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ISSUES ON WATER PRIVATIZATION UNDER NEW REGULATION: EVIDENCE IN INDONESIA***

Abstract

Water plays a vital role in every human life, so the availability and sustainability of water resources need to be carefully regulated. This article attempts to analyse water governance in Indonesia under the new water resources regulation, mainly the issue of water privatization. This article is classified as normative legal research. This article shows that even though the State gives the water privatization licence to the private sector as the last priority, it seems that the Indonesian people will still encounter the same problem in the coming year. This article argues that the issue of distribution of water justice, water access, and violations of the water right related to water utilization on a large scale are challenges for the Indonesian government to resolve.

Keywords

distribution of justice; legal issues; new regulation; water privatization; violation of water rights

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INTRODUCTION

Indonesia's government has tended to follow World Bank guidelines for the water sector since the 1980s.¹ Between 1983 and 2003, the World Bank provided 27 water infrastructure loans to Indonesia, aggregating US\$2,921.75 million.² Through the Water Resource Sector Adjustment Loan (WATSAL), the World Bank granted Indonesia a loan to restructure the water resource sector in 1999.³ When the World Bank granted the loan of US\$300 million as part of its strategy for attempting to resolve the Indonesian economic crisis, this scheme demanded that the Indonesian government "amend water resources regulation to furnish regional autonomy and private sector participation in water resource development".⁴ The loan is split into three tranches, with the second and third tranches of US\$100 million and US\$150 million to be released after Indonesia completes the reform programme for water resources and irrigation outlined in The Policy Matrix.⁵

As a condition of the loan, the Indonesian government was required to modify the country's water rules and implement the requested legislation. The World Bank's water resource strategy is founded on the fourth Dublin principle,⁶ which says that "water has monetary significance across all of its competing users and should be identified as a financial good."⁷ This strategy has paved the way for water privatization governance in Indonesia. Before enacting the Water Resources Act

¹ W. Hadipuro, *Indonesia's Water Supply Regulatory Framework: Between Commercialisation and Public Service?*, "Water Alternatives" 3, 2010, p. 480.

² *Ibid.*, p. 481.

³ Indonesia – *Water Resources Sector Adjustment Loan Project (WATSAL)* (English). World Bank Group, 1999, p. 1-8, available at: <http://documents.worldbank.org/curated/en/487961468756571443/Indonesia-Water-Resources-Sector-Adjustment-Loan-Project-WAT-SAL> [last accessed 20.3.2022].

⁴ *Ibid.*, p. 4.

⁵ *Ibid.*, p. 5.

⁶ World Bank, *Water Resources Management: A World Bank Policy Paper*, World Bank Publication, 1993, p. 10.

⁷ World Meteorological Organization, *The Dublin Statement and Report of the Conference: International Conference on Water and the Environment: Development Issues for the 21st Century: 26-31 January 1992, Dublin, Ireland*, Hydrology and Water Resources Department, World Meteorological Organization, 1992, p. 20.

Number 7/2004, as required by the World Bank, Indonesia had the Water Resources Development Act Number 11/1974, which made no mention of the prospect of a profit-motivated private sector participating in Indonesia's water resources development. On the other hand, the private sector may manage water in various ways under the Water Resources Act Number 7/2004, including establishing drinking water systems, providing essential water for farming purposes, and governing water resources.⁸

On the basis of the condition above, a strain emerged between the need to secure the protection of human rights and the necessity to establish financial growth, which the World Bank prescribed. It is driven by the Water Resources Act Number 7/2004, which provides legal avenues for the privatization of water resources governance.⁹ This Act has been contested by many segments of civil society, most notably by farmers¹⁰ and civic organizations.¹¹ Civil society organizations challenged the Water Resources Act Number 7/2004 twice before the Indonesian Constitutional Court. In 2015, after a second challenge, the Indonesian Constitutional Court affirmed the Water Resources Act unconstitutional and revoked it.¹² In its legal reasoning, The Constitutional Court of Indonesia considered the provision on human rights in the Constitution of the Republic of Indonesia 1945 (abbreviated as the Indonesian Constitution of 1945) and the international human rights perspective. Nonetheless, the Indonesian Constitutional Court determined that the Government of the Republic of Indonesia may yet give authorization to the private sector to monetize water under particular and stringent circumstances.

⁸ Undang-Undang Nomor 7 Tahun 2004 Tentang Sumber Daya Air (Water Resources Act No. 7/2004) (2004).

⁹ Sudjito et al., *Strengthening, Synchronizing, Harmonizing, Institutionalizing integration, and Acculturating Pancasila in the Context of Strengthening the Nation's Sovereignty*, Pusat Studi Pancasila UGM, 2014, p. 237.

¹⁰ Serikat Petani Indonesia, *The Situation of Farmers' Rights in Indonesia*, 2014, p. 19, available at: http://spi.or.id/wp-content/uploads/2014/12/Laporan_Situasi_Hak_Asasi_Petani_2014_Serikat_Petani_Indonesia.pdf [last accessed 25.2.2022].

¹¹ Muhammadiyah Society and Al Jamiatul Wasliyah v The Government of Indonesia, No. 85/PUU-XI/2013, February 18th, 2015, Jakarta, para. 16.

¹² *Ibid.*, p. 146.

After running for five years, a legal void in water resources governance was answered by enacting the Water Resources Act Number 17/2019. For the Indonesian people, this regulation draws on a new ambition for sustainable water governance, but the next question is whether this new regulation is positioned to promote or act against water privatization. This paper assumes that the issuance of water regulations requires analysis considering the imbalance between the availability of water, which tends to decrease, while water demand increases. Meanwhile, on the basis of the Indonesian Constitution of 1945, the nation's founders did not desire privatisation. Water resources must be managed by considering social, environmental, and economic functions in harmony to create synergy and integration between regions, sectors, and needs to be intergenerational to meet the people's water needs. The Indonesian Constitution of 1945 stipulates that the burden of managing water resources is the state's responsibility to disseminate it equitably to the public. At this point, the Indonesian Constitution of 1945 explicitly determines that the water issue is crucial. If it is not managed appropriately, it will have the potential for social injustice and a great potential for human rights violations.

Concomitantly with previous argumentation, this paper intends to address issues related to water privatization and some possible questions following it under the new water governance in Indonesia. First, it will describe water privatization, mainly the intention, the history, and the legal grounds of water privatization in Indonesia. Second, it will analyse the issues and challenges of water privatization possibilities in Indonesia. This article examines the case of water resource law in Indonesia to highlight how the regulation can restrict the Government when opting for water privatization under new regulations that could support economic growth. This article is a kind of normative legal research, where the authoritative document becomes the primary source of information without abandoning secondary legal sources to build legal argumentation firmly. Starting with the basic concept of water privatization and water commodification, it then proceeds to a legal study of the public reaction to the Water Resources Act Number 7/2004, which ended in the decision of the Constitutional Court. Several scientific articles, working papers, and books support the arguments presented in this article, primarily a comparison with the State of Victoria in formu-

lating regulations on water privatization which aim to limit the private sector and provide a central role for the State to manage the mechanism of the water privatization. This comparison option directed at the Government of Victoria is aimed only at realizing everyone's fair and equal access to water.

