

State Liability to Fulfillment of Water Rights In Improving Public Health Degrees

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Abstract: This research identifies the principles of State Liability for the fulfillment of the Water Rights in improving the public health degree and analyzes the State Liability under the principles of water rights, under human rights law and the concept of public health. The results of research indicate that as an independent right, the right to water is expressly recognized in international law and implied by the 1945 Constitution of The Republic Of Indonesia, so that this right is a real and concrete legal right. States liability for the fulfillment of the right to water and specifically for the fulfillment of the minimum water level of the right to water is a non derogable right so that the state is liability. The right to water is ambiguous, has links to the right to health and the right to life. By the nature of the ambiguity, this right has a strong legal position. Indonesia has ratified the International Covenant on Economic, Social and Cultural Right (ICESCR) and accepted the United Nations (UN) Declaration on the right to water and sanitation, thus assuming responsibility for implementing the principles of water rights. Countries may be sued by courts for human rights violations of water because by law materially the right to water has been accepted as an international customary law. Violations of international law are not limited to the most serious human rights violations, but also include human rights violations in all sectors of life of the international community.

Keywords: State Liability; Water Rights; Public Health Degrees

1. Introduction

Water is the principal of human life. If this asset is reduced or exhausted, then human beings can not live its life certainly. This logical basis brings with mind and attitude in positioning water as the main resource. Population growth is characterized by increasing economic activity of the community, giving a significant effect on the availability of clean water around 844 million people in the world that still lack of drinking water services.¹ Nearly one billion people do not have access to basic water supplies, and 1.5 million children under five die each year from diseases related to unsafe water conditions and about 2.6 billion people in the world can not access proper sanitation (World Bank 2013).²

¹ UNICEF and WHO. (2017). Progress on Drinking Water, Sanitation and Hygiene. Update and SDG Baseline. Jenewa. Swiss

² Salman, S.M.A. (2014). "The Human Right to Water and Sanitation: Is The Obligation Deliverable?". *Water International*, Vol 39. No. 7: 969-982

Legal protection for water is essential because the water is public goods which are fundamental to life and health.³ Although the water has great benefit, we must be realized that the water supply is decreasing and thinning. It is undeniable that except for water as a source of life, water has also become a commodity economic center, borrowing the term Bronwen Morgan, both contrary radically, water as an economic good and water as a human right.⁴

The United Nations Children's Fund (UNICEF) estimates that the total under-five children mortality caused by diarrhea, more than 90 percent of these deaths are caused by unsafe or improper water use, poor sanitation, and insufficient supporting facilities. The availability of drinking water, sanitation, and facilities is a parameter in determining the health status of the population as in Indonesia.⁵

As a result of water deficiency, some diseases suffered by humans are caused by water conditions that contain pathogenic bacteria, which become the transmission of diseases such as cholera, typhoid, liver infection, bacillary dysentery, amoebic dysentery, polio, giardiasis, and cryptosporidiosis. Scientific studies suggest that this 77% reduction in morbidity can be achieved by improving the conditions and accessibility of drinking water and sanitation.⁶

Conditions in the world in which some groups of people are victimized by the availability of problematic water supply, women in many communities have lower status than men. This prevents women from obtaining their rights in education, for employment and other human rights.

Inadequate water conditions increase the chances of children suffering from malnutrition and disease. Their immune system is not yet fully awakened. Children also often share tasks with women as water collectors. As a result in many countries many children are not in school. This fact indicates a neglect of the right to education and health in children. The clean water factor causes the root of the problem.

The United Nations Development Program (UNDP)⁷ states that "a fifth of the population of developing countries suffered from hunger every night, a quarter has difficulty meeting very basic needs like clean drinking water, and one-third live in a very poor country with the number of people who live in poverty." The poor, among the affected groups, are the most miserable.

In Indonesia itself are estimated, most of the rivers, contaminated with various wastes, ranging from organic materials to coliform bacteria and fecal coli that causes diarrhea. Based on Ministry of Health, generally the hospitals in Indonesia have cases of hospitalized diarrhea is the highest disease that causes death. Uneven distribution of water also contributes to this problem.

³ Paragraph 1. General Comment No 15, The Water Rights, 2002

⁴ Morgan, B. (2004). "The Regulatory face of The Human Rights to Water". Journal of Water Law, Vol 15: 179-187

⁵ WASHplus. (2013). Integrating water, Sanitation and Hygiene into Nutrition Programming. USAID. Washington, USA.

⁶ Andries, L. (2008). Effects of water Quality to Public Health, Water Quality of Trainers, UNESCO – IHE, Manado, November (2008), Page 17-22.

