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Village Autonomy: The Main Road to Fulfill Right to Water

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ABSTRACT

Water resources are common resources that affect the livelihood of many people. Its management should be oriented towards the rights fulfillment to water for the community. However, the management of water resources still shows inconsistency. This results in uncertainty in the rights fulfillment to water for the community. Therefore, a reform in water resources management is needed. Village autonomy can be the foundation for a more community-oriented water rights management, since it contains independence and community initiatives. This research aimed at finding a precise and clear concept in the management of water resources based on village autonomy. This research was conducted using normative juridical, with legislative and doctrinal approaches. The results show that the concept of village autonomy-based water resources management is carried out by accommodating the community's rights on water resources. It aims at providing guidance in the implementation of management that is not only oriented to exploitation, but also consider the aspects of conservation and control of water resources. This conception is expected to be implemented in village communities (not customary village communities) so as to be able to fulfill the rights to water to village communities justly and democratically.

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1. Introduction

The 1945 Constitution of the Republic of Indonesia (hereinafter, "the 1945 Constitution") has mandated that one of the aims of the nation is to promote general welfare. One of the indicators of the welfare achievement is the rights fulfillment to water for the community. Hence, as an effort to accelerate the welfare achievement, autonomy is then carried out, including at the provincial, district, city and village levels. In essence, these autonomy lead to forming the independence to take care of their own household affairs,

with the aim to better accommodate the needs of their people.¹ Particularly, the village autonomy is the original autonomy that becomes the source of the formation of regional autonomy.² The Law No. 6 of 2014 on Villages has provided a basis for directing the development and strengthening of village autonomy. Based on the village autonomy, the village becomes a priority in the effort to achieve independence, which includes managing the water resources.³

For this reason, when village communities exist in the context of a larger political system, understanding of the system of control at the village level requires analysis both of the system of control imposed on the village by the state and also of that which has evolved within the community through centuries of its existence. These two systems, of course, cannot operate altogether independently of each other but must somehow be articulated with one another.⁴ The specific ways in which the two systems articulate differ from society to society.

However, there are still fundamental problems in the context of water resources management. Considering the Law No. 11 of 1974 on Irrigation, it is true that village autonomy has not been accommodated in water resources management. In practice, there are still plenty of privatization and monopoly on water resources by private sector.⁵ Moreover, the Government Regulation No. 121 of 2015 on Water Resources Management still provides the opportunity of water resources monopoly by the private sector. It shows disharmony in the context of legislation, which is Law No. 6 of 2014 that seeks to strengthen village autonomy through water resources management. On the other hand, the institution or agency that is formed to manage the water resources in the village, namely the *Badan Usaha Milik Desa* (hereinafter "village-owned company"), was apparently not in accordance with the aim of Article 33 of the the 1945 Constitution. All of the aforementioned issues illustrate the inconsistency and not well-managed in water resources management. This resulted in the non-fulfillment of the rights to water for the community.

The concept and the position of the village and the village government institutions throughout the history of constitutional development in Indonesia has experienced ups and downs like a roller coaster.⁶ Village autonomy based clearer water resources management planning is needed, in order to fulfill the rights to water for the community. In meaning, this includes social justice and economic democracy; meets the water needs for the community both in quantity, quality, and enhance traditional values to become the basic source of village autonomy and to serve as the basis for a more environmentally friendly management.

¹ Bagir Manan. (1994). *Hubungan Antara Pusat dan Daerah Menurut UUD 1945*. Jakarta: Pustaka Sinar Harapan, p. 21

² Ateng Syafrudin and Suprin Na'a. (2010). *Republik Desa, Pergulatan Hukum Tradisional dan Hukum Modern dalam Desain Otonomi Desa*, Bandung: Alumni, p. 11

³ See Article 90 of Law No. 6 of 2014. Village is prioritized in managing natural resources (including water) through Village Owned Enterprises (BUM Desa), supported by the central, regional and village government.

⁴ Befu, H. (1965). Village Autonomy and Articulation with the State: The Case of Tokugawa Japan. *The Journal of Asian Studies*, 25(1), 19-32. doi:10.2307/2051038

⁵ Andre Widiartanto. (2015). *Air Putih Instan*. Available from: http://www.kompasiana.com/andrewied/air-putih-istan_551764f7813311b2689de10c [Accessed July 14, 2017]. Also read on Iwan. (2015). *Moratorium dan Evaluasi Privatisasi Air di Sukabumi*. Available from: <http://beritapalu.net/2015/08/31/moratorium-dan-evaluasi-privatisasi-air-di-sukabumi/> [Accessed July 14, 2017]

⁶ Phahlevy, R. (2016). The Concept of Village Autonomy in Indonesia (Indonesian Constitution Perspective). *Rechtsidee*, 3(1), 27-40. doi: <http://doi.org/10.21070/jihr.v3i1.151>

In accordance with the background of the problems, this research discusses the development water resources management concept based on village autonomy. The development of this concept aims at opening access and fulfilling the rights to water for the community in accordance with Article 33 of the 1945 Constitution. It is expected that the results of this research can be implemented, especially by the people in the village area.

2. Method

This research is a normative juridical research conducted by examining legal secondary data. There were two approaches used, including the legislative and doctrinal approaches. All of the legal materials collected were analyzed qualitative in juridical way by organizing appropriate arguments.