I. WATER PRIVATIZATION IN INDONESIA

Water privatization is a term that refers to the participation of a private entity in the ownership, administration, or contracting of a previously public water service.¹³ The phrase "private sector involvement" is sometimes used to refer to various agreements between a public agency and a private organization. Typically, it refers to a contract between a government agency and a private corporation (often a transnational corporation).¹⁴ Privatization, in a limited sense, occurs when the government sells its assets to the private sector, which includes all planning, maintenance, and operating duties.¹⁵ This kind of privatization is referred to as divestiture. In the late 1980s, the United Kingdom implemented it, in which the complete water infrastructure, from water collection to reticulation and sewage treatment, was sold to private companies.¹⁶ The State still has responsibility for monitoring and regulatory oversight in this model of privatization.¹⁷ There is another method of privatizing water that does not entail the transfer of state assets, but instead concentrates on the transfer of administrative and operational tasks to the private sector (e.g., personnel management, strategic plan-

¹³ K. Fitch, *Water Privatisation in France and Germany: The Importance of Local Interest Groups*, "Local Government Studies" 33, 4, 2007, pp. 589-605.

¹⁴ J. Budds, G. McGranahan, *Are the Debates on Water Privatization Missing the Point? Experiences from Africa, Asia and Latin America*, "Environment and Urbanization" 15, 2, 2003, pp. 87-114.

¹⁵ D.A. McDonald, G. Ruiters, *The Age of Commodity: Water Privatisation in Southern Africa*, Earthscan Publications, 2005, pp. 25-54.

¹⁶ J.A.J. Ernst, *Whose Utility? The Social Impact of Public Utility Privatisation and Regulation in Britain*, University of York, 1992, p. 502, available at: <http://etheses.whiterose.ac.uk/2499/> [last accessed 1.2.2022].

¹⁷ D.A. McDonald, G. Ruiters, *supra* note 15, p. 52.

ning, meter reading, and maintenance).¹⁸ Infrastructure and equipment for water services remain publicly held or will be returned to public ownership after a specific time, and operational tasks may be shared between the public and private sectors.¹⁹ This system is used in France and allows the private sector to provide water services for a set number of years.²⁰

The World Bank refers to privatization models as public-private partnerships (PPPs). The World Bank defines *privatization* broadly as the transfer of decision-making responsibilities from the public to the private sector, with a range of ownership and provision options available, including public ownership and operation by a public enterprise, public ownership with private sector operation contracted out, and private ownership and operation frequently with government regulation.²¹ In short, water privatization refers to the process of shifting service duties to people, corporations (public or private), communities, or non-governmental organizations.²² Similarly, the World Health Organization (WHO) uses a broader definition of water privatization, stating that numerous countries have reported private sector participation (PSP) in managing urban water services, which includes not only large corporations, but also organizations such as religious groups, community-based organizations, and non-governmental organizations.²³ After defining water privatization broadly, the next important debate is on the private sector's operating principles for providing water services. Commodification and commercialization of water services are concepts that are linked with privatization.

According to the neoliberal conception, the government's function is reformulated, emphasizing keeping state interventions in the market

¹⁸ National Research Council, *Privatization of Water Services in the United States: An Assessment of Issues and Experience*, The National Academies Press.

¹⁹ D.A. McDonald, G. Ruiters, *supra* note 15, pp. 25–54.

²⁰ J.A.A. Jones, *Water Sustainability: A Global Perspective*, Routledge, 2014.

²¹ World Bank, *World Development Report 1994: Infrastructure for Development*, 1994, p. 4, available at: <http://hdl.handle.net/10986/5977> [last accessed 1.2.2022].

²² D.A. McDonald, G. Ruiters, *supra* note 15, pp. 25–54.

²³ WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, *Global Water Supply and Sanitation Assessment Report*, 2000, p. 21, available at: http://www.who.int/water_sanitation_health/monitoring/jmp2000/en/ [last accessed 11.2.2022].

to a minimum.²⁴ It started as an academic movement extolling the benefits of free markets during the Reagan–Thatcher period of the 1980s. It was succeeded by the Washington consensus and adjustment programmes of the 1990s.²⁵ Neoliberal proponents assert that the government has generally failed to meet the growing demand for goods and services in areas where the private sector can efficiently and effectively supply those things.²⁶ Almost all public assets have been privatized, including water, telecommunications, power, and transportation.²⁷ It started with the Dublin Statement and Principles of 1992, which stated that “water has economic worth... and it should be acknowledged as a valuable economic resource”.²⁸ Following the Dublin conference, the United Nations Conference on Environment and Development held in Rio in 1992 acknowledged water as an economic benefit as part of effective water management.²⁹

States, international organizations, private companies, and other players have increasingly defined water in terms of the 1992 Dublin Declaration and Principles, rather than using a phrase referring to the public good.³⁰ On the basis of this premise, arguments erupted about whether water is a public or private good. There is an argument that the status of water is irreversibly unclear,³¹ either public or private. It may be classified as a private good since it has characteristics of economic good and economic worth.³² It may also be classed as a public good since it becomes an essential necessity within the framework of an in-

²⁴ D. Harvey, *A Brief History of Neoliberalism*, Oxford University Press, 2007.

²⁵ J. Peck, A. Tickell, *Neoliberalizing Space*, “Antipode” 34, 3, 2002, pp. 380–404.

²⁶ E. Steurer, *A Private Commodity or Public Good?: A Comparative Case Study of Water and Sanitation Privatization in Buenos Aires, Argentina, 1993–2006*, University of South Florida, 2008, p. 9–19, available at: <https://digitalcommons.usf.edu/etd/515/> [last accessed 1.2.2022].

²⁷ D. Harvey, *supra* note 24.

²⁸ World Meteorological Organization, *supra* note 7.

²⁹ Agenda 21: Programme of Action for Sustainable Development 1992 (A/Conf. 151/26)

³⁰ D. Jaffee, S. Newman, *A Bottle Half Empty: Bottled Water, Commodification, and Contestation*, “Organization & Environment” 26, 3, 2013, pp. 318–335.

³¹ K. Bakker, *Privatizing Water: Governance Failure and the World’s Urban Water Crisis*, Cornell University Press, 2010, p. 83.