⁷ International Covenant on Economic, Social and Cultural Rights (Fact Sheets No. 1 Revision 1) page 2

Based on the results of micro biological water quality inspection of PDAM's (Indonesian's Water Company) drinking water in disrtribusi channel in 2013, it shows from 384 number of PDAMs in Indonesia only 23 PDAMs meet micro biological requirements.⁸

Approximately 119 million Indonesians do not yet have access to clean water. While those with access most get clean water from water supply, community water business and deep water wells. This situation seems ironic, considering Indonesia is included in 10 countries rich in freshwater resources. Household proposals based on the type of provincial drinking water source, according to 2013 Basic Health Research, 11.9% of people using tap water and 1.6% of the population use retail / retail tap water. The results of this research show only 13.6% nationally population who get safe water services.⁹

The Government of Indonesia Year 2005 has ratified two important international covenants, namely the International Covenant on Civil and Political Rights (ICCPR) to be Law No. 12 Year 2005 and the International Covenant on Economic and Socio-Cultural Rights which is abbreviated as the International Covenant on Culture, Social, and Economic Rights (ICCSEER) to be Law No. 11 Year 2005. The reality in this implementation, the fulfillment of the rights of ICCSEER is not as timely as ICCPR. Civil rights and economic, social, and cultural rights can not be separated or differentiated. Both are equally important, as economic, social and cultural rights are an integral part of the human rights system. Some sections of civil and political rights that depend on economic, social and cultural rights, such as the right to life are always based on health. Unsafe clean water will affect health so that the right to life can not be enjoyed perfectly. That fact is a failure of the state to fulfill the obligation to respect the right to life itself. So the state must be responsible for accountability.

In Indonesia there are fundamental obstacles in the implementation of ICCSEER's rights, including the right to water with the lack of understanding of individual as human rights holders, especially rights in the field of ICCSEER. In addition, there is a low understanding of the government apparatus on human rights, especially the rights of ICCSEER. Among the apparatus, as the organizers of this country never knew that the developer of the basic obligations is the responsibility of the country completely and the basic holder are the people.

The right to water still requires recognition to provide an important understanding of human rights, even without adequate water supply, humans are unlikely to live in dignity. Committee on Economic, Social and Cultural Righths, seeks to interpret the urgency of the right to water as a requirement of other human rights fulfillment. Such a situation is so significant that the right to water is part of human rights. That opinion is how universally accepted, it is the role of the science of law to provide guidance. This situation is very different when compared to civil and political rights, such as the right to life, the right not to be tortured, the right to express opinions, and so on. Civil and political rights are urgent, so there is no need for justification.

⁸ General Directorate of Disease Control and Enviromental Sanitation, Ministry of Health Republic of Indonesia, 2014

⁹ *Ibid*

As rights, the right to water brings the consequence of country obligation to fulfill the need of clean water, especially for its citizens. On the other hand, the right to water as well as other economic, social and cultural rights, there is still a legal dilemma because there is no clear regulation regarding protection and enforcement mechanisms as indicators or parameters on the fulfillment of state obligations. Similarly, minimum standards that describe the minimal conditions that must be enjoyed by every individual to survive.¹⁰

The responsibility of the country in realizing the right to water that generates the reaction of liability is an obligation arising from the international treaty law. So that country can be sued for violation of its obligations to respect, to protect and to fulfill on the right to water. The issues commonly encountered in implementing ICCSER's rights include the right to water, the perception that human rights violations are deemed to be limited to severe human rights violations related to human rights violations in Civil and Political Rights. Human rights in the field of Economic, Social and Culture are categorized as a right that can not be fought for or fulfilled. Whereas human rights violations not only limited to severe human rights violations. In the development of the country as an abstract entity shall be responsible for human rights violations, example any act that violates international obligations as regulated in international treaties. This paper will explain the issues; whether the right to water has a clear legal status through the principles of the right to water and as a fundamental right of how the right to water with health rights including the right to life and whether materially the right to water can be sued through court.

2. Principles Of The Right To Water

The existence of law in social life serves to protect the physical security for every individual, so that needed food, decent dwelling, health service, clean water. If all these things can be fulfilled by each individual, physically the individual will be able to live a peaceful and prosperous life.¹¹ Water as one of the important components needed by everyone to ensure the physical security of the human body.