3. Water Resources Management Based on Village Autonomy

3.1. Examining the Inconsistency of Water Resources Regulation

Water is a part of life and one of the main sources of survival. Approximately, 72% of the Earth consists of water, but only about 3% of which is fresh water. Nearly 1% of the 3% can be utilized by humans.⁷ A Greek philosopher, Thales⁸, claimed that “*the world originated in water and was sustained by water and that the Earth floated on water. Water constitutes everything; everything has its beginning in water, and to water everything returns*”.

Water is public goods that affect the livelihood of many people. There are no living beings, especially human, that can survive without water. Initially, water was considered as renewable goods. This is because there is a hydrological cycle that simply starts from sea water evaporation, cloud formation, precipitation, percolation, and finally ground water flows. However, changes in the demographics and conditions of the Earth affect the hydrological cycle, hence the availability of water resources is not in balance with the needs. As a result, water resources are classified as non-renewable goods.⁹ This issue requires stricter regulation of water resources to maintain its quality and quantity.

Theoretically, water is one of nature's resources. Water resources can be divided into two categories, namely ground water and surface water. Ground water can be divided into shallow ground water and deep ground water. Basically, the classification has its own function for humans. In general, surface water can function as irrigation, while ground water is used to meet the basic needs of water of the community as well as to conserve ground water.

Considering the importance of water in human life, the availability of water should always be maintained, both in terms of quantity and quality. There are three classic problems that often occur in water resources, namely too much, too little, and too dirty.¹⁰ If the water is too much and not accommodated, it can cause flooding. If water is too

⁷ Samsul Wahidin. (2016). *Hukum Sumber Daya Air*. Yogyakarta: Pustaka Pelajar, p. 45.

⁸ Elizabeth Ann McAnally. (2007), *Toward A Philosophy Of Water: Politics Of The Pollution And Damming Along The Ganges River*. Texas: University Of North Texas, p. 4.

⁹ I Nyoman Nurjaya. (2008). *Pengelolaan Sumber Daya Alam Dalam Perspektif Antropologi Hukum*. Jakarta: Prestasi Pustaka Publisher, p. 94.

¹⁰ Robert J. Kodoati and Roestam Sjarief. 2010. *Tata Ruang Air, Pengelolaan Bencana, Pengelolaan Infrastruktur, Penataan Ruang Wilayah, Pengelolaan Lingkungan Hidup*. Yogyakarta: ANDI, p. 28-31.

little, it can cause drought. If the water is too dirty, the water cannot be used and can cause environmental damage. In order to prevent and overcome these problems, it is necessary to have a more sustainable water resources management.

The era advancements have led to the idea that water does not only have a social value, but also economic value. It leads to the understanding that water can be a profitable commercial commodity, even known as "*blue gold*". This contributes to the exploitation of water resources on the basis of liberalism. Such conditions must certainly be controlled, in order to avoid harmful domino effect on the community's access to the rights to water.

Water resources management is an effort to create a balanced condition between human interest and nature. However, water resources management in Indonesia still encounters problems. In general, this problem begins with the inconsistencies in its regulation. This can be seen from its weak management and exploitative implementation. Unfortunately, the aspects of sustainability of water resources are still under-scrutiny and the utilization of water resources for commercialization takes precedence. The nation as a ruling organization has not performed its full function, either in terms of its arrangement or its implementation. As a result, the community's rights to water is violated.

Since Law No. 7 of 2004 has been revoked by the Constitutional Court through the Decree Number 85/PUU-XII/2015, the regulation of water resource management refers back to Law No. 11 of 1974. The imposing of Law No. 11 of 1974 did not automatically wipe out monopoly and privatization of water resources. This means that the revoking the Law No. 7 of 2004 does not stop the implementation of monopoly and privatization of existing water resources in Indonesia. Furthermore, the material in Law No. 11 of 1974 has not fully in accordance with the current developments, for example, in accommodating village autonomy to manage water resources. The presence of village autonomy can actually help in fulfilling the rights to water for the community. Villages, through the governments and community, can collaborate in utilizing water resources in accordance with the needs of the community.

This inconsistency raises uncertainty at the stage of its implementation. For example, in 2015, Tanggulangin and Kebonrejo Villages, Pasuruan Regency, East Java, were considered to be violating the regulation by the district government for managing water resources inappropriately.¹¹ In addition, there was also a village that carried out the exploitation of water resources, namely the Wates Temple village. However, the exploitation undertaken in the said village paid less attention to the aspects of conservation and control.¹² It was certainly detrimental to the community as a subject that benefits from water resources. Thus, the rights to water for the community cannot be realized properly.

3.2. Local Wisdom of Water Resources Management in Customary Village

Law No. 6 of 2014 has provided the legal basis for the existence village and customary village (customary law community). Basically, they both have autonomous rights to organize and manage the household affairs. The second fundamental difference is the strong role of customary law in the customary village.¹³ Local wisdom/traditional value that lives more in customary community seeks to be adopted in the context of water

¹¹ Based on direct conversation with Chief of Village (*Kepala Desa*) in both village.

¹² Based on direct conversation with Chief of Village.