³² *Ibid.*, p. 84.

dividual's and society's everyday existence.³³ Water as a public or private benefit is an example of a *merit good*. *Merit products* are defined as things that should be provided to – and where appropriate, consumed by – everyone, perhaps only to specified minimal levels, regardless of whether they like it or not and no matter their ability to pay for it.³⁴

According to neoclassical theory, a private business is unlikely to offer public goods and services under market circumstances since they are provided for free, making profit a hazardous proposition for a private enterprise. Profit maximization becomes a reason for opposing water commodification. For the first time in history, British people demanded safe, affordable household water as a public utility rather than one provided by profit-driven private companies.³⁵ Additionally, opponents of water commodification say that water is a fundamental human right³⁶ given for free.³⁷ Because water commodification establishes the circumstances for water to be captured by market logic, it also catalyses commercialization.³⁸ Water commercialization is described as incorporating commercial concepts into water management, such as competitive bidding, cost recovery, cost-benefit analysis, profit maximization, performance-based compensation, demand-driven investments, and ring-fenced decision making. Furthermore, it is possible to execute it with or without privatization.³⁹ An example of non-privatization water commercialization in South Africa is Johannesburg Water (Pty) Ltd., solely controlled by the City of Johannesburg.⁴⁰ According to this corporate structure, water services are mainly commercial. This business

³³ J.A.J. Ernst, *supra* note 16, pp. 502-503.

³⁴ W. Beckerman, *How Large a Public Sector?*, "Oxford Review of Economic Policy" 2, 2, 1986, pp. 7-24.

³⁵ R. Wilk, *Bottled Water, the Pure Commodity in the Age of Branding*, "Journal of Consumer Culture" 6, 3, 2006, pp. 303-325.

³⁶ *Report of the United Nations Water Conference, Mar Del Plata, 14-25 March 1977, 1977*, p. 9-19, available at: <http://digitallibrary.un.org/record/724642> [last accessed 2.12.2021].

³⁷ D.A. McDonald, G. Ruiters, *supra* note 15, p. 189.

³⁸ *Ibid*, p. 190-195.

³⁹ K. Bakker, *The 'Commons' Versus the 'Commodity': Alter-Globalization, Anti-Privatization and the Human Right to Water in the Global South*, "Antipode" 39, 3, 2007, pp. 430-455.

⁴⁰ J. Dugard, *Can Human Rights Transcend the Commercialization of Water in South Africa? Soweto's Legal Fight for an Equitable Water Policy*, "Review of Radical Political Economics" 42, 2, 1, 2010, pp. 175-194.

model is referred to as corporatization, and it involves the transition of water services from a (local) government agency to a publicly traded company. Corporatization aims to increase a particular service's financial sustainability and organizational flexibility by establishing a legally distinct entity from the government.⁴¹

Moreover, since water corporatization offers benefits, it may serve as a doorway for the private sector to invest in, to own, or to manage public water services, whether directly or indirectly. It may be accomplished by adopting an outsourcing model as an operational strategy in which the public entity owns the water service provider. Publicly held water corporations may outsource numerous elements of water services.⁴² Public water corporations⁴³ may enter into contracts with the private sector for non-core or core tasks like cleaning, computer programming, construction, operations, maintenance, and customer service.⁴⁴ Also, this form of water management can be more commercial than outsourced alternatives since managers would encourage and enforce cost recovery and other market principles.⁴⁵

1. THE ORIGIN AND THE LEGAL FOUNDATION OF WATER PRIVATIZATION IN INDONESIA

Throughout the 1970s and 1980s, the World Bank and other aid agencies promoted water resource development programmes (e.g., technologies for consolidating, modernizing, and maintaining infrastructural facilities and dams) as a means of overcoming water scarcity, a means which also requires changing water legislation to close gaps in existing water laws, ensuring administrative efficiency, and clarifying basic principles.⁴⁶ Since the 1990s, these agencies have been aggressive-

⁴¹ K. Bakker, *Good Governance in Restructuring Water Supply: A Handbook*, Federation of Canadian Municipalities, 2003, p. 8.

⁴² D.A. McDonald, G. Ruiters, *supra* note 15, p. 15.

⁴³ K. Bakker, *supra* note 41, p. 4.

⁴⁴ K. Bakker, *From Public to Private To...Mutual? Restructuring Water Supply Governance in England and Wales*, "Geoforum" 34, 3, 2003, pp. 359-374.

⁴⁵ D.A. McDonald, G. Ruiters, *supra* note 15, p. 248.

⁴⁶ H. D. Frederiksen, J. Berkoff, W. Barber, *Water Resources Management in Asia Vol. 1*, The World Bank Publication, 1993, p. 110.

ly promoting the market-based distribution and privatization of water through structural adjustment programmes and conditions consistent with the WTO's General Agreement on Trade in Services (GATS)⁴⁷ that introduced water privatization through free trade rules. In 1993, The World Bank established its 'Water Resource Management Policy' to encourage policy changes, planning, and institutional management of water in borrowing nations.⁴⁸

As one source of support for private sector participation in water delivery, international financial institutions believe that the policies outlined above may be expected to improve efficiency, expand services, attract more investment, and relieve governments of fiscal deficits.⁴⁹ Additionally, the World Bank published its 'Water Resource Sector Strategy' in 2004, stating that water resource management and development are essential elements in economic growth and lessening poverty.⁵⁰ The World Bank expanded lending to execute this strategy; about 17% of loans were given to water-related projects (e.g., water supply and sanitation, irrigation, and water management components) between 1993 and 2001.⁵¹

Additionally, many critical lobbies of International Financial Institutions expressed their support for Water Privatization. To begin, in 1996, the World Bank, the United Nations Development Program, and the Swedish Aid Agency SIDA established the Global Water Partnership, whose members adhere to the ideas of water commodification.⁵² Secondly, in 1996, officials of Suez, the Egyptian government, and the Canadian aid agency CIDA established the World Water Council in Marseilles, whose members are primarily private companies, international organizations, and government departments.⁵³ Thirdly, the Internation-

⁴⁷ Ibid., p. 115.

⁴⁸ World Bank, *supra* note 6.

⁴⁹ World Bank, *Water Resources Sector Strategy: Strategic Directions for World Bank Engagement No 28114*, The World Bank Publication, 2004.

⁵⁰ Ibid., p. 34.

⁵¹ N. Hadad, *Water Privatization in Indonesia*, "INFID Annual", 2003, pp. 1-10.

⁵² P. Bond, *Water Commodification and Decommmodification Narratives: Pricing and Policy Debates from Johannesburg to Kyoto to Cancun and Back*, "Capitalism Nature Socialism" 15, 1, 2004, pp. 7-25.