According to General Comment No. 15 of the United Nations ICESCR Committee on the Right to Water, the Right to Water as a fundamental instrument in support of its fulfillment, the right to an adequate standard of living, the right to food, the right to housing, the right to health, the right to environmental sanitation, good and healthy living environment. The entire right must be related to the function of clean water in order for the health of every individual to be preserved. The right to water has a strong juridical meaning, if it is associated with health status. Water and health are two interrelated aspects. The quality and quantity of water consumed by society can determine the degree of public health, especially water to meet basic human needs. Water quality generally shows the quality or condition of water that is associated with a

¹⁰ Palupi, S. (2007). Merumuskan Indikator Pemenuhan dan Perlindungan hak Ekonomi, Sosial dan Budaya. Yogyakarta: PUSHAM UII, p.2

¹¹ Marzuki, P.M. (2014). *Pengantar Ilmu Hukum*. 6th Edition. Jakarta: Kencana, p.42-43

particular activity or need. Then the quantity concerns the amount of water that humans need in certain activities.

Without adequate drinking water the health of individuals will be vulnerable to disease and the right to life is threatened. A broader interpretation can be given in Article 6 of the International Covenant on ICCPR Rights. The article that became the focus of attention and debate for defenders and opponents of the death penalty stated that "Every human being has the inherent right to life. This rights shall be protected by law. No one shall be arbitrarily deprived of his life."

The Human Rigths Committee (HRC) interpreted that the right to life is interpreted more broadly, not simply forbidding the elimination of human life. Another meaning of this provision is to make an effort to support the basic steps for a life.¹² In this case water is needed to prevent humans from being sick so as to avoid the threat of death.

Year 1977 was noted as the starting points of the effort to establish that the right to water as a stand-alone human right. In that year, the first UN International Conference on water was held in Mar Del Plata, Argentina. The conference issued a resolution that read: "All peoples [...] have the right to have access to drinking water in quantities and of a quality equal to their basic needs."¹³

Through this convention, countries are required to take all steps to ensure a decent life including the availability of clean water facilities. In addition, it also regulates technical matters regarding the distribution of water resources. The conference requires the regulation of the distribution of water resources concerning programs, equipment and institutions as an effort to coordinate among the countries that share them. The solution that can be done is through an approach, a global problem that must be solved with a global solution. Due to the scarcity of water in a place will certainly have a negative effect, to several places around it.¹⁴

The right to water as a human right is contained in international standards and norms on human rights, such as the International Covenant on Economic, Social and Cultural Rights (ICERC), the International Covenant on Economic, Social and Cultural Rights (ICERC) Article 11 of the ICERC Covenant states that "the right to everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing ..." According to General Comment No. 15 of Water Rights, mentioning that the use of the word including, indicates that the list mentioned after the word including, is not limited to only those mentioned.¹⁵ This provision asserts that even if it is not mentioned, the right to water is very important to maintain and maintain a decent level of life.

Article 12 International Covenant on Economic, Social and Cultural Rights as stated in the previous discussion which states: The States Parties to the present Covenant

¹² Gleick, P.H. (1998). *The Human Right to Water, Water Policy I*, Elseiver, p.487-503

¹³ Salman, S.M.A. and Siobhan McInerney-Lankford. (2004). *The Human Right to Water Legal and Policy Dimension*. The World Bank Washington DC, p.5

¹⁴ Hardberger, A. (2006). "Whose Job is It Anyway: Governmental Obligations Created by The Human Right to Water". *Texal International Law Journal*, p.536.

¹⁵ Look At Third Paragraph, General Comment No 15, *The Water Rights*, 2002

recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 24(2) paragraph (c) Convention on the Rights of Child (1989) yang menyatakan : State Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures...to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental protection.

Through this covenant, it clearly mentions the rights to water availability, conventions that pay attention to children also try to link the conditions of preventing and combating malnutrition and disease, with the obligation of the state to guarantee the availability of clean water for drinking.

Article 14 verse (2) Paragraph (h) The Convention on the Elimination of All Forms of Discrimination Against Women 1979 states that "State parties ... shall ensure to living adequate conditions, particularly in relation to housing, sanitation, electricity, and water supply, transport and communication ..."

The formulation of the sentence is that there is an obligation for the country to ensure that women have the right to be able to enjoy life properly in relation to the relationship with housing, sanitation, electricity and water availability and transportation and communication. Since the right to a decent living is categorized as a human right, including the availability of water is an integral part of human rights itself.

On April 27, 1999, the United Nations Commission on Human Rights adopted Decision 1999/108 which stated "the rights to drinking water and sanitation services are human rights." The Resolution of the Commission on Prevention of Discrimination and Protection of Minorities 1998/7 states: "The right to drinking water and sanitation for every man, woman and child is a fundamental principle of equality, human dignity and social justice."

In 2000 the United Nations Committee on Economic, Social and Cultural Rights received the General Comment, No. 14 on the right to health which formulated the normative interpretation of the right to health as set out in Article 12 (1) of the ICESCR. These general comments interpret the right to health as an inclusive right which includes not only continuous and decent health services, but also includes factors that determine good health, including access to safe drinking water.