¹³ General explanation (*Penjelasan Umum*) UU No. 6 Tahun 2014.

resources management. This is considering that local wisdom is able to serve as a guideline to maintain water availability in customary village areas. In addition, the adoption is also a means of realizing integrative village/hybrid village¹⁴, which is the village that does not only carry out the government function, but also social function by accommodating local wisdom. This is also in line with the government programs to develop villages.¹⁵

There are two customary villages that can become references related to local wisdom; they are the customary village of Cigugur, West Java and the customary village of Tenganan, Bali. First, the customary village of Sundanese community. Karl A. Witfogel¹⁶ categorized the Sundanese as a hydraulic society. The lives of this society's members are inseparable from water, even the outlook of their lives is formed by their reflection on water. One characteristic that strongly shows the relationship of Sundanese people to water is in the naming of areas. Many areas are given the prefix "ci" in their names. The word "ci" or "cai" in Sundanese means water.¹⁷

Local culture becomes a manifestation of idea and behavior of Cigugur community that highly value ecological wisdom. The local knowledge created by the Cigugur community has the advantage of adapting to the environment, bringing harmony with nature. The ability of the Cigugur community to read the signs of nature becomes strength of the local community.¹⁸ The community has local wisdom in preserving nature by classifying the forest, i.e. *Titipan Forest (Leuweung Titipan)*, *Tutupan Forest (Leuweung Tutupan/Leuweng Geledegan/Leuweng Kolot)* and *Garapan Forest (Leuweung Garapan/Leuweng Sampalan)*. The classification can also be considered as a spatial arrangement.¹⁹

Leuweung Tutupan is a reserved area. It also serves as a water catchment area; therefore, this area is a water supply area for people with springs or *cainyusu* in it. *Leuweung Titipan* is a forest that should not be disturbed or opened because it is considered sacred. This area should not be exploited at all. There is also a source of water that is considered sacred. *Leuweung Garapan* is an area that can be managed by indigenous peoples widely. The forest can be cultivated and utilized as widely as possible, but still within the customs' rules. There are also water resources that can be managed by the community. To drain water from the water source, plastic pipe or bamboo were used. The quality of the running water is also very good, clear and clean.²⁰ The utilization of the water source is also limited. It is reinforced by customary rules and sanctions, also known as the *pamali* culture.

¹⁴ Moch. Solekhan. (2012). *Penyelenggaraan Pemerintahan Desa Berbasis Partisipasi Masyarakat dalam Membangun Mekanisme Akuntabilitas*. Malang: Setara Press, p. 56-57.

¹⁵ Kementerian Desa, Pembangunan Daerah Tertinggal dan Transmigrasi RI. (2015). *Regulasi Baru, Desa Baru (Ide, Misi dan Semagant Undang-Undang Desa)*. Jakarta: KEMEN Desa PDR RI, p. 45.

¹⁶ As quoted from Abdul Holik. (2009). *Filsafat Dan Mitos-Mitos Air Dalam Diskursus Bencana: Tinjauan Khusus Budaya Sunda*. Unpublished Article, p. 3.

¹⁷ *Ibid.*

¹⁸ Mina Holilah. (2015). "Kearifan Ekologis Budaya Lokal Masyarakat Adat Cigugur Sebagai Sumber Belajar IPS". *Jurnal Pendidikan Ilmu Sosial*, 24: 2, op. 162-180.

¹⁹ *Ibid.*, p. 172-173. Also read on Astatin Fitriani (et.al.). (2009). "Pengaruh Modernisasi Dalam Kearifan Lokal Pengelolaan Sumberdaya Alam (Studi Kasus : Kasepuhan Cipta Mulya, Desa Sirna Resmi, Kecamatan Cisolok, Kabupaten Sukabumi, Provinsi Jawa Barat)". *Article*. Bogor: Institut Pertanian Bogor, p. 10.

²⁰ *Ibid.*, p. 175

Second, Tenganan customary village is one of the *pakraman* villages (customary villages) in Bali that still preserve their customs, especially in water resources management.²¹ Subak system is a model used by *pakraman* village to manage water resources. Subak is the oldest inheritance of indigenous people of Bali that continues to be used until now. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has established Subak as a world cultural heritage.²²

Basically, Subak is a customary community organization/institution that deals with irrigation. The purpose of the establishment of Subak is to manage water resources and make a fair and equitable distribution for the members of the community. Subak in Tenganan customary village led by a *pekaseh* or *klian subak*, accompanied by a maid called *bawong sanak*. *Bawong sanak* is directly involved in managing water resources, such as arranging the distribution of water.²³

The existence of Subak is rooted from the conception of *Tri Hita Karana*. According to the definition, *Tri Hita Karana* is the three causes of welfare in human life. The meaning is taken from each word, which is *Tri* that means three, *Hita* that means prosperous and *Karana* that means cause. The people of Bali believe that the implementation of *Tri Hita Karana* has the value for the balance of life, as in the teachings of Hinduism. There are three important elements contained in *Tri Hita Karana*, associated with Subak, they are:²⁴

- a. *Parahyangan* is a harmonious relationship between human and God. Each subak has its own temple called Pura Subak/Pura *Ulun Carik*, Pura *Bedugul*/Pura *Ulun Empelan* or others with different names, as an element of Divinity in subak.
- b. *Pawongan* is a harmonious relationship between humans. Subak has a member called *krama subak* or in some places called *krama carik* as a social element.
- c. *Palemahan* is a harmonious relationship between human and nature and the environment. Subak regulates and controls water use; refrain from doing massive exploitation.