⁵³ P. Bond, J. Dugard, *Water, Human Rights and Social Conflict: South African Experiences*, "Law, Social Justice & Global Development", 1, 2008, pp. 1-21.

al Private Water Association was founded in 1999 with the assistance of the World Bank Group, the European Bank for Reconstruction and Development, the US Credit Export Agency, and the Overseas Private Investment Corporation.⁵⁴

The World Bank began its water privatization in Indonesia in June 1991, when it provided a \$92 million loan to Jakarta PAM Jaya (Jakarta Municipal Waterworks) to improve its infrastructure.⁵⁵ Following the financing, the World Bank and Japan's OECF urged the Indonesian government to enable private sector involvement in Jakarta's water system.⁵⁶ In the 1990s, due to financial constraints associated with increasing water service coverage and maintaining water infrastructures in Jakarta, the Indonesian government agreed and encouraged private companies to handle the water delivery system.⁵⁷ Following the implementation of this strategy, private companies such as BOO Bekasi in 1993, Batam Concession in 1996, and Jakarta Concession in 1997⁵⁸ were engaged in water delivery in Indonesia. In the case of Jakarta, two transnational corporations were involved in water supply management: Thames Water International established PT. Thames PAM Jaya with local partner PT. Kekarpola Airindo for the eastern region and Suez-Lyonnaise des Eaux established PT. Palyja with local partner PT. Garuda Dipta Semesta for the western region. Both companies were responsible for a broad range of tasks related to the operation, maintenance, and administration of water supply services.⁵⁹

⁵⁴ Bond, *Water Commodification*, *supra* note 52, p. 20.

⁵⁵ P.R. Siregar, *World Bank and ADB's Role in Privatizing Water in Asia*, Committee for the Abolition of the Third World Debt, 2004.

⁵⁶ A. Harsono, *Water and Politics in the Fall of Suharto*, 2003, available at: <https://www.icij.org/investigations/waterbarons/water-and-politics-fall-suharto/> [last accessed 2.12.2021].

⁵⁷ O. Braadbaart, *Privatizing Water: The Jakarta Concession and the Limits of Contract*, [in:] p. Boomgaard (ed.) *A World of Water: Rain, Rivers and Seas in Southeast Asian Histories*, Leiden: Brill, 2007, pp. 297-320.

⁵⁸ H. Santono, *Water Privatization in Indonesia and the Chance of PuPs as Alternatives*, 2007, pp. 1-5, available at: <https://www.tni.org/archives/water-docs/adbsantono.pdf> [last accessed 12.11.2021].

⁵⁹ N.E. Shofiani, *Reconstruction of Indonesia's Drinking Water Utilities Assessment and Stakeholders' Perspectives of Private Sector Participation in the Capital Province of Jakarta*, 2003, pp. 1-15.

The preceding project was halted by the economic crisis of 1997–1998, which affected Indonesia’s macroeconomy and resulted in a balance of payment deficit. The crisis compelled Indonesia to reach an agreement with the International Financial Institutions, which Indonesia did on October 31, 1997, when it signed a ‘Memorandum of Economic and Financial Policies’ (often referred to as a Letter of Intent) with the IMF.⁶⁰ This agreement obliged the Indonesian government to change its economic policies and institutions, including the social safety net, banking system and corporate restructuring, bankruptcy reform, trade liberalization, and privatization of state companies.⁶¹ The World Bank, ADB, and bilateral creditors developed the strategy and plans for implementing this timetable in 1998.⁶² Under these circumstances, the reform of water resource policy was reintroduced. In April 1998, the World Bank gave Indonesia a loan to restructure the country’s water resource sector via the Water Resource Sector Adjustment Credit (WATSAL)⁶³ programme as part of a larger loan for macroeconomic policy reform.⁶⁴ For the third loan disbursement, the World Bank stipulated that the existing water resource strategy be replaced with a new one consistent with World Bank Policy. The Indonesian government accepted the offer in 1999. The World Bank approved a US\$ 300 million loan to the Indonesian government as part of its strategy for resolving the Indonesian economic crisis. The loan was used to support a structural adjustment programme of policy, institutional, regulatory, legal, and organizational reforms in the irrigation and water resources management sector,⁶⁵ emphasizing private sector participation.⁶⁶ The first tranche of US\$50 million was promptly paid upon the credit facility’s effective date. The second tranche of US\$100 million was paid on December 31, 1999, and the third tranche of US\$150 million was paid in the second or third quar-

⁶⁰ Indonesia Letter of Intent and Memorandum of Economic and Financial Policies, 1998, available at: <https://www.imf.org/external/np/loi/072998.htm> [last accessed 12.11.2021].

⁶¹ Ibid.

⁶² N. Hadad, *supra* note 51, pp. 2–5.

⁶³ World Bank, *supra* note 3.

⁶⁴ N. Hadad, *supra* note 51, p. 7.

⁶⁵ P.R. Siregar, *supra* note 55.

⁶⁶ World Bank, *supra* note 3.

ter of 2000, after the completion of the reform programme for water resources and irrigation as described in *The Policy Matrix*.⁶⁷

Although water privatization has been underway since the 1990s, the legislative framework regulating private sector participation in water service supply was inadequate at the time. On the other hand, the laws prohibit private sector participation in economic activities that affect the lives of many people, including drinking water, as stated in Article 6 of the Foreign Investment Act Number 1/1967 as modified by the Foreign Investment Act Number 11/1970, which explains that Areas of activity that are closed to foreign investment exercising complete control include those that are critical to the country and affect the lives of a large number of people, such as seaports, the production, transmission, and distribution of public electric power, shipping, mobile communications, aviation, drinking water, public railways, nuclear energy improvement, and mainstream media. However, the Water Resources Development Act Number 11/1974, which serves as the primary instrument for water management, makes no mention of the prohibition of private sector involvement in water exploitation investments as long as they obtain a state licence, which stresses that all forms of exploitation must be conducted in the spirit of 'joint enterprise' and 'kinship principle'.⁶⁸ The legal framework for private sector involvement in water provision was established in August 2000 by Presidential Decree Number 96/2000, as amended by Presidential Decree Number 118/2000 concerning Business Fields Closed and Open to Investments on Certain Conditions, which stipulates that foreign and domestic capital can invest in the processing and provision of clean water for the public with the use of joint ventures.⁶⁹ While Presidential Decree Number 118/2000 created a legal framework for private sector involvement, it is more concerned with foreign direct investment than water law. This order did not meet the World Bank's requirements, which stated that the Indone-

⁶⁷ Ibid.

⁶⁸ Republik of Indonesia, Undang-Undang Nomor 11 Tahun 1974 Tentang Pengairan 1974 (Water Resources Development Act No. 11/1974) (1974).

⁶⁹ Keppres No.118 Tahun 2000 tentang Bidang Usaha yang Tertutup dan Bidang Usaha yang Terbuka dengan Persyaratan Tertentu Bagi Penanaman Modal (Presidential Decree 118/2000 Concerning Business Fields Closed and Open to Investments on Certain Conditions) Attachment III (2000).

sian government's water law and implementing regulations should be amended. In November 1998, the Indonesian government established the 'Task Force for Water Resources Policy Sector Reform,' collaborating with the World Bank, to develop a new Water Resource Law.⁷⁰ The New Water Resource Bill proposed several issues, including the following: (1) Water is not a free good, but rather has economic value and should be managed according to economic theories; (2) The government can no longer be viewed as a provider, but rather as a regulator and enabler of private providers or farmer groups; and (3) The development of new water management institutions.