In 2002, the United Nations published the General Comment Number 15 of ICESCR in detail formulating the substance of the right to water. In that form, it is clear that the right to water is very important for an adequate standard of living which is one of the absolute requirements for the sustainability of human life. The General Comment on the Right to Water (2002) by the UN Committee on Economic, Social and Cultural Rights states that human rights receive sufficient, safe, acceptable, and physically accessible water to meet personal and domestic living needs.

The right to water is officially recognized as a stand-alone human right with the recognition of the importance of the existence of water, on July 28, 2010, the United

Nations General Assembly issued Resolution 64/292 on Human Rights on Water and Sanitation. It was emphasized that the right to get clean and safe drinking water and sanitation are part of human rights and an important element to fulfill the right to life as a whole. Furthermore, it calls on countries and international organizations to provide support in terms of resources, finance and technology for developing countries as part of global efforts, in meeting quality water needs, fulfilling quantity and being affordable physically and economically. This resolution was followed up with the issuance of policies from the Human Rights Council through Resolution, Number 15/9 of 30 September 2010, which stated that the right to water is a means to support the realization of other human rights.

Understanding the principles of the right to water as a human right is not merely an approach based on international human rights law through the UN. However, a process of seeking the nature of water rights also with a moral approach is to explain the existence of clean water that has a strong connection with the field of public health. Water that does not meet health requirements can reduce the degree of human health.

Water is a nutrient that plays a role in the human body. Patients with diarrhea lose a lot of fluids, including energy and nutrients used to fight germs. This situation leads to malnutrition. Lack of nutrition makes the thinking power is low, especially for children. The availability of clean water closely related to the level of child intelligence.¹⁶

There are several health problems related to water,¹⁷ such as water-borne diseases because water is one of the transmission media of various disease agents because it consumes water that is contaminated biologically and chemically, resulting in poisoning and infection. Water-based diseases can interfere with health, because water plays a role in the transmission process. Examples of Schistosomiasis: worms that live in water, their larvae penetrate the human foot and enter the heart. Malaria and dengue fever: the outbreak through mosquitoes that develop in water. Diseases caused by water-washed, and skin or mucous membranes. Contact with contaminated water usually causes skin disorders and mucous membranes, such as pyoderma (a bacterial infection of the skin). Water quality is one of the main needs, given the various diseases can be brought by water to humans who use it. The explanation of this description, presented in the table below:

¹⁶ Ehrenstein, OS von, et al. (2007). Children Intellectual Function in Relation to Arsenic Expose. *Epidemiologi* – Volume 18, Number 1. University of California, p.44-51.

¹⁷ WHO. (2001). *Water quality: guidelines Standards and Health: Assessment of Risk and Risk Management for Water-related Infectious Disease*, p.234

A Living and Growing Disease In Water (WHO, 2001)

Carrier Disease Water	Cause	Mechanism of Transmission	Arising Type of Illness
Water borne disease	Water contains pathogens	Consuming oral contaminated water biological / chemical	Cholera, typhoid, hepatitis, dysentery, colitis, polio, Cancer, Toxicity effects on the skin, liver, kidneys, nervous system, immunity, reproductive system, digestive system etc.
Diseases due to contact with water	Poor hygiene / personal hygiene and lack of water for sanitation.	Skin or mucous membranes contact with contaminated water	Infection; eyes, skin, mucous membranes, and gastrointestinal tract
Disease through water	Water becomes an agent of disease	Worms that live in water. Diseases through mosquitoes that develop in water and tse-tse flies	Worms, malaria, dengue fever

The quality and safety of drinking water is an important aspect of public health. Non-polluted water, defined as uncontaminated water, does not contain certain foreign ingredients that can cause health problems ranging from mild to severe and even result in death. WHO guidelines dealing with water quality should be free of microorganisms, chemicals and radiological materials that can threaten an individual's health.¹⁸

Judging from the accessibility, amount or quantity of water needed by humans, the basic need for clean water is the minimum amount of clean water that needs to be provided so that humans can live properly. Individual minimum needs for clean water in support of life and health set by professionals as long as they emit moral principles, can be considered as sources of law. The minimal need for clean water within the framework of the function of protecting the physical security of the individual in order to live a decent life.¹⁹

Even though the water provided is plenty and guaranteed quality, there are still some problems in its use, such as the time it takes for people to reach and queue to get it.

¹⁸ Salman, S.M.A., supra note 2

¹⁹ Marzuki, P.M., supra note 12, p.276

Some residents need more time to get water while the amount collected will decrease. The number of available storage facilities is also important. Washing facilities close to the location of water will save energy and are more economical.