The utilization of water resources with Subak is done wisely. The prioritized water resources to be used are surface water such as rivers, lakes or dams, especially for agricultural purposes. The distribution of water for each Subak depends on the size of the river flow throughout the year. If water demand in one Subak environment is not sufficient, then it is possible to borrow water from another Subak.²⁵

3.3. Village Autonomy in Water Resources Management Perspective

The term autonomy comes from a fragment of two Greek words, *autos* that means "self" and *nomos* that means "rule/law". Therefore, it can be concluded that the meaning of autonomy is the making of its own rules/law.²⁶ In its development, autonomy is not

²¹ Made Sudita and Made Antara. (2008). "Nilai Sosial-Ekonomi Air Di Kawasan Pura Tirta Empul Desa Manukaya, Kabupaten Gianyar, Bali: Suatu Pendekatan Ekonomi Lingkungan". Article. Bali: Universitas Udayana, p. 4.

²² UNESCO. (2012). *Cultural Landscape of Bali Province: the Subak System as a Manifestation of the Tri Hita Karana Philosophy*. Available from: <http://whc.unesco.org/en/list/1194/>. [Accessed April 03, 2017]

²³ Imamulhadi. (2016). *Hukum Lingkungan Alternatif Hukum Lingkungan Adat, Hukum Lingkungan Islam*. Yogyakarta: K-Media, p. 69-71.

²⁴ Ni Putu Ika Nopitasari and Suatra Putrawan. (2013). "Konsep Tri Hita Karana Dalam Subak", Article, Bali: Fakultas Hukum Universitas Udayana, p. 4-5.

²⁵ Imamulhadi. (2016). *Hukum Lingkungan...Op.Cit.*, hlm. 75.

²⁶ Ni'matul Huda. (2015). *Hukum Pemerintahan Desa Dalam Konstitusi Indonesia Sejak Kemerdekaan Hingga Era Reformasi*. Malang: Setara Press, p. 46.

only limited to making its own rules. Autonomy also includes self-government, or running its own household (*eigen huisouding*).²⁷

The term village autonomy was coined by the Dutch during the Dutch East Indies era. This term emerged after studying the life of people in Indonesian villages that are able to live independently on the basis of community initiatives.²⁸ Historically, prior to the existence of the Unitary State of the Republic of Indonesia (NKRI), villages have been able to manage natural resources in their areas to meet their living needs, especially through water resources.²⁹ However, along with regulatory developments in Indonesia, villages have limited access to water resources management, so they become marginalized. This resulted in the people not being able to access their rights to water.

As a matter of fact, considering the basic philosophy of village autonomy, village autonomy can be a bridge in the fulfillment of the rights to water while maintaining the availability of water resources. First, village autonomy is the driving force behind the fulfillment of the rights to water. Village is the smallest unit within the framework of *Negara Kesatuan Republik Indonesia* (Indonesia Republic). Village members have the characteristic to build emotional closeness between them, even knowing the environmental conditions in their area, especially with regard to water resources. This is what can be used to make the village as a vanguard in the fulfillment of the rights to water for the community. This is in line with Lindsay Knight,³⁰ that addressed:

“Local governments are often at the front line in providing water and sanitation services. They are frequently given responsibility by national governments to ensure access to these services as well as the power to determine who receives the services, and under what conditions”.

The autonomous rights attached to village should make the village self-reliant. Autonomy is not just a complement. There must be a consistency to strengthen village autonomy in managing water resources. The nation, as the supreme power organization, ideally should not just authorize the village, but rather grant the village recognition to the management of water resources based on their autonomous rights. Basically, village autonomy is based on community initiatives/community rights reflected in the bonds of community and community.³¹ Placing village autonomy as the basis for water resources management means opening the opportunity for the community to take part in management activities; understanding water resources management activities as a shared authority among stakeholders; and becoming a joint venture based on shared value, shared vision and shared missions. This is also in line with the opinion of George C. Homans³², who suggested that *“for all the actions that people take, the more likely a person will do it”*.

Above all, traditional values living in village members can be adopted to be fundamental foundation in a more environmentally friendly management. Village autonomy cannot be separated from traditional values (local wisdom). It becomes a character attached to the village. However, traditional values are more strongly implemented by customary

²⁷ M. Laica Marzuki. (2006). *Berjalan-jalan di Ranah Hukum Edisi Revisi*. Jakarta: Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi RI, p. 161.

²⁸ Soetardjo Kartohadikoesoemo. (1965). *Desa*. Bandung: Sumur, p.212-214.

²⁹ Bayu Surianingrat. (1981). *Pemerintahan dan Administrasi Desa*. Jakarta: Aksara Baru, p. 13.

³⁰ Lindsay Knight. (2003). *The Rights to Water*. France: World Health Organization, p. 33.

³¹ Soetardjo Kartohadikoesoemo. (1965). *Desa... ,Op.Cit*, p. 30.

³² As quoted from Tumpal P. Saragi. (2006). *Mewujudkan Otonomi Masyarakat Desa Alternatif Pemberdayaan Desa*, Yogyakarta: IRE Press, p. 49.

community (customary village). Nevertheless, traditional values can be adopted to develop water resources management concepts that are not based on exploitation only. The traditional values teach people to appreciate water resources as a gift from The Creator. Human beings are required to disregard their own interest in benefiting from water resources. So far, these traditional values can serve as guidelines for maintaining harmony between humans and water resources, for example those in customary village of Cigugur, West Java and the customary village of Tenganan, Bali.

The existence of Law No. of 2014 has actually revoked the spirit to strengthen village autonomy in managing water resources. That is, Law No. 6 of 2014 seeks to provide a legal basis in water resources management that is more oriented towards the fulfillment of the rights to water of the community through village autonomy. Based on the village autonomy, villages are the priority in water resources management. This can be known from the provisions of Article 90 of Law No. 6 of 2014 that, through *Badan Usaha Milik Desa* (village-owned company) institutions, villages are prioritized to manage natural resources with the support of the central government, local government and village government.

