordance with the right to develop oneself collectively. As explained by the Constitutional Court in the legal considerations of paragraph [3.20] of Constitutional Court Decision Number 15/PUU-V/2007 and the legal considerations of paragraph [3.13] of Constitutional Court Decision Number 14-17/PUU-V/2007 have interpreted Article 28C paragraph (2) of the 1945 NRI Constitution as the right to develop oneself collectively, which includes the right to fulfill basic needs, the right to education, the right to obtain benefits from science and technology, art and culture, and so on, which refers to the provisions of Article 28C paragraph (1) of the 1945 NRI Constitution which regulates that economic, social and cultural rights (economic, social, and cultural rights) cultural rights) are part of the right to self-development, so that in reality the private sector also has the right to be involved in the management of bottled drinking water. The existence of the phrase "entitled" in the provisions of Article 28C paragraph (2) of the 1945 NRI Constitution provides an opportunity for everyone to fight for their rights to build the nation, state, and society while at the same time giving the state the obligation to provide legal instruments to ensure that everyone, be it BUMN, BUMD, and BUMDes as well as the private sector, can fight for their rights or collective rights in order to build society, the nation, and the state.

That Article 28C paragraph (2) of the 1945 NRI Constitution provides one of the basic rights for the private sector, namely the right to develop themselves collectively, where in this right the private sector has the basic right to participate in development (the right to development). At the international level, this right is regulated in the Declaration on the Right to Development (hereinafter referred to as DRTD), General

Assembly Resolution 41/128 dated 4 December 1986. Right to development included in non-derogable right namely human rights that cannot be limited and cannot be revoked. This right provides space and opportunity for every individual and citizen to participate, contribute, and enjoy development in the economic, social, cultural, and political fields. The essence of the right to participate in development is to place every person as the "center of development" and it is the responsibility of the state to formulate participatory policies as referred to in Article 2 (3) DRTD which states that:

“States have the right and the duty to formula appropriate national development policies that aim at the constant improvement of the well being of the all population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits result therefrom”.

Furthermore, the state is the holder of primary responsibility for fulfilling rights. to development, the state has 3 (three) ways to create conditions that are favorable for the fulfillment of rights to development as regulated in Article 3 DRTD, namely:

- a. States act collectively to establish cooperation or facilitate participation at both the national and global levels;
- b. States act independently to adopt and implement policies that affect people not fully within their jurisdiction; and
- c. States act independently to create or formulate national development policies and programs that influence or impact all people who are fully within their jurisdiction.

Thus, the state has an obligation to implement participatory policies by involving public participation in government affairs. However, Article 46 paragraph (1) letters e and f of Law 17/2019 hinders private participation in the provision of drinking water because of the provision of top priority for BUMN, BUMD, and BUMDes accompanied by the provision of certain and strict conditions. For this reason, the private sector not get equal participation space in

an effort to fill the gap in the fulfillment of people's right to drinking water. The provisions in Law 17/2019 which regulate the provision of drinking water are as follows:

Table I. Provisions and Analysis in Law 17/2019 which Regulates the Provision of Drinking Water