Through the above explanation indicates that the fulfillment of clean water needs to set a guideline as a standard indicator of water needs. In an emergency if there is no water available to meet basic needs, it is very important to supply safe drinking water in sufficient quantities to maintain survival. Generally the most important health problems are caused by poor hygiene and lack of water, as well as the use of contaminated water.

Some of the essential water requirements standards established by WHO can be used as guidelines, especially in determining the minimum water requirements of each person. According to WHO, household use, everyone needs about 50 liters per day, this requirement is a standard requirement (WHO: 2002).²⁰ Developed countries 60 - 120 liters / day. Needs for the human body 2 - 2.5 liters / day around 8-10 glasses. Discharge of 2 - 2.5 liters / day: urine 1 liter / day, sweat 1 liter / day, faeces 50 - 60 cc / day and breathing (WHO: 2001)²¹ According to Peter H Gleick basic needs for domestic human needs every people per day; for the needs of drinking water: 5 liters, 20 liters sanitation service, 15 liters bath, preparation process 10 liters of food. The need for clean water is a minimum requirement in order to sustain life in moderate climatic conditions and average activity.²² Factors that affect water needs are air temperature, humidity, activity, body weight and diet.

In comparison with the WHO guidelines below, we will outline key standards and key indicators of water supply and access and quantity of water. Standard needs clean water, access and amount of water; so that everyone has access and a safe and fair amount of water in sufficient quantities for drinking, cooking, and personal and household hygiene. Common water points are located close enough to households to allow for minimum water use.

In order to support these standards, key water supply indicators are defined as essential minimum requirements:²³

- a. The average amount of water used for drinking, cooking, and personal hygiene in each household is at least 15 liters per person per day.
- b. The furthest distance between the household and the nearest water point is 500 meters.
- c. The duration of the queue at the water source does not exceed 15 minutes
- d. It takes no more than three minutes to fill a 20 liter water vessel
- e. Water sources and systems are maintained in such a way that water is available in sufficient quantities on a continuous or routine basis.

²⁰ Gleick, P.H., supra note 13

²¹ WHO, *How Much Water Is Needed In Emergencies*, 2012

²² Gleick, P.H., supra note 13

²³ The Sphere Project. (2004). *Piagam Kemanusiaan dan Standar Minimum dalam Respons Bencana*. Jakarta: Grasindo, p.34

The amount of water needed for household needs may vary according to the climate, weight, available sanitation facilities, daily living habits, religious and cultural practices, types of cooked food, clothing that worn, and so on.

The rules governing the minimum human need for clean water and clean water compliance standards based on the aspect of availability, quality and accessibility specified by experts in professional or competent groups such as WHO are the standards or guidelines in the framework of protecting the physical security of the individual in order to live a decent life. As long as the rules emit moral principles, they can be regarded as laws.²⁴ These standards will assist in establishing indicators in regulating the level of fulfillment or achievement of human rights implementation of water.

- Principles of Water Rights in the Constitution in Indonesia

When it is associated with the 1945 Constitution of Republic of Indonesia as the basic law, from the opening, the body, the articles, to the explanation, there is no direct mention of the fulfillment of the right to water. Indirectly the constitutionalization of water rights norms in the provisions of the 1945 Constitution of Republic of Indonesia is reflected in the contents of the Preamble to the 1945 Constitution of the Fourth Paragraph: "Later than that to establish an Indonesian State Government that protects the entire Indonesian nation and the entire Blood of Indonesia and to promote the general welfare (.....)

Article 23 of the 1945 Constitution of Republic of Indonesia requires that in the preparation of the budget for the country / region, it should be allocated for the greatest of the people. Budgets are important to analyze the realization of ESCR. The state budget is the main political document that reflects the country's policy priorities. The aspect of resource availability is very influential in realizing these rights. Budget to finance the fulfillment of clean water for basic daily needs, requires adequate funds. In countries with weak political will to public interests such as Indonesia, development funds for the realization of Economic, Social, and Cultural rights, such as the provision of clean water and health programs, are in fact inadequate. This can be seen in the composition of country budget and regional budget every year. The health and clean water program is still far from the provisions stipulated in Article 23 of the 1945 Constitution of Republic of Indonesia.

Furthermore, in the body, can refer to several articles, namely Article 28A; Everyone has the right to live and have the right to survive, for his life. This article is the basic norm that regulates water, due to the fact that citizens' access to water in maintaining a well-born and inner life, can be drawn a basic norm that access to citizens is a fundamental right. The declaration of the article supports water to be a source of life, without water human being threatened.