3.4. Legal Construction of Water Resources Management to Achieve the Rights to Water

The rights to water for human beings is a very fundamental and is a part of human rights. No one can prevent a person from enjoying water for his/her life needs (non-excludability)³³, especially since water is a common heritage of mankind. The rights to water is a basic right to the fulfillment of water resources, including its quantity, quality and access to obtain adequate water and to utilize it to meet human's basic needs.³⁴ Suteki³⁵ also explains that the rights to water is a fundamental right for human life.

In today's modern perspective, the rights to water can be understood as the rights to water use and the rights to water business. The rights to water use is the rights for people to get their basic needs of water fulfilled, and that rights should be prioritized. The rights to water business is the rights to cultivate and profit materially from water. This rights is secondary, meaning that it can be obtained if the rights to water use is met. Basically, the community as the beneficiary subject of water has the rights to obtain both in the ³⁶context of the rights to water. However, it should still consider the potential of water resources in the area. There are three basic references in relation to the rights to water, namely:

- a. The duty on respect rights to water;
- b. Prevention against third party exploiting water;
- c. Ensure the fulfillment of the rights to water.

Through village autonomy-based water resources management, access to the fulfillment of the rights to water in a just and democratic way can be provided. The management of water resources here refers to the planning, implementation, monitoring and evaluation

³³ Matthew Kotchen, "Public Goods", on J. Whitehead and T. Haab (eds.). (2012). *Environmental and Natural Resource Economics: An Encyclopedia*. Santa Barbara: ABC-CLIO Inc, p. 2.

³⁴ Samsul Wahidin. (2016). *Hukum Sumber Daya Air*. Yogyakarta: Pustaka Pelajar, p. 32.

³⁵ Suteki. (2010). *Rekonstruksi Politik Hukum Hak Atas Air Pro-Rakyat*. Malang: Surya Pena Gemilang, p. 3.

³⁶ Mellina Williams. (2007). "Privatization and The Human Rights to Water: Challenges for The New Century," *Michigan Journal of International Law* 28: 469, p. 475-491.

of the implementation of water resources conservation, water resources utilization and water damages control.³⁷

The water resources that can be managed by villages are limited to shallow ground water and surface water. It also needs to be controlled with the use of water discharge. At this stage, it is necessary to coordinate with the local government, both provincial and district/city governments. This coordination is important to build a synergy between local government and village. In line with the development of village autonomy, a consistency is needed in strengthening village autonomy in water resources management.

In general, water resources management based on village autonomy can be illustrated as follows:

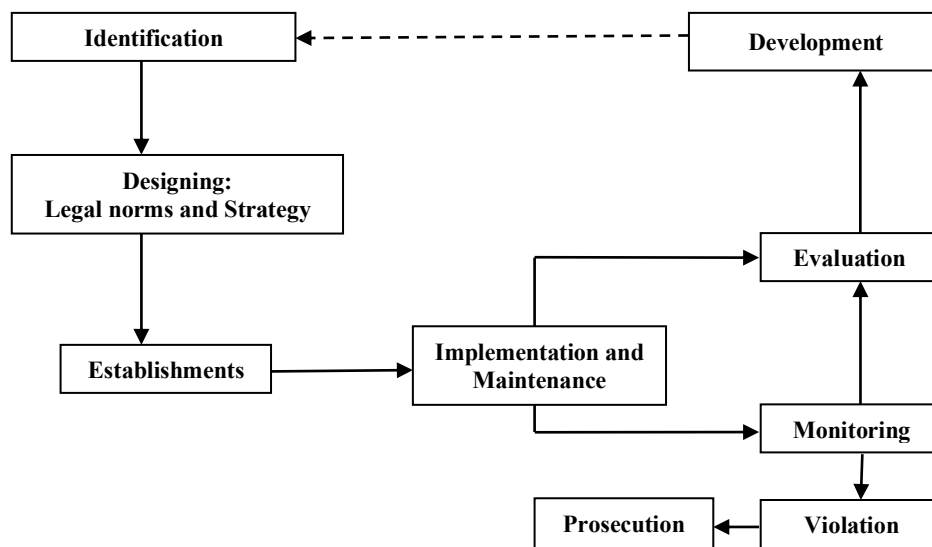


Figure 1. Main flow of water resources management based on village autonomy chart

The process of identification is done to identify the potential of water resources and the community needs. The designing process consists of two aspects, which are designing the legal regulations and designing the strategy of water resources management. The formation of village regulations serves as a legal basis in managing water resources. Strategies are developed by involving the community. The community can make suggestions in developing the management strategies. Next, the supervision aims at seeing the progress of the management implementation. Lastly, evaluation is needed to identify what has been achieved and what to consider for further development. Basically, water resources management is developed by focusing on the community's rights and initiatives on water resources. This is considering that the village autonomy philosophically includes the rights/initiatives of the community. In addition, water as public goods must be managed together by a community based on a kinship basis. That is why an institution is needed to accommodate the rights of the people to a just water resource.

³⁷ Takdir Rahmadi. (2015). *Hukum Lingkungan di Indonesia Edisi Kedua*. Jakarta: Rajawali Pers, p. 196-197.