Provision	Author Analysis
<p>The use of water resources for business needs is carried out by paying attention to the following principles:</p> <ol style="list-style-type: none"> does not interfere with, does not set aside, and does not eliminate the people's right to water; state protection of people's rights to water; environmental sustainability as a human right; supervision and control by the state over water is absolute; the main priority for the use of Water Resources for business activities is given to state-owned enterprises, regional-owned enterprises, or village-owned enterprises; and Granting of permits to use Water Resources for business needs to private parties can be done with certain strict conditions after the principles as referred to in letters a to e are fulfilled and there is still water available. <p>(Article 46 paragraph (1) Law 17/2019).</p>	<p>There are differences in opportunities between the private sector and the government in drinking water management efforts and there is the provision of top priority for BUMN, BUMD, and BUMDes accompanied by the provision of certain and strict conditions for the private sector.</p>
<p>Use of water resources for business needs as referred to in paragraph (1) must have a permit. (Article 49 paragraph (2) of Law 17/2019)</p> <p>Granting of permits is carried out strictly in the following order of priority:</p> <ol style="list-style-type: none"> fulfillment of basic daily needs for groups that require large amounts of water; fulfillment of daily basic needs that change the natural conditions of water sources; community agriculture outside the existing irrigation system; use of Water Resources for business needs to meet basic daily needs through the Drinking Water Supply System; non-business activities for the public interest; use of Water Resources for business needs by state-owned enterprises, regional-owned enterprises, or village-owned enterprises; and Use of Water Resources for business needs by private business entities or individuals. <p>(Article 49 paragraph (3) Law 17/2019).</p>	<p>That the granting of priorities and the application of licensing procedures should be given based on the portion of interests and responsibilities of business actors where in terms of AMDK business activities, both private and state-owned companies have equal obligations and responsibilities so that the absence of a comprehensive explanation regarding the priorities referred to in the a quo article causes these provisions to be inconsistent with the principle of proportional justice mandated by Article 28D paragraph (1) of the 1945 NRI Constitution.</p>
<p>Permission to use Water Resources for business needs using Water and Water Power as materials as referred to in Article 49 paragraph (1) letter b which produces products in the form of drinking water for basic daily needs is granted to state-owned enterprises, regional-owned enterprises or village-owned enterprises that organize Drinking Water Supply Systems. (Article 50 of Law 17/2019).</p>	<p>Explanation of Article 50 of Law 17/2019 explains that: "Drinking Water for basic daily needs is Drinking Water organized through the Drinking Water Supply System, excluding Packaged Drinking Water" there is a clear difference between AMDK and SPAM. In addition, referring to these provisions, AMDK products are qualified as industrial commodities and are not included in the drinking water for daily needs provided by the state through SPAM. This has implications for access to managing AMDK, where both private parties and state-owned companies should have the same ease of doing business</p>
<p>Permits to use Water Resources for business needs may be granted to private parties after meeting certain and strict requirements as referred to in Article 46 paragraph (1) letter f at least: a. in accordance with the Water Resources Management Pattern and Water Resources Management Plan; b. meeting technical administrative requirements; c. obtaining approval from stakeholders in the Water Resources area; and d. fulfilling Water Resources Conservation cost obligations which are components of</p>	<p>That Article 46 paragraph (1) letter f of Law 17/2019 explains the existence of certain and strict requirements after fulfilling the principles as referred to in Article 46 paragraph (1) letters a to e of Law 17/2019. If we look closely at the formulation of the phrase "certain and strict requirements", then Law 17/2019 provides an interpretation as stated in Article 51 of Law 17/2019 so that the two articles must be read as one unit.</p>

BJPSDA and other financial obligations in accordance with the provisions of laws and regulations.	
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Source: Author's Analysis Results

Based on the description above, Article 46 paragraph (1) letter e of Law 17/2019 as one of the requirements for determining permits with certain and strict conditions (vide Article 46 paragraph (1) letter f), if using the legal interpretation by argumentum a contrario, in the case of BUMN, BUMD, BUMDes as SPAM organizers have not been able to produce drinking water products for basic daily needs in order to fulfill the people's right to water which is organized through SPAM, then the phrase "certain and strict conditions" in Article 46 paragraph (1) letter f of Law 17/2019 cannot be applied to the private sector, because the phrase "certain and strict conditions" for the private sector as producers of AMDK products, is a logical consequence that can only be applied after BUMN, BUMD, BUMDes as SPAM organizers are able to guarantee the fulfillment of the people's right to drinking water in accordance with their responsibilities and obligations and other principles regulated in Article 46 paragraph (1) letters a to e of Law 17/2019. Therefore, the legal framework for the management of water resources for the provision of drinking water in Indonesia does not reflect equality between the private sector and the government, which has the potential to derogate the community's right to obtain adequate drinking water.

B. Water Resources Management Formulation for the Provision of Drinking Water by Cooperation Between the State and the Private Sector as an Effort to Fulfill the Need for Adequate Drinking Water

The first formulation is the need for changes to the terms and conditions for private drinking water management, as regulated in Article 46 paragraph (1) of Law 17/2019 which is realized by facilitating private drinking water management permits. This is so, with the argumentative reason, namely the Constitutional Court Decision Number 001-021-022/PUU-I/2003, in its legal considerations interpreting the

concept of state control in Article 33 of the 1945 Constitution of the Republic of Indonesia that " The Right to Control the State " includes the understanding that the people collectively give the state a mandate to formulate policies (beleid), make arrangements (regelendaad), carry out management (bestuurdaad), carry out management (beheersdaad), and carry out supervision (toezichhoudensdaad) for the purpose of the greatest prosperity of the people. The Constitutional Court also emphasized that if the meaning of the words "controlled by the state" is only interpreted as ownership in the civil (private) sense by the state, then it is not sufficient to achieve the goal of "the greatest prosperity of the people".