The Government of Indonesia passed the Water Resources Act Number 7/2004 in 2004 and there followed numerous Government Regulations that established a more solid legal framework for the private sector's participation. Numerous provisions of the Water Resources Act Number 7/2004 require the private sector to participate in the water supply. Individuals or businesses may acquire commercial water immediately upon acquiring a licence from the government or regional governments under Article 9 of the Water Resources Act Number 7/2004.⁷¹ In terms of water supply, this law also permits the participation of private corporate organizations in developing the drinking water supply system.⁷² Except for surface water resources, which may only be managed by a State-owned business or a regionally held enterprise, the private sector also has a chance to manage water resources. However, communities opposed the International Financial Institutions' execution of the water programme. In Indonesia, civil society organizations organized and petitioned the Constitutional Court to invalidate the Water Resources Act No. 7/2004. On a worldwide scale, a study released by The Norwegian Forum for Environment and Development found that privatization of water in the global south did not benefit the public, particularly when it failed to benefit the poor.⁷³

⁷⁰ N. Hadad, *supra* note 51, pp. 1-5.

⁷¹ Undang-Undang Nomor 7 Tahun 2004 Tentang Sumber Daya Air (Water Resources Act No. 7/2004).

⁷² *Ibid.*

⁷³ J. Magdahl et al., *Privatization of Water, Public-Private Partnership: do they deliver to the poor?*, The Norwegian Forum for Environment and Development, 2006, p. 5, available

2. THE POSSIBILITIES OF WATER PRIVATIZATION UNDER THE NEW WATER REGULATION

The journey of the Water Resources Act Number 7 /2004, which ended in the hands of constitutional judges, finished the polemic on water governance which was not in compliance with the soul and spirit of the Indonesian Constitution of 1945. Finally, the Water Resources Act Number 17/2019 was adopted and came into force on October 16th, 2019. This law explicitly states that water resources are controlled by the State and used for the people's greatest prosperity. For this reason, the State guarantees the people's right to water to meet the minimum daily basic needs for a healthy and clean life with sufficient quantity, good quality, and safe, sustainable, and affordable.⁷⁴

Something is interesting under this new water regulation, where water management, in general, is clustered into five priorities. First, the water right must be fulfilled by the State in the context of daily basic needs; the State must fulfill the second priority, the right to water for smallholders; the third priority, use of water resources for business needs to meet daily basic needs through the drinking water supply system; the fourth priority is the use of water resources to fulfill non-commercial activities in the public interest, and the fifth priority is the use of water resources for other commercial purposes based on the licence.⁷⁵

As stipulated in the Water Resources Act Number 17/2019, water utilization for commercial purposes is conducted based on a licence, which the Regional Government and/or Central Government grant according to their authority. Water licences for commercial purposes are issued by the Regional Government and/or Central Government to (1) state-owned enterprises, (2) regional-owned enterprises, (3) rural-owned enterprises, (4) a cooperative entity, (5) a private business entity, and (6) individuals. Observing the provisions as stipulated in the Water Resources Act Number 17/2019, it can be interpreted that the State still (allows) the

at: <http://fivas.org/wp-content/uploads/2015/05/Water-privatisation-030406-final-version.pdf> [last accessed 12.11.2021].

⁷⁴ Penjelasan Undang-Undang Nomor 17 Tahun 2019 Tentang Sumber Daya Air (Explanation of the Water Resources Act No. 17/2019).

⁷⁵ Ibid.

acceptance of water privatization through licensing mechanisms. This paper argues that lawmakers adopted a strategy by setting down water privatization through priority mechanisms. Despite the utilization of water for commercial purposes through a complicated process, the lack of clarity and firmness of the rules regarding when the priority until the fourth priority has been met by the State makes it easy to use water for commercial purposes at any time without waiting for the fulfillment of requirements previously. According to Mousmouti,⁷⁶ the diffusion of messages in this Water Resources Act unintentionally reveals motives for commercial interests through water privatization that seems to be clad in the public interest.

If it is examined theoretically, even though granting a water privatization ticket is the last option, this situation demonstrates that the legislators have not followed the lessons learned from the annulment of the Water Resources Act Number 7/2004. The Indonesian Constitutional Court, through a decision previously, has given a decisive caution that the state bears a comprehensive burden to manage water governance. Central Government can transfer its authority to Regional Governments based on the principle of decentralization without giving the slightest authority to hand over to the private sector, primarily if there is a financial motive. In plain language, the legislation procedure and dynamics of academic debate during the Water Resources Act Number 17/2019 drafting can hardly be said to have happened. Instead of filling a legal void, this regulation is muted, silent from the context of public debate, and suddenly comes into force,⁷⁷ so it will not be easy to understand and find a legal rationale for implementing the Water Resources Act No. 17/2019.

Moreover, at the praxis level, derivative regulations from the Water Resources Act No. 17/2019 are needed to support the fulfillment of daily basic water needs for the people until this paper has been released.

⁷⁶ M. Mousmouti, *Designing Effective Legislation*, Edward Elgar Publishing, 2019.

⁷⁷ R. Betahita, *Investment Veil for Passing the Water Resources Act*, 2019, available at: <https://betahita.id/news/detail/4006/kedok-investasi-dalam-pengesahan-ruu-sumber-daya-air.html>. [last accessed 22.6.2022].; Media Indonesia, *The Water Resources Act 2019 Opens Up Corporate Opportunities for Water Privatization*, 2020, available at: <https://mediaindonesia.com/politik-dan-hukum/282917/uu-sda-2019-buka-peluang-korporasi-privatisasi-usaha-air>. [last accessed 22.6.2022].

This condition will be fruitful for the water business, especially bottled drinking water. Bottling water business players then captured the change in the Indonesian people's lifestyle as an opportunity. The exploitation of water sources by business operators does not seem to contribute positively to regional income and the protection of sustainable water sources. For example, Aqua-Danone products are based in France, where one of its factories in Klaten Regency, Central Java, released sales data for Aqua Klaten in 2018 reaching 1.2 billion litres, and in September 2019 amounting to 870 million litres.⁷⁸ However, the corporation's contribution to the regency's income is still considered small; even the effort of water sources restoration is considered insignificant.⁷⁹ The polemic about the water privatization licence will ultimately only benefit the political elite and water corporations. The fundamental needs of the people who, under the Indonesian Constitution 1945, should be given high priority, are at the same time marginalized. If this condition continues, the prediction that Indonesia will experience a water crisis in 2030 seems to be close to reality as conveyed by Piesse that 'Indonesia contains about 21% of the total water resources in the Asia-Pacific, equal to about 6% of the world's total. It is not a water-scarce country, but poor water management, limited infrastructure, and rapid economic development have driven scarcity in parts of the country'.⁸⁰

II. ISSUES AND CHALLENGE ON WATER PRIVATIZATION

Suppose the Government provides an opportunity for privatization by granting water licences under the pretext of economic growth. In that case,

⁷⁸ T. Sudjatmiko, *Penjualan Air Tinggi, Upah Karyawan Aqua Klaten Rendah (High Water Sales, Employee Aqua Klaten has Low Wages)*, 2019, available at: <https://www.krjogja.com/berita-lokal/jateng/klaten/penjualan-air-tinggi-upah-karyawan-aqua-klaten-rendah/> [last accessed 12.11.2021].