Article 28 H; Everyone has the right to live a prosperous and spiritual life, to live in one place and to get a good and healthy living environment and be entitled to health care. This provision can be broadly drawn into the fulfillment of the right to water. The right

²⁴ Gleick, P.H., supra note 13

to a live in healthy and good living environment has a bearing on the fulfillment of the right to water. A good and healthy environment will not be met without proper water.

The 1945 Constitution of Republic of Indonesia only regulates the principal or more constitution of soft law and moral appeal which can not be the basis for demanding its fulfillment through the courts in case of violation of the right to water. Furthermore, it needs to be regulated in a more complete and operational legislation. Because as the main rule, the 1945 Constitution only establishes human rights and fundamental freedoms recognized, without setting its own handling mechanism if it is violated.

3. Right To Water: Whether The Fullest Can Be Digitized Through The Court

The right to water is one part of the cluster of economic, social and cultural right and has been accepted internationally as an integral part of the fulfillment of human rights through UN Resolution Number: 64/292 Date 28 June 2010. The current issue is Right to Water become part of ICCSER. Together with ICCPR Rights, ICCSER's Rights have been recognized internationally as part of The International Bill of Human Rights. The legal framework became clearer after the rights set forth in the multilateral treaties contained in the Covenant on Economic, Social and Cultural Rights (CESCR) adopted by the UN General Assembly in 1966 as the implementation of the principles contained in the 1948 Universal Declaration Human Rights (DUHAM). Although the right to water is not explicitly stated in the 1948 DUHAM, it implicitly demonstrates that fulfillment of the standard of living can not be achieved without adequate water quality in terms of quality, quantity and accessibility.

The UN resolution establishing the right to water as an independent human right has the power of law. This is because the resolution has gained the power of customary international law by linking the right to water with the right to life, decent living standards, the right to physical and mental health, the right to a healthy and clean environment, the right to food and the right to housing.

By examining some of the legal products in the form of decisions of national courts and constitutions in various countries related to water rights enforcement mechanisms such as constitutions in countries such as South Africa, Kenya, Ecuador, Congo and other countries, explicitly contain the right to water.²⁵

Understanding to applicable laws and judicial decisions on the right to water in some countries,²⁶ such as Article 41 of the Constitution in Argentina, the right to water as part of a healthy environment. In India, although the Indian constitution does not directly recognize the right to water, the Indian High Court interpreted the right to water as part of Article 21 of the Indian constitution on the right to life. Water is categorized as a constitutional right recognized by the Kerala High Court in 1990 over the case of *Attakoya Thangal v Union of India*. The court stated that, the right to good and healthy

²⁵ Chowdgury, N., B. Mustu, Halet St, Dennis and Melanie Yap. (2011). *The Human Right to Water and The Responsibility of Businesses: An Analysis of Legal Issues*, School of Oriental and African Studies.

²⁶ Cahil-Ripley, A. (2011). *The Human Right to Water and Its Application in the Occupied Palestinian Territories*. Abingdon: Routledge, p.17

water and the right to air is an attribute of the right to life, as it is a basic element to sustain human life.

European Court of Human Rights, implicitly regarding the provisions on the Right to Water is regulated in the European Human Rights instrument. The African justice system regarding the right to water is part of the right to health. Inter American Convention on Human Rights System, the right to water legal standard is part of the right to health, the right to a healthy environment, the right to food and the right to housing, the right to life.²⁷

The right to life is a basic prerequisite for the exercise and acceptance of the right to other freedoms. Other rights and freedoms add to the quality of life. Likewise the right to life is interdependent on rights and other freedoms. Without the right to adequate food or clean water, the right to life will be threatened.²⁸

The above description has illustrated how countries in the world consider that it has become an international customary law to link rights to water with other rights. The right to water always holds the status of ambiguity because it does not explicitly stand as a single right, but requires meaning. The law in Argentina stresses that to achieve a minimum need for clean water is usually associated with the right to health, the right to life, and the right to a healthy environment.²⁹

Simply customary law is said to be "usage and practice as accepted by law". What conditions must be met for "usage and practice" to be considered and accepted as law, because "usage and practice" alone does not in itself be customary. First a habit becomes customary law arises so certain habits perceived as a legal obligation are continuously performed and respected by society in a long time. Secondly if there is opinion necessity, namely the awareness of the need for law that arises as a public demand.³⁰

Constitution and judicial decisions in some countries as described above, as well as regulations in some countries that receive water rights in jurisdiction, and ratified by 142 countries, data in 2000 on the Rights of ICCSER, as an indication of the fulfillment of two elements of habit to become customary law.³¹