According to the provisions of Article 90 of Law No. 6 of 2014, the institution that can manage water resources in village area is village-owned company. Upon deeper analysis, the village-owned company is apparently not in line with Article 33, especially in paragraph of (1) the 1945 Constitution, as well as the characteristics of the village community, which are both based on kinship and mutual cooperation. The basic philosophy of village-owned company formation is rooted in capitalism. The more one invests one's capital; they will have control over the village-owned company. Only the investors can determine the development and decision-making. This issue has the potential to lead to liberalism-oriented water resources management. On the other hand, it will also impact on the lack of ownership of the community in the village environment over the water resources in the area. In line with the description, according to Yustika³⁸, "there is a tendency of dominance from the big investors, which resulted in the failure of village-owned company mission as a social agent".

Based on Article 33 of the the 1945 Constitution, particularly in paragraph (1), it is better if water resources are managed through cooperative institutions, in which case the Village Unit Cooperative (*Koperasi Unit Desa-KUD*). The idea of Indonesian cooperatives is to create a collective Indonesian society, which rooted in indigenous Indonesian customs (mutual cooperation and discussion) in accordance with modern conditions. The spirit of collectivism is revived through cooperatives that prioritize the kinship atmosphere.³⁹ The existence of these philosophical foundations, certainly can spur public participation in water resources management activities. Every member of the community, especially the members of the cooperatives, has a stronger sense of belonging.

So far, the existence of cooperative as an economy driving force institution becomes increasingly marginalized. Since the development of village-owned company, the existence of cooperatives in the village area is given less attention, especially with the program of *Nawa Kerja Kementerian Desa (9 Working Elements of Village Ministry)*, Development of Underdeveloped Areas and Transmigration that prioritize the development of the village-owned company.⁴⁰ It is clear that *KUD* (Village Unit Cooperative) is used more for the purpose of savings, loans and agriculture.⁴¹ While in fact, when looking at Presidential Decree No. 4/1984 on the Development of Village Unit Cooperatives, cooperatives can play a wider role, especially in terms of water resources management.

Ideally, in a village area, there has to be only one body that can fully undertake water resources management activities. This is to avoid dualism that leads to management conflict. Village Unit Cooperatives should serve as an institution that accommodates people's rights. The establishment of the Village Unit Cooperatives is driven by the village community initiatives. Then followed by the establishment of water resources management unit, which is hierarchically included in the Village Unit Cooperatives

³⁸ Dirjen Pembangunan dan Pemberdayaan Masyarakat Desa (PPMD). Kemendes PDIT yang disampaikan dalam Marcel Rombe Baan (ed.). (2016). *Kemendes Khawatirkan Jika Bumdes dalam Bentuk PT*. Available from: <http://www.netralnews.com/news/kesra/read/35450/kemendes.khawatirkan.jika.bumdes.dalam.bentuk.pt>. [Accessed July 10, 2017]

³⁹ Mohammad Hatta. (2015). *Politik, Kebangsaan, Ekonomi (1926-1977)*. Jakarta: Kompas, p. 475.

⁴⁰ Ahmad Sofyan (ed.). (2015). *Nasib Koperasi Pascakelahiran BUMDes*. Available from: <http://www.keuangandes.com/2015/04/nasib-koperasi-pascakelahiran-bumdes/>. [Accessed July 10, 2017]

⁴¹ Adhitya Himawan. (2016). *LSP2I: Koperasi di Indonesia Saat Ini Hidup Enggan Mati Tak Mau*. Available from: <http://www.suara.com/bisnis/2016/05/21/020000/lsp2i-koperasi-di-indonesia-saat-ini-hidup-enggan-mati-tak-mau>. [Accessed July 11, 2017].

structure. The water resources management unit consists of several divisions, namely the conservation division, utilization division and the control division. Each division has their respective roles as the name implies.

Consequently, there are some important points on the existence of cooperative as the institution that manages water resources in the village. Cooperative better represents economic democracy and social justice. This is clearly in line with Article 33 of the 1945 Constitution, which is based on togetherness and kinship. It is also important to remember that water is a common resource. Community participation in managing water resources can be accommodated appropriately. This is in line with the conception of village autonomy, which emphasizes community initiatives and activities. The community can participate in the process of planning and decision-making, implementation, results utilization, and evaluation.

“Participatory on rural development, should emphasize local organizations, which can better listen to inputs from village communities and enable village involvement in rural development programs.”⁴²

Each member of the cooperative has a sense of joint-ownership. The community members benefit equally, both to meet their basic needs and the economic benefits of water (if potential). This encourages the community to always ensure the availability of water resources in their area.

Village Unit Cooperatives as community forum also participates in implementing three interlocked basic activities of management, which are the conservation, utilization and control of water resources. Although Village Unit Cooperatives is a profit institution, it does not mean that the Village Unit Cooperatives only runs water resources business activities, because it will make Village Unit Cooperatives as an exploitative institution for water resources. Firstly, regarding conservation, it is an effort to maintain the existence and sustainability of the condition, nature and function of water resources in order for it to always be available in sufficient quantity and quality to meet the needs of the living beings, both in the present and in the future. This can be started by mapping the territory to determine the conservation zone. This action can resemble the local wisdom of Cigugur customary village that divides their territory in three parts. In addition to taking into account the provisions of Law No. 26 of 2007 on Spatial Planning, particularly in Article 3 and Article 48 paragraph (1). As a part of conservation actions, it should also be emphasized that everyone who uses water should also respect other people's rights to water. The utilization of water resources should not be too free.

