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DECLARATION OF WATER FOR THE PEOPLE
(Position to Water Resources Draft Law)

**The Water Resources Draft Law
Belongs to the Private Sector, not Public**

The magnitude of flood and drought factually has a tendency to increase, not only in its intensity, frequency, duration, location, but also in the number of sectors being affected. The height of erosion rate, widening landslide, the flaw of micro climate, the raising of pollution rate and various continuous socio-economic problems indicate that at the present, water is mis-managed and radical corrections should be promptly made.

Such argument is supported by the continuous increase of inter-sector water demands in terms of quantity, quality, and continuity. With constant supply and even inclined decrease of usable water, the inter-sector competition is getting more critical, and the agricultural sector becomes its victim. The impact is water, as the main source of life (>80% in living creatures), becomes a rare matter with no substitution. As a result, it is made a matter with economic value and a trigger of a very high possibility of conflicts. Water consumption is a basic right in life; therefore, whatever party controlling water as a commodity must pay its careful attention to the fulfilment of such right.

Water, as a public matter with mutual relation between the multifunction and multiscale of its existence, must be managed according to its cycle. The right to use water for individual, group, and global interests will never change water's status as a public matter to be a private one for the purpose of unlimited exploitation and trading. The role of the country in the management of water resources is to ensure the fulfilment of the right to water of the people (at a global scale) before that of those at the higher scales.

The country's control over water must be global and comprehensive in order that it can provide water for the people in a just manner with high advantages towards a reliable water resources conservation. The present Water Resources Draft Law is, in fact, far from the principal and essential expectation of the people: to support the creation of a better ecosystem and justice for the people.

The expected Water Resources Draft Law is the one which is comprehensive in order that it may bring changes to any condition that guarantees water supply and a consumption water which is broader in range, continuous and reliable. This means the Water Resources Draft Law functions to meet the interest of the people with the purpose of keeping the ecosystem, providing protection against pollution, developing and protecting of water resources, developing the economic value of water resources, health and safety of the people.

The Water Resources Draft Law is not complete.

As a draft law that was born later, the Water Resources Draft Law had better refer to the Decree of the People's Consultative Council or other related laws. The Water Resources Draft Law is not complete. The 'recall clause' in the draft law is based only on the country's Constitution, without mentioning any relevant Decrees of the People's Consultative Council such as the Decree of the People's Consultative Council no. 11 year 2001 on natural resources management and Law no. 22 year 2000 on regional autonomy which is closely related to water resources matter, for example, the law on regional autonomy. Therefore, it is necessary to extend the 'recall clause' by adding various higher legal results and other related legal result.

Besides the unclear purpose, advantages and function of the Water Resources Draft Law, **the general stipulation does not describe the purpose, advantages and function of the Water Resources Draft Law**. This chapter contains only the definition, basis, duty of state, concession, and management. The purpose, advantages and function are put in this chapter. If it is true, as planned, that the chapter on general stipulation becomes an introduction to the following chapter, most of the themes, for example, conflict solution, information system, coordination and control, in the Water Resources Draft Law should be touched on.

Water Transformation: from Public Commodity to Private Commodity

Article 5 of the Water Resources Draft Law states that the country guarantees the right of every single citizen to use water for their main needs, at least for their daily lives, in order to meet a healthy, clean, and productive life. That guarantee has been the common responsibility of the central and regional governments. This includes the responsibility to guarantee the access to water resources for everyone.

The government cannot prevent anyone from using water and getting benefit from it in meeting their main daily needs. While according to the article 40, clause 4, cooperative, private business bodies and the community can participate in the implementation of drinking water supply system development. If the government argues that they do not have sufficient fund for water management, the service of this public matter will be put under private sectors' control. This condition will make water a private commodity. **There will be a transformation process from public to private sector** that is said to be a violation of article 33 of the country's Constitution. The improvement of service quality must never sacrifice the life of the people.

If the management of drinking water, as a daily need, put under the control of private sectors, water will be a private commodity with high excludability¹. If in the explanation of article 40, clause 1, it is stated that household drinking water is standard water, the water can be drunk without being boiled and stated hygienic according to result of microbiological examinations (E.coli test), with such quality, as intended in the explanation above, there will be an increase

¹ Something categorised as either private or public commodity is viewed from its excludability and competition level. The excludability level of a commodity is determined by whether or not the supplier or consumer of the commodity or the service hampers (or excludes) other people from using it. The level of competition is determined by whether or not somebody who uses a commodity or service can decrease its supply for other people. If a commodity has a high level of competition, it will only be used individually. But if it has low level of competition, it will be used by many. Water scarcity cannot result in high water excludability because people have the right to use water.

of foreign access, domination and hegemony; it is due to limited provision of fund and technological capacity.