Indonesia as a country that has ratified the International Covenant on ICCSER is bound to the convention. It must therefore be responsible for carrying out all obligations set forth in the Covenant and applying in national law. State accountability is accountability to the entire international community (*erga omnes*).³²

The importance of social, economic and cultural rights so that Sir Humphrey Waldock in his article entitled "The Legal Protection of Human Rights National and International, is said that nowadays recognized the classical rights and freedoms by itself are not

²⁷ Cahil-Ripley, A. Ibid

²⁸ Asplund, K.D., S. Marzuki and E. Riyadi. (2010). *Hukum Hak Asasi Manusia*. Yogyakarta: Pusat Studi HAM Universitas Islam Indonesia, p.97

²⁹ Picoloti, J.M. (2003). *The Right to Water in Argentina*. Cordoba (Argentina): CEDHA.

³⁰ Marzuki, S. (2007). *Upaya Litigasi & Non Litigasi Atas Pelanggaran Hak EKOSOB di Indonesia*. Yogyakarta: PUSHAM UII, p.8.

³¹ Ibid

³² Asplund, K.D, S. Marzuki and Eko Riyadi, supra note 29, p.69

sufficient without a social justice minimal, without minimum economic, social and cultural rights, the enjoyment of rights and freedoms - classical freedom has no meaning.³³ Without CSER, civil and political rights mean little to many people. What is the meaning of political rights if people are dying of hunger, dehydration or suffering from illness.³⁴

Paragraph 57 General Comment Number 15 of the Rights of CSER affirms the use of international human rights legal instruments such as the Ecosseo Covenant, into the domestic legal system, may enhance the effectiveness of settlement measures for water rights abuses. The Court Institution may adjudicate a violation of the right to water, or at least to the offense for not fulfilling its core obligations to ensure compliance with, the minimum principal level provided for in paragraph 37 General Comment No. 15 .

The Limburg Principle³⁵ also affirms and gives direction for every country, especially the state party not only to see positive economic, social and cultural rights. The 16th paragraph of the Limburg Principles asserts: "All States parties have the obligation to take the full realization of the rights contained in the Covenant." So also in the 22nd paragraph: "Some obligations under the Covenant require immediate implementation in full by all States parties, such as the prohibition of discrimination in article 2(2) of the Covenant."

The argument of maximum available resources or progressive realization as set forth in Article 2, paragraph 1 of the Covenant, can not be used to override compliance with the minimum essential level of any right. For the right to water there is a minimum basic level of every right stated in the Covenant. For example to ensure minimal water and safe to prevent disease.³⁶ Minimum basic needs in order to support so that individuals can survive. In general, countries are expected to ensure the minimum essential level of any right including the right to water. Eliminating or delaying the minimum essential level of these rights would be contrary to the aditarian *Justitia dilate est justitia negate*,³⁷ means delayed justice equates to disregarding justice.

The country is considered to do the omission if the minimum basic needs of clean water are not met.³⁸ This is a violation of human rights. Previously the practice of international law regarding human rights violations only applies in certain cases, such as severe human rights violations or violations of national laws that are not in line with international law, in the case of the same object.

Through the UN General Assembly session Resolution No. 56/83 of 12 December 2001 has included provisions on state responsibility of States for International Wrongful Acts. The concept of State liability is not only bound to severe human rights violations but

³³ Hadjon, P.M. (1987). *Perlindungan Hukum Bagi Rakyat*. Surabaya: PT. Bina Ilmu, p.45

³⁴ Scheinin. M. (2005). *Justiciability and The Indivisibility of Human Right (The Road to A Remedy)*. Australia: University of New South Wales, p.17-26

³⁵ Approved by The Experts in International Law Meeting at Maastricht (Netherland) on July 2nd- 6th 1986. Economic, social and cultural rights, ELSAM (Institute for Policy Research and Advocacy in Jakarta). 2001

³⁶ 37th Paragraph, General Comment No 15, The Water Rights, 2002

³⁷ Langford, M. (2008). *Social Rights Jurisprudence*. Cambridge University, p.148

³⁸ Paragraph 41 (c) vii, General Comment No 15, The Water Rights, 2002

covers general circumstances, the state is responsible for unlawful acts and legal consequences which are the effects of such actions.³⁹ Thus human rights violations are not identical always related to the most serious violations of international crimes. Violations of the most serious international crimes that are responsible are individuals, not abstract entities like the state. In responsible human rights violations are the country.⁴⁰

The context of the provisions of the UN General Assembly's resolution is that the country shall be responsible for the conduct of any person that holding public office or performing in public function, or any person other than a public office. Violate the international obligations as stated in each international agreement. The concept of state responsibility is very wide reaching the actions of the country apparatus, both at the central and regional levels and other parties relating to public functions .⁴¹

The resolution of the state's responsibility for unlawful acts in its context requires that the provisions of Article 27 of the Vienna Convention on International Treaties (1969) apply in its entirety. Neither country can circumvent international responsibility for reasons contrary to national law. International agreements can be equated with contracts, both are agreements from the parties concerned to accept obligations between the two, and one party that fails to fulfill its obligations can be held accountable through international law with *maxim pacta sunt servanda*, pacts must be respected.