⁷⁹ T. Sudjatmiko, K. Kecil, *DPRD Undang PT Tirta Investama (Small Contribution, Regional People's Representative Assembly Summon PT. Tirta Investama)*, 2017, available at: <https://www.krjogja.com/berita-lokal/jateng/klaten/kontribusi-kecil-dprd-undang-pt-tirta-investama/> [last accessed 12.11.2021].

⁸⁰ M. Piesse, *Indonesian Water Security: Improving but Still Subject to Shocks*, 2016, available at: <http://inford.org/indonesian-water-security-improving-but-still-subject-to-shocks/> [last accessed 12.11.2021].

this article argues that the Indonesian people will always face the same challenges in the years to come. Several arguments are described below.

1. CONSTITUTIONAL ISSUES

Juridically, the urgency of drafting the Water Resources Bill is a follow-up to the Constitutional Court Decision Number 85/PUU-IX/2013, which annulled the Water Resources Act Number 7/2004. The legal void in regulating water resources creates legal uncertainty, so it is necessary to draft a new bill on natural resources instantly. Article 33 paragraph (5) of the Indonesian Constitution of 1945 expressly mandates that further provisions regarding the implementation of Article 33 of the Indonesian Constitution of 1945 shall be regulated in an Act, including derivative provisions concerning water resources.

Related to its existence, which is vital for human life, it is necessary to regulate water resources aimed at the people's welfare while optimizing water use, of course, by not ignoring the water characteristics as a public good. Regulation of water resources is needed to guarantee everyone's right to water and also regulate the presence of the state in water resources governance to optimize the Indonesian people's welfare. The water resources governance requires large investments, especially in the provision of water resources infrastructure. However, this condition cannot be used as legal reasoning for involving the government of other countries or private business entities, both foreign and domestic, in water resources governance. Suppose the involvement of the government of other countries or private business entities, both foreign and domestic, is required. In that case, the provision of funds for the water resources governance can only be carried out through financing cooperation and not cooperation in water resources governance.

The limitation of water resources on the one hand, while on the other hand, there is an increase in water demand, is causing competition between users of water resources and an impact on strengthening the economic value of water. This condition can potentially cause conflicts of interest between sectors, regions, and various parties related to water resources. For this reason, legal configurations are needed to protect the community's interests to meet basic daily needs and irrigation of

people's agriculture. The Indonesian Constitutional Court emphasized the meaning of State control over the earth and water and the natural resources contained therein, which are used for the greatest prosperity of the Indonesian people. The essence of the Indonesian Constitution reflects the mandate of the founding fathers who formulated the Indonesian Constitution of 1945, that water is one of the most important and fundamental elements in life and human life or dominates the lives of many people.

As one of the important elements in human life that control the livelihood of many people, water must be controlled by the State. Based on these considerations, in water exploitation, there must be very stringent restrictions to maintain water sustainability, i.e. (a) No water exploitation may interfere with, override, let alone negate the people's water rights. This proposition is based on the argumentation that the earth and water and the natural resources contained therein must not only be controlled by the State, but also for the greatest prosperity of the people; (b) Whereas in line with Article 28I paragraph (4) of the Indonesia Constitution of 1945, the State must fulfill the people's right to water, access to water is one of its basic rights. Furthermore, considering that environmental sustainability is one of the human rights regulated in Article 28H paragraph (1) of the Indonesia Constitution of 1945, water governance in Indonesia must comply with the formulation of this article; (c) As an important production branch, and controlling the livelihood of many people, which must be controlled by the State, water which according to Article 33 paragraph (3) of the Indonesia Constitution of 1945 must be controlled by the State and used for the greatest prosperity of the people, supervision and control by the State over water is absolute; (d) The continuation of the State's right to control over water because water is something that significantly affects the livelihood of many people, and the main priority to the water exploitation should be given to State-Owned Enterprises or Regional-Owned Enterprises; and (e) If, after all the previous restrictions have been applied and it turns out that water resources are still available, it is still possible for the Government to grant permits to private businesses to operate water under certain strict conditions. This article considers that granting a water privatization permit is logical, but difficult to implement. Fulfilling needs at the earliest priority under the Water Resources Act Number 17/2019 must

be accomplished, and precise indicators are given first. This option becomes logical and measurable when the Government intends to give a water privatization permit to the private entities.

2. SOCIAL JUSTICE IN WATER ACCESS

Fundamental freedoms, procedural fairness, and distributive justice are the concepts at the heart of water conflicts.⁸¹ *Social justice* is defined as a state of affairs (either actual or ideal) in which (a) benefits and costs in society are distributed according to some allocation principle (or set of principles); and (b) the processes, norms, and rules governing political and other forms of decision-making protect individuals' and groups' fundamental rights, liberties, and entitlements.⁸² According to this definition, social justice is divided into two components: distributive justice and procedural justice. Distributive justice is described as the fair distribution of benefits and costs associated with natural resource development.⁸³ Distributions may be judged to be fair based on three distinct principles: justice (or proportionality, including *merit*), equality, and necessity.⁸⁴ Following the equality concept, resources should be divided evenly among society's members; according to the equity principle, resources should be distributed based on individual contributions; and according to the need principle, resources should be directed toward those in greatest need.⁸⁵

⁸¹ J.G. Tisdell, *Equity and Social Justice in Water Doctrines*, "Social Justice Research" 16, 4, 2003, pp. 401-416.

⁸² J.T. Jost, A.C. Kay, *Social Justice: History, Theory, and Research*, [in:] S.T. Fiske, D.T. Gilbert, G. Lindzey (eds), *Handbook of Social Psychology*, New Jersey: John Wiley & Sons, Inc., 2010, pp. 1122-1165.

⁸³ C.G. Gonzalez, *Environmental Justice and International Environmental Law*, [in:] S. Alam et al. (ed.), *Routledge Handbook of International Environmental Law*, Oxfordshire: Routledge, 2013, pp. 77, 85.

⁸⁴ M. Deutsch, *Equity, Equality, and Need: What Determines Which Value Will Be Used as the Basis of Distributive Justice?*, "Journal of Social Issues" 31, 3, 1975, pp. 137-149.

⁸⁵ T. Rothmund, J.C. Becker, J.T. Jost, *The Psychology of Social Justice in Political Thought and Action*, [in:] C. Sabbagh, M. Schmitt (eds), *Handbook of Social Justice Theory and Research*. Dordrecht: Springer, 2016, pp. 275-291.