Secondly, regarding the utilization, it is an optimal stewardship, supply, utilization, development and business of water resources in order to be effective and efficient. This activity prioritizes the rights to water in the sense of fulfilling the basic needs of the community. Water is distributed to every citizen's house and public facilities using the shallow ground water. If there is more potential for water resources in the village area, either the shallow ground water or surface water, it can be used for other needs, such as water for sale, tourism or power plant. This activity should still pay attention to the conservation aspect.

Thirdly, regarding control, it is a precautionary, prevention and recovery measures of environmental damage caused by water. These control activities can be divided into

⁴² Norman Uphoff *et. al.* (1979). *Feasibility and Application of Rural Development Participation*. New York: Cornell University, p. 28.

physical and non-physical actions. Physical actions include building infrastructure, such as embankments or dam, which serves as a water reserve, also planting trees as a catchment and water recovery. Non-physical actions can be implemented through training and supervision. Supervision is directed primarily to the utilization activities, which include the pre-implementation, implementation and post-implementation of the utilization activities. This also emphasizes self-purification of the water being used.

Above all, as a government institution, there are three fundamental things that can be done by the village government to support the implementation and maintenance of water resources management in the village through the Village Unit Cooperatives. First, village government can set village regulations; providing a legal basis on the nature of water resources in the village and on the guidelines for managing water resources in the village. The village government can also establish village regulations that reinforce the village identity as an autonomous entity of the community. The village government is not merely carrying out administrative functions, but also collaborating with community to strengthen village autonomy, especially in water resources management.

Second, the village government, through an agreement with Village Unit Cooperatives, can undertake capital participation to develop a water resources management unit. The capital collected by the village government can come from separated assets. Profits derived from the capital participation can be put in the village revenues (*Pendapatan Asli Desa*-PAD) and become village funds. The funds can be allocated for village development.

Third, from the structural point of view, it is necessary to strengthen the existence of village water regulator (*ulu-ulu*). Today, the existence of village water regulators, which is part of the village apparatus, is not much empowered. The role of water regulators is getting weaker, especially when village autonomy is increasingly marginalized in terms of water resources management. The existence of this water regulator even frequently eliminated.⁴³ The authority of water resources management in the village can be a way to reinforce the role of village water regulator. Some of the basic roles of the village water regulator include managing agricultural irrigation, mediating water resources-related conflicts and providing recommendations on the use of water resources.

4. Conclusion

The concept and the position of the village and the village government institutions throughout the history of constitutional development in Indonesia has experienced ups and downs. However, the concept of village autonomy-based water resources management is carried out by accommodating the community's rights on water resources, in accordance with the aims of Article 33 of the 1945 Constitution. The accommodating institution is the Village Unit Cooperative, which philosophically rooted in kinship and mutual cooperation. This conception is also adopted from local wisdom among customary village communities. It aims at providing guidance in the implementation of management that is not only oriented to exploitation, but also take into account the aspects of conservation and control of water resources. This conception is expected to be implemented in village communities (not customary village communities) so as to be able to fulfill the rights to water to village communities justly and democratically.

⁴³ Didik G. Suharto. (2016). *Membangun Kemandirian Desa (Perbandingan UU No. 5/1979, UU No. 22/1999 & UU No. 32/2004 serta Perspektif UU No. 6/2014)*. Yogyakarta: Pustaka Pelajar, p. 17-18.

Support from Central Government, Local Government, and Village Government are also needed to strengthen village autonomy as a basis for water resources management. The establishment of legislation that is more supportive of the implementation of such management is needed as a formal legal basis. A training is also needed to achieve independence for villages to manage water resources. Structuring the village administration can be done by reinforcing the role of village *ulu-ulu* (water regulator) in the village area.

References

- Ann McAnally, E. (2007), *Toward A Philosophy Of Water: Politics Of The Pollution And Damming Along The Ganges River*. Texas: University of North Texas.
- Baan, M.R., (ed.). (2016). *Kemendes Khawatirkan Jika Bumdes dalam Bentuk PT*. Available from: <http://www.netralnews.com/news/kesra/read/35450>, Kemendes khawatir jika Bumdes dalam bentuk PT. [Accessed July 10, 2017].
- Befu, H. (1965). Village Autonomy and Articulation with the State: The Case of Tokugawa Japan. *The Journal of Asian Studies*, 25(1), 19-32. doi: 10.2307/2051038
- Fitriani, A. et. al. (2009). "Pengaruh Modernisasi Dalam Kearifan Lokal Pengelolaan Sumberdaya Alam (Studi Kasus : Kasepuhan Cipta Mulya, Desa Sirna Resmi, Kecamatan Cisolok, Kabupaten Sukabumi, Provinsi Jawa Barat)". *Article*. Bogor: Institut Pertanian Bogor.
- Hatta, M. (2014). *Kedaulatan Rakyat, Otonomi & Demokrasi*. Bantul: Kreasi Wacana.
- Hatta, M. (2015). *Politik, Kebangsaan, Ekonomi (1926-1977)*. Jakarta: Kompas.
- Himawan, A. (2016). *LSP2I: Koperasi di Indonesia Saat Ini Hidup Enggan Mati Tak Mau*. Available from: <http://www.suara.com/bisnis/2016/05/21/020000/lsp2i-koperasi-di-indonesia-saat-ini-hidup-enggan-mati-tak-mau>. [Accessed July 11, 2017].
- Holik, A. (2009). *Filsafat Dan Mitos-Mitos Air Dalam Diskursus Bencana: Tinjauan Khusus Budaya Sunda*. Unpublished Article.
- Holilah, M. (2015). "Kearifan Ekologis Budaya Lokal Masyarakat Adat Cigugur Sebagai Sumber Belajar IPS". *Jurnal Pendidikan Ilmu Sosial*. Bogor: Institut Pertanian Bogor.
- Huda, H. (2015). *Hukum Pemerintahan Desa Dalam Konstitusi Indonesia Sejak Kemerdekaan Hingga Era Reformasi*. Malang: Setara Press.
- Imamulhadi. (2016). *Hukum Lingkungan Alternatif Hukum Lingkungan Adat, Hukum Lingkungan Islam*. Yogyakarta: K-Media.
- Iwan. (2015). *Moratorium dan Evaluasi Privatisasi Air di Sukabumi*. Available from: <http://beritapalu.net/2015/08/31/moratorium-dan-evaluasi-privatisasi-air-di-sukabumi/> [Accessed July 14, 2017].
- Kartohadikoesoemo, S. (1965). *Desa*. Bandung: Sumur Bandung.
- Kementerian Desa, Pembangunan Daerah Tertinggal dan Transmigrasi RI. (2015). *Regulasi Baru, Desa Baru (Ide, Misi dan Semangat Undang-Undang Desa)*. Jakarta: KEMEN Desa PDR RI.
- Knight, L. (2003). *The Rights to Water*. France: World Health Organization.