That the meaning of the sentence "must be controlled by the state" can be interpreted that the state does not have to directly participate in managing or organizing production branches, but it can be handed over to cooperatives and private businesses. The main task of the state is to make regulations and carry out supervision in order to ensure the smooth running of the economy in order to ensure the creation of people's welfare. In this case, people's welfare can also be achieved if the state can ensure that actors who participate in organizing production branches that are important for the state and control the livelihoods of many people continue to pay attention to magical-religious values and economic-social function values, pay attention to ecosystem functions, include the preservation of natural resources, pay attention to the people's dimension, avoid monopolistic businesses, provide equal rights and obligations in access and benefits, and accommodate the role of society.

In fact, the use of water resources for the needs of drinking water businesses by the private sector means giving the private sector the opportunity to use water resources as material in the production process in relation to being a business actor and has absolutely nothing to do

with eliminating control by the state which includes the power to regulate (*regelendaad*), manage (*bestuursdaad*), administer (*beheersdaad*), and supervise (*toezichhoudensdaad*) because these five authorities are still inherent in the state.

Table 2. State Control and Private Sector Role in Water Resources Management for Drinking Water

Aspects of State Control	Implementation in Water Resources Management for Drinking Water Provision by involving the Private Sector
Power to regulate (<i>regelendaad</i>)	demonstrated through the existence of regulatory functions by the state through legislative authority by the DPR together with the Government, and regulations by the Government in the management of water resources.
Management function (<i>bestuursdaad</i>)	Demonstrated by the state carried out by the Government with its authority to issue and revoke licensing facilities (<i>vergunning</i>), licenses (<i>licentie</i>), and concessions (<i>consessie</i>) in relation to water resources management.
Management function (<i>beheersdaad</i>)	This is done through a share -holding mechanism and/or through direct involvement in the management of State-Owned Enterprises or State-Owned Legal Entities as an institutional instrument through which the State, cq. the Government, utilizes its control over water resources to be used for the greatest prosperity of the people.
Supervision function by the state (<i>toezichhoudensdaad</i>)	carried out by the State, cq Government, in order to supervise and control so that the implementation of state control over water resources is truly carried out for the greatest prosperity of all the people. Therefore, the use and utilization of water resources for bottled drinking water business activities by the private sector does not conflict with the concept of the state's right to control.

Source : Author's Analysis Results.

Based on the description above, the granting of permits (*vergunning*) carried out by the State cq the Government of the Republic of Indonesia for important branches of production and/or those concerning the livelihoods of many people, including in *casu a quo* business permits for the use of water resources for business needs, must be interpreted as a manifestation of the State's Right to Control which is granted and originates from the Constitution to the State cq the Government of the Republic of Indonesia which is sown, woven and guided by the construction of the implementation of the principles of economic democracy and the derivative principles of economic democracy (vide Article 33 paragraph (4) of the 1945 NRI Constitution) as well as the principle of family (vide Article 33 paragraph (1) of the 1945 NRI Constitution), so that the control by the state over the sources of wealth in question, in *casu a quo* granting permits to use water resources for business needs, ultimately oriented towards achieving the goal of a welfare state state) Indonesia, namely realizing the implementation of the national economy for the greatest prosperity of the people which can lead the Indonesian people to achieve

"Social Justice for All Indonesian People" in accordance with the mandate of Pancasila as the basis of the state (*staatsfundamentálnorm / grondwet*) and the philosophical basis of the state (*philosopische ground floor*).

With the existence of business licensing, then. The Government of the Republic of Indonesia can clearly limit the amount or volume of water that can be obtained or managed by business license holders and the validity period of business licenses. This concept has clearly placed the position of the private sector as economic actors as well as business license holders to use water resources for the needs of drinking water businesses by the private sector in a subordinate position with the Government of the Republic of Indonesia as the license issuer. The limitation of certain and strict conditions is a fear and concern that is not based on clear reasons and rationalizations so that it closes the role of the private sector to participate in advancing, prospering, and fulfilling the right to water which is part of Human Rights. Based on the arguments above, the process of managing and managing drinking water by private business entities clearly does not conflict with the concept of the state's right to control. The implementation

of business activity restrictions that are given priority will return the state and the private sector to their original positions (original position). This will provide benefits to both parties, where the state gets the main priority to organize SPAM which is its obligation so that the people's right to water is easier to realize, and on the other hand the private sector is given the convenience to fill the empty space in fulfilling the people's right to water which has not yet been fulfilled by the state through AMDK and still get benefits that are in line with the economic corridor of the 1945 Constitution of the Republic of Indonesia.