Concerning water rights, according to the distributive justice principle, access to water must be equitable for everyone,⁸⁶ as shown by the similarity of the distribution of rights to the water resources.⁸⁷ Additionally, everyone has an equal right to an adequate supply and quality of water to sustain their life.⁸⁸ The right to water entails the following (1) Access to water implies that water resources must be reachable, affordable, and accessible to all; (2) Adequate quality, which implies that water must be safe; (3) A specific quantity, sufficient, and continuous measure for personal and domestic use.⁸⁹ *Procedural justice* is defined as “the right to be treated equally”.⁹⁰ It is a right to be treated equally in decision-making processes on the distribution of commodities and opportunities.⁹¹ It demands that natural resource-related decisions be made democratically, including representation, equity, inclusion, and interaction.⁹² Additionally, procedural justice necessitates involvement in the process of creating a fair result. Water policy must include public involvement, particularly from disadvantaged groups such as the poor, minority, or ethnic minority populations.⁹³

Considering the idea as mentioned earlier of social justice, the issue arose as to whether this concept can be guaranteed under the water privatization policy of the Water Resources Act Number 17/2019. If the Water Resources Act Number 17/2019 is founded on the Pancasila ideology as the State fundamental norm, then social justice as a branch of justice will inspire every State leader to make tremendous efforts to create a fair society. It is a society capable of meeting the basic requirements of every individual. In this instance, social justice under the State’s jurisdiction demands that all members of society have adequate resources

⁸⁶ F. Kartal, *Commodification of Water, Right of Access to Water and Social Justice: Right to Water*, 2010, available at: <https://en.suhakki.org/index.php/2010/07/commodification-of-water-right-of-access-to-water-and-social-justice/> [last accessed 12.11.2021].

⁸⁷ J.G. Tisdell, *supra* note 81, pp. 401-416.

⁸⁸ A. Kallhoff, *Water Justice: A Multilayer Term and Its Role in Cooperation*, “Analyse & Kritik” 36, 2, 2014, pp. 367-382.

⁸⁹ J. Scanlon, A. Cassar, N. Nemes, *Water As A Human Right?*, IUCN, 2004.

⁹⁰ R.R. Kuehn, *A Taxonomy of Environmental Justice*, “Envtl. L. Rep. News & Analysis”, 30, 2000, p. 10681.

⁹¹ R. Dworkin, *Taking Rights Seriously*, Bloomsbury Academic, 2013.

⁹² R.D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality*, Routledge, 2018.

⁹³ J. Rawls, *A Theory of Justice*, Oxford University Press, 1971.

and capability to live fittingly as human beings. Additionally, it is specified that the group of individuals in a privileged position (the privileged classes) accepts responsibility for utilizing their advantages. In summary, if a water privatization licence is granted, it should not be awarded to profit-driven companies, but instead require the State to take a more prominent role in water privatization to achieve 'real' social justice.

While witnessing the privatization of water in Victoria, Australia, the Australian State of Victoria defines the water sector as "government-owned water businesses".⁹⁴ It is reiterated in the 1975 Victorian Constitution Act, which states that "a public body has a responsibility to ensure the provision of a water service".⁹⁵ A 'Public Authority' is defined as a statutory authority, a council, a company whose shares are held by or on behalf of the State, or the head of an agency. Although the Constitution establishes public ownership of water services, it never prohibits the creation of PSPs,⁹⁶ as long as the public authority retains control and is accountable to the Minister.⁹⁷ Additionally, the PSP for Victoria's water sector was established on July 30, 2009, when Melbourne Water (the state-owned bulk water supply company) signed a concession agreement with AquaSure (a consortium comprised of Thiess, Degremont (a subsidiary of Suez), and Macquarie Capital) for the delivery of 150 GL of desalinated water to Victoria.⁹⁸

As previously stated, PSP is a kind of privatization under a more comprehensive meaning. The contract between Melbourne Water and AquaSure illustrates Victoria's water privatization, and it may serve as an example of how the state's laws mitigate the impacts of water privatization. One of the regulatory functions is to guarantee that suppliers

⁹⁴ N. Martin, *Corporatization as a Means of Improving Water Quality: The Experience in Victoria, Australia*, "Journal of Toxicology and Environmental Health", Part A 67, 20-22, 2004, pp. 1889-1899.

⁹⁵ Constitution Act 1975 (Vic).

⁹⁶ M.M. Al'Afghani, *Legal Frameworks for Transparency in Water Utilities Regulation: A Comparative Perspective*, Routledge, 2016.

⁹⁷ Constitution Act 1975 (Vic).

⁹⁸ Partnerships Victoria Project Summary, 2009, available at: <https://www.dtf.vic.gov.au/sites/default/files/2018-01/Project-Summary-for-Victorian-Desalination-Project.pdf>. [last accessed 12.11.2021].

maintain service levels,⁹⁹ including tariffs and protection for disadvantaged populations. This contract is one of the primary reasons why the government controls the price of water services which customers should pay. In Victoria, the Essential Services Commission (Commission)¹⁰⁰ determines the water tariff, considering the costs of regulation, the differences in the operating environments of regulated entities, and the regulated entities' health, safety, ecological sustainability (including water conservation), and social obligations.

When establishing the price of water, the Commission consults stakeholders by issuing consultation papers and soliciting public opinions through its website.¹⁰¹ Additionally, in order to meet the public's demand for drinking water, a water company "must not stop the provision of drinking water to a person only because the person has refused or failed to pay any money owed to the Authority".¹⁰² Victoria Law, based on all of these laws, guarantees social justice in the water sector by ensuring the right to water for personal and household usage and engaging the public in setting water prices. Briefly, Indonesia's decision to adopt water privatization has several unintended effects. First, the rising water tariff will disproportionately impact low- and moderate-income households. Second, the poor will have difficulties obtaining water supply since growth is motivated by financial concerns. Third, the growing environmental issues are caused by the private sector's obsession with profit at the expense of environmental stewardship. As previously stated, the international financial institutions' promotion of water privatization illustrates a convergence of neoliberal and social justice concerns.¹⁰³

⁹⁹ C. Graham, *Regulating Public Utilities: A Constitutional Approach*, Hart Publishing, 2000.

¹⁰⁰ Water Industry Act 1994 (Vic).

¹⁰¹ Essential Services Commission, 2018, available at: <https://www.esc.vic.gov.au/water/water-prices-tariffs-and-special-drainage/water-price-reviews/water-price-review-2018> [last accessed 12.11.2021].

¹⁰² Water Act 1989 (Vic).

¹⁰³ R.H. Wade, *US Hegemony and the World Bank: The Fight over People and Ideas*, "Review of International Political Economy" 9, 2, 2002, pp. 215–243.