- Manan, B. (1994). *Hubungan Antara Pusat dan Daerah Menurut UUD 1945*. Jakarta: Pustaka Sinar Harapan.
- Marzuki, M.L. (2006). *Berjalan-jalan di Ranah Hukum Edisi Revisi*. Jakarta: Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi RI.
- Nopitasari, N.P.I., and Putrawan, S. (2013). "Konsep Tri Hita Karana Dalam Subak", *Article*, Bali: Fakultas Hukum Universitas Udayana.
- Nurjaya, I.N. (2008). *Pengelolaan Sumber Daya Alam Dalam Perspektif Antropologi Hukum*. Jakarta: Prestasi Pustaka Publisher.
- Phahlevy, R. (2016). The Concept of Village Autonomy in Indonesia (Indonesian Constitution Perspective). *Rechtsidee*, 3(1), 27-40. doi: <http://doi.org/10.21070/jihr.v3i1.151>
- Rahmadi, T. (2015). *Hukum Lingkungan di Indonesia Edisi Kedua*. Jakarta: Rajawali Pers.
- Robert J.K., and Sjarief, R. 2010. *Tata Ruang Air, Pengelolaan Bencana, Pengelolaan Infrastruktur, Penataan Ruang Wilayah, Pengelolaan Lingkungan Hidup*. Yogyakarta: Andi.
- Saragi, T.P. (2006). *Mewujudkan Otonomi Masyarakat Desa Alternatif Pemberdayaan Desa*, Yogyakarta: IRE Press.
- Sofyan, A., (ed.). (2015). *Nasib Koperasi Pascakelahiran BUMDes*. Available from: <http://www.keuangandes.com/2015/04/nasib-koperasi-pascakelahiran-bumdes/>. [Accessed July 10, 2017].
- Solekhan, M. (2012). *Penyelenggaraan Pemerintahan Desa Berbasis Partisipasi Masyarakat dalam Membangun Mekanisme Akuntabilitas*. Malang: Setara Press.
- Sudita, M., and Antara, M. (2008). "Nilai Sosial-Ekonomi Air Di Kawasan Pura Tirta Empul Desa Manukaya, Kabupaten Gianyar, Bali: Suatu Pendekatan Ekonomi Lingkungan". *Article*. Bali: Universitas Udayana.
- Suharto, D.G. (2016). *Membangun Kemandirian Desa (Perbandingan UU No. 5/1979, UU No. 22/1999 & UU No. 32/2004 serta Perspektif UU No. 6/2014)*. Yogyakarta: Pustaka Pelajar.
- Surianingrat, B. (1981). *Pemerintahan dan Administrasi Desa*. Jakarta: Aksara Baru.
- Suteki. (2010). *Rekonstruksi Politik Hukum Hak Atas Air Pro-Rakyat*. Malang: Surya Pena Gemilang.
- Syafrudin, A., and Na'a, S. (2010). *Republik Desa, Pergulatan Hukum Tradisional dan Hukum Modern dalam Desain Otonomi Desa*, Bandung: Alumni.
- UNESCO. (2012). *Cultural Landscape of Bali Province: the Subak System as a Manifestation of the Tri Hita Karana Philosophy*. Available from: <http://whc.unesco.org/en/list/1194/>. [Accessed April 03, 2017]
- Uphoff, N., (et.al.). (1979). *Feasibility and Application of Rural Development Participation*, New York: Cornel University.
- Wahidin, S. (2016). *Hukum Sumber Daya Air*. Yogyakarta: Pustaka Pelajar.
- Whitehead, J., and Haab, T (eds.). (2012). *Environmental and Natural Resource Economics: An Encyclopedia*. Santa Barbara: ABC-CLIO Inc.

- Widiartanto, A. (2015). *Air Putih Instan*. Available from: http://www.kompasiana.com/andrewied/air-putihinstan_551764f7813311b2689de10c [Accessed July 14, 2017].
- Williams, M. (2007). "Privatization and The Human Rights to Water: Challenges for The New Century," *Michigan Journal of International Law* 28. Ann Arbor: University of Michigan.
- World Meteorological Organization. (1992). *International Conference on Water and Environment: Development Issues for the 21th Century-The Dublin Statement and The Report of The Conference*. Geneva.