The Implication of the Water Resources Draft Law's Application

Article 40 and the explanation of this article, clause 1, which states that drinking water is standard water, can be directly consumed without being boiled first and stated healthy according to the result of microbiological examinations (E.coli test), will have negative effect on the people and some 300 regional waterworks in Indonesia. It is said that it will bring negative effect on the people because, actually, there are many parameters that are used to measure the quality of drinking water, as stated in the Decree of the Health Minister no. 907/MENKES/SK/VII/2002. Besides microbiological examinations, hygienic drinking water must also be given chemical, radioactive, and physical examinations. If the requirements of hygienic drinking water just as stated in the draft law, **the drinking water can be dangerous for health because, although it does not contain E.coli, there might be much more dangerous chemical and radioactive substances.**

On the other side, if the regional waterworks, whose condition is not 'healthy', are demanded to supply drinking water, they have to provide investment fund to replace pipe circuitries. The fund is certainly in great amount. Besides, they have to provide also production cost to manage standard water from the land surface, and the cost will be very expensive because the Water Resources Draft Law does not guarantee any repressive efforts to prevent the pollution of land surface water.

Water as a private commodity is managed based on the concession as regulated in article 9. According to article 46 on water allocation and article 29, clause 5, the government pays compensation to defeated concession holders if the sequence of priority is changed. The clause and article above will make the government the side to suffer all the risks. If the allocation and concession is wrongly determined as a result of hydrological cycle, the government will suffer all the risks by paying compensations that will eventually bring risks to the community.

Article 49 on water export can result in disintegration. If this article is legalised like a draft without explanation about who will benefit from the result of the export, there will be a tendency for the districts and cities with abundant water supply and export potential to give priority to the export of water rather than the importance of water for basic needs or the agriculture of the people in that district or the other cities.

The exploitation of water resources by private sectors through the involvement of the business world and individuals in the management system (article 11, clause 3), the development of drinking water supply system (article 40, clause 3), the use of clouds as climate technology (article 38, clause 2), the use of salt water on the land (article 39, clause 2), the control of water at certain points (article 45, clause 4), and the development of irrigation system (article 41, clause 5) will create very dangerous implication. The possible impact is that foreign enterprises, particularly, foreign private enterprises will have direct interference in the country's management of water resources, just like what did the British Ambassador for the Thames Water, which is actually a German company, when the water company suffered financial loss. At that time, the British Ambassador could command the government of Jakarta City to raise the price of water to eradicate the loss.

Inter-article Contradiction

Article 80, clause 1, states that using water for daily needs and agriculture is free of water resources management cost. Water resources management cost is the cost collected from water consumers to carry out water management in order to guarantee a continuous water management.

The decided water management cost is based on a rational economic calculation that can be accounted for. The calculation has been based on the following elements:

- a. investment depreciation cost
- b. investment amortisation and interest
- c. operation and maintenance; and
- d. water resources development

While article 40, clause 3, states that state-owned corporations and region-owned corporations will have roles in the implementation of drinking water supply system. Article 78, clause 3 (point c) states that the farmers are responsible for operation funding and the maintenance of tertiary irrigation system. They can still be assisted by the central and/or regional government.

The definition of ‘people’s agriculture’ as stated in the explanation of article 8, clause 1, is very confusing.

People’s agriculture is an agricultural cultivation, which comprises various commodities, e.g. crops, fishery, animal husbandry, plantation, and forestry, which are managed by the people with certain width of land that does not need more than 2 litters of water per second per family.

The need for water for people’s agriculture is always related to the width of the managed area, and this does not have anything to do with family. The amount of two litters per second per family for people’s agriculture might be a very big amount. In Java, most farmers have only 0,3 – 0,5 hectares of rice fields. So if one bases on the article 8 above, every farmer will have the right to have approximately 64 litter/second/ha, which much higher than the usually needed amount, that is around 1-1,2 litter/second/ha.

Even if the water is used for fishery (people’s fishpond), the needed maximum amount will never be that much, because people’s fishponds are usually traditional fishponds with surplus and do not need many woofs like the semi intensive ones, so one does not need too much water for putting new water into the fishponds.

What the Water Resources Draft Law Forgets

Land water exploitation, which is now increasingly made is not regulated by the draft law at all. Article 40, clause 6, is on the bodies being responsible to the minister for the development of drinking water system, while article 86 that regulates the board of water resources does not mention any qualifications of the body and board members. This will result in a non-functioning body and board because the members are not competent, independent and do not involve stakeholders.

Water concession **is not** all at once followed by the obligation for conservation and improvement, so that implicitly water consumers are not all at once obliged to carry out

conservation, maintenance, and to improve the condition of his water resources, both before and after consumption.

For the farmers, water is not only a main means of agricultural production, but also a commodity that guarantees their daily activities. Without the guarantee of water supply, they (who make up the greatest part of the country's population) will lose their jobs and the Indonesian food stamina will be obstructed.

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