The understanding so far that economic, social and cultural right cannot be upheld or sued through court, is clearly misleading. The country has an obligation that has an immediate effect. It means that economic, social and cultural rights can no longer be qualified as "not a legal right" or simply "ideals of political statements". Just like civil and political rights, economic, social and cultural rights are also real legal rights that can be sued for their fulfillment through the courts. Especially for rights concerning non deregable rights, such as minimum standards or minimum essential requirements. For example the right to water.

The use of international human rights legal instruments such as the CSER Covenant, into the domestic legal system, can enhance the effectiveness of settlement measures for water rights abuses. The Court Institution may prosecute a violation of the right to water, or at least to the offense for not fulfilling its core obligations to ensure compliance with, the minimum principal level provided for in paragraph 37 General Comment No. 15.⁴²

The meaning of the ICCSER legal framework contained in the covenant, in international law legislation is very clear. The obligation to confirm the legal status and enforcement mechanism for the fulfillment and protection of ICCSER rights by the State party is immediate. The dichotomy of civil and political rights and the rights of ICCSER in practice is not necessary because they are equally important, having the same legal

³⁹ United Nations. *Responsibility of States for Internationally Wrongfull Acts 2001*. (2005). Jenewa. Swiss

⁴⁰ Ibid

⁴¹ Ibid

⁴² 57th Paragraph, General Comment No 15, The Water Rights, 2002

capacity, wholeness, interdependence and interconnection. So it is necessary to emphasize the importance of integral conceptions for the promotion and protection of the cross-section of civil and political rights and the socio-cultural economic rights.

4. Conclusion

Based on the explanation given in the previous section, it is necessary to state several conclusions as follows:

The basic principles of state liability for the fulfillment of the right to water, namely: The right to water is recognized and supported by international law through agreements, declarations and other norms including the 1945 Constitution of Republic of Indonesia. That the right to water as an independent human right. Thus this right is a concrete legal right. It is the obligation of every country that has ratified the present Covenant to comply.

The right to water is ambiguity, clean water has a connection with various joints of life in order to support the health quality of everyone. The principles of the right to water can be explained through the concept of public health as a moral and legal basis for obtaining a picture of the nature of the right to water. This approach confirms the nature of ambiguity towards the right to water.

The country is responsible for the fulfillment of the minimum level of water rights. The country's obligation to guarantee fulfillment at the minimum basic level of the right to water is a non derogable righth. If the country does not fulfill its obligations to the minimum basic level, it is a violation of human rights and country responsibility will occur.

Country may be sued by courts for the fulfillment of the right to water on the basis of some basic concepts: the existence of the right to water has been accepted as part of international customary law. Human rights violations are not always synonymous with the most serious international crimes. So the country as an abstract entity is accountable for water rights violations committed by any person holding public office or performing in public function, or any person not a public office.

References

- Andries, L. (2008). *Effects of Water Quality to Public Health, Water Quality Training Of Trainers*, UNESCO - IHE, Manado, November.
- Asplund, K.D., S. Marzuki and E. Riyadi.. *Hukum Hak Asasi Manusia*. Yogyakarta: Pusat Studi HAM Universitas Islam Indonesia.
- Cahill–Ripley, A. (2011). *The Human Right to Water and its Application in the Occupied Palestinian Territories*. Abingdon: Routledge.
- Chowdhury, N., B. Mustu, Halet St. Dennis and Melanie Yap. (2011). *The Human Right to Water and the Responsibility of Businesses: An Analysis of Legal Issues*. School of Oriental and African Studies.

- Ehrenstein, OS von, *et al.* (2007). *Children Intellectual Function in Relation to Arsenic Expose. Epidemiology - Volume 18, Number 1. University of California.*
- Gleick, P.H. (1998). *The human right to water, Water Policy I, Elseiver.*
- Hadjon, P.M. (1987). *Perlindungan Hukum Bagi Rakyat Indonesia.* Surabaya: PT Bina Ilmu.
- Hardberger, A. (2006). "Whose Job Is It Anyway: Governmental Obligations Created by the Human Right To Water". *Texal International Law Journal.*
- Langford, M. (2008). *Social Rights Jurisprudence.* Cambridge University.
- Marzuki, P.M. (2001). *Pengantar