3. POSSIBILITIES OF HUMAN RIGHTS VIOLATIONS

Commonly, human rights violations related to water utilization have occurred in extractive industry activities¹⁰⁴, where most licensing of water utilization is used to support business activities. Grant permission for large-scale water utilization for extractive industry activities as stipulated in Article 49 of the Water Resources Act Number 17/2019 is potentially violating the rights of local communities, primarily indigenous peoples. Extractive industry activities that are located near the indigenous people tend to lead to social friction.¹⁰⁵ This friction commonly occurs when corporations keep on the business interests that lead to water pollution problems, and on the other hand, the indigenous peoples fight for the protection of traditional water sources from pollution and destruction. Even though the extractive industry might prefer to separate technical matters such as tailings disposal, groundwater contamination, and other emissions, there is a link between environmental aspects and human rights, the community, the workforce, wealth distribution, indigenous peoples, and other stakeholder concerns.¹⁰⁶

In 2016, the Indonesian National Commission on Human Rights released a report on the impact of a mining licence clearance sale, one of which, ex-mining pits in densely populated areas, left toxic water and heavy metals. Ex-mining pits from five coal mining concessions in Samarinda-East-Borneo were found to have a slight degree of acidity (pH), far below the standard set by the Government. Of all the samples, some of which had a degree of acidity (pH) of 3.2 ppm. (Indonesian Nation-

¹⁰⁴ C. de Albuquerque, *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, 2011, available at: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A_HRC_27_55_ENG.doc [last accessed 12.11.2021]; B.M. Meier et al., *Monitoring the Progressive Realization of the Human Rights to Water and Sanitation: Frontier Analysis as a Basis to Enhance Human Rights Accountability*, [in:] K. Conca, E. Weinthal (eds), *The Oxford Handbook of Water Politics and Policy*, Oxford: Oxford University Press, 2016, pp. 100-120.

¹⁰⁵ R.M. Acuña, *The Politics of Extractive Governance: Indigenous Peoples and Socio-Environmental Conflicts*, "The Extractive Industries and Society" 2, 1, 2015, pp. 85-92.

¹⁰⁶ S.D. Handelsman, *Human Rights in the Minerals Industry*, 2002, p. 106, available at: <https://pubs.iied.org/sites/default/files/pdfs/migrate/G00531.pdf> [last accessed 12.11.2021]; D. Kemp et al., *Mining, Water and Human Rights: Making the Connection*, "Journal of Cleaner Production" 18, 5, 2010, p. 1553-1562.

al Commission on Human Rights, 2016) the Indonesian National Commission on Human Rights concluded that the mining corporation did not fulfill its various obligations that are stipulated mandatory by mining regulations. The mining corporation had generally not obeyed post-mining requirements by not doing environmental restoration, including reclamation. The impact, in addition to causing deaths, also caused environmental pollution, damage to natural structures (environment), damage to the sources of the life of citizens, primarily agricultural land, sources of clean water and air, as well as other matters. Thus, it is evident that there has been a violation of the right to a healthy and sound environment due to coal mining activities in East-Borneo which ignored human rights standards in environmental aspects.

Damage to water quality and water pollution due to extractive industries also occur on Bangka Belitung Island. The mining activities of PT Timah have transformed small lakes that used to be well stocked with fish, and fun places to play for children into miserable disasters. Known as a tin supplier since the 16th century, the Bangka Belitung Island has become an investor paradise in tin mining, where Apple and Samsung producers use tin from Bangka Belitung Island. The 5.6 billion gadgets in the world require 39,200 tons of solder, a third of which is supplied from Bangka Belitung Island.¹⁰⁷ Facts in other areas: as many as 216 villages in the North-Moluccas, undergo mining wastewater pollution. Misfaruddin as head of the Central Statistics Agency (Biro Pusat Statistik) put the amount of water pollution as increased by 370% when compared with the data from 2014.¹⁰⁸ Several reports related to water rights violations committed by extractive industries also oc-

¹⁰⁷ L. Arumingtyas, *Fokus Liputan: Cerita Di Balik Kemilau Timah Bangka-Belitung (Bagian 3) (Focus of Coverage: The Story Behind the Sheen of Bangka-Belitung Tin (Part 3))*, 2018, available at: <https://www.mongabay.co.id/2018/01/18/fokus-liputan-cerita-di-balik-kemilau-timah-bangka-belitung-bagian-3/> [last accessed 12.11.2021].

¹⁰⁸ M.A. Maulidin, S. Satri, *Nasib Pulau-Pulau Kecil Dalam Cengkeraman Tambang (The Fate of the Small Islands in the Clutches of Mine)*, 2019, available at: <https://www.mongabay.co.id/2019/11/26/nasib-pulau-pulau-kecil-dalam-cengkeraman-tambang/> [last accessed 12.11.2021]; A. Fatah, *216 Desa di Maluku Utara Tercemar Limbah Pertambangan (216 Villages in North Maluku Are Polluted by Mining Waste)*, 2018, available at: <https://ambon.antaranews.com/berita/48792/216-desa-di-malut-tercemar-limbah-pertambangan> [last accessed 12.11.2021].

curred in Latin America¹⁰⁹, the United States¹¹⁰, and several other countries. The practical facts previously listed require serious concern from the Indonesian Government through new water regulations when it gives licences for large-scale water utilization. Sometimes, mathematical calculations justify increasing state revenue from licensing water utilization in the extractive industry. Still, it is not proportionate to environmental damage and social impacts on society, primarily for indigenous peoples.

CONCLUSION

The Constitutional Court of Indonesia decided that Water Resources Act Number 7/2004 contradicted Article 33 Indonesian Constitution 1945 and annulled it in 2015. Furthermore, Indonesia has new water regulations under the Water Resources Act Number 17/2019. Empirical evidence has described how the water privatization licence does not encourage the Government to create people's welfare, but on the contrary, the licence triggers water injustice, environmental damage, and human rights violations. If the Indonesian government grants a water privatization licence to a corporation, the Government must take a prominent role in distributing water justice and avoiding the violation of the water rights of society. Besides, Victoria's experience in water resources management can be used for comparison and lessons learned for the new law. One of the essential regulations which can be copied from Victoria is the regulation that stipulates that a water corporation "must not discontinue the supply of drinking water to a person merely because the person has refused or failed to pay any money due to the authority.

¹⁰⁹ D. Aitken et al., *Water Scarcity and the Impact of the Mining and Agricultural Sectors in Chile*, "Sustainability" 8, 2, 2016, p. 128; A. Bebbington, M. Williams, *Water and Mining Conflicts in Peru*, "Mountain Research and Development" 28, 3, 2008, pp. 190-195; P.J.L. Farias, *Brazil: The Evolution of the Law and Politics of Water*, [in:] *The Evolution of the Law and Politics of Water*, Springer, 2009, pp. 69-86.

¹¹⁰ S.A. Northey et al., *Water Footprinting and Mining: Where Are the Limitations and Opportunities?*, "Journal of Cleaner Production" 135, 2016, pp. 1098-1116; M. Hendryx, F. Fulk, A. McGinley, *Public Drinking Water Violations in Mountaintop Coal Mining Areas of West Virginia, USA*, "Water Quality, Exposure and Health" 4, 3, 2012, pp. 169-175.