Second, if BUMN, BUMD, BUMDes as SPAM organizers have not been able to produce drinking water products for daily basic needs organized through SPAM, then the private sector should be given the same opportunity as BUMN, BUMD, BUMDes as a transitional effort as well as to overcome the gap in fulfilling the people's drinking water needs which should be provided by the state through BUMN, BUMD, BUMDes as SPAM organizers, before finally achieving the main objective of Law 17/2019, namely fulfilling the people's right to drinking water. The forms of cooperation and roles between the state and the private sector are as follows:

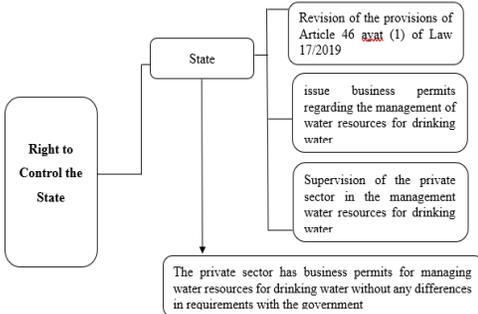


Chart I. Cooperation between the State and the Private Sector in Providing Bottled Drinking Water

Source : results of the author analysis

Formulation water resources management for the provisions of drinking water through cooperation between the state and the private

sector, 6 (six) things must be considered, are regulation, licensing, criteria for the private sector as manager of drinking water supply, rights, and authority, supervision, and sanctions. Furthermore, applications for business permits and approvals for the use of water resources must now be submitted electronically. In 2016, the Minister of Public Works and Public Housing established the applicable procedures for obtaining permits for the commercialization and utilization of water resources through the issuance of Regulation No. 01/PRT/M/2016 concerning Procedures for Licensing for Business of Water Resources and Use of Water Resources (hereinafter referred to as Permenpupr 1/2016”). However, in an effort to better accommodate changes regarding the implementation of water resource management, the Minister has now issued Regulation No. 2 of 2024 concerning Procedures for Licensing for Business Use of Water Resources and Approval of Use of Water Resources (hereinafter referred to as Permen PUPR 2/2024) which has been in effect since February 7, 2023.

It should be noted that every water resource business permit (Business Permit) and Water Resource Utilization Permit issued before the enactment of PUPR Ministerial Regulation 2/2024 will remain valid until the permit expires. However, every application to obtain a Business Permit and Water Resource Utilization Permit that has been submitted will now be processed in accordance with the provisions contained in the new framework of PUPR Ministerial Regulation 2/2024. In essence, water resource management must be carried out by the central and/or regional governments in accordance with their authority. Based on the provisions of Article 1 numbers 9 and 10, such management must be carried out based on the issuance of certain legal documents, the details of which are as follows:

1. For commercial purposes: Business License; and
2. For non-commercial and irrigation purposes: water resource use agreement (“Use Agreement”).

Commercial activities that require a Business License are no longer differentiated based on their form of use, as was the case in the previous PUPR Regulation 1/2016. However, the new framework of PUPR Regulation 2/2024 still maintains most of the activities that

originally outlined in Permenpupr 1/2016, resulting in a total of 14 eligible commercial activities, one of which is the business of drinking water (with or without packaging).

The application mechanism for issuing a business permit includes the following methods:

1. Applications for obtaining a Business License are submitted through the Online Single System Submission (“OSS”)

2. Fulfillment of administrative requirements, which include:

a. Statement of responsibility for social problems arising from activities carried out;

b. Letter of absolute responsibility for the use of land where the activity takes place;

c. The business permit that the applicant in question has, as required to carry out the requested activity;

3. Technical requirements, which include:

a. Relevant water withdrawal amounts and schedules

b. Detailed design drawings of the type or structure of infrastructure to be built.

CONCLUSION

The legal framework for water resources management for the provisions of drinking water in Indonesia has been regulated drinking water management through the provisions of the 1945

NRI Constitution and Law 17/2019. However, these provisions do not provide space for equal participation for the private sector in the provisions of drinking water, which has the impact of not fulfilling the need for safe and adequate drinking water for the community. That prioritization and implementation of permission granting procedures should be given based on the portion of interests and responsibilities of business actors where in terms of drinking water resbusiness activities, both private and state owned companies have equal obligations and responsibilities so that there is no comprehensive explanation regarding the priorities in question. These provisions at article 46 (1) Law 17/2019 to be inconsistent with the principle of proportional justice mandated by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Second, in formulating water resources management for the provisions of drinking water through cooperation between the state and the private sector, 6 (six) things must be considered, are regulation, licensing, criteria for the private sector as manager of drinking water supply, rights, and authority, supervision, and sanctions. This will provide benefits to both parties, where the state get top priority to organize SPAM which is its obligation so that the people's right to water is more easily realized, and on the others hand the private sector is given the convenience to fill the empty space in fulfillment the people's right to water which is still not yet available. can be fulfilled by the state through AMDK and still get benefits that are in line with the economic corridor of the 1945 Constitution of the Republic of Indonesia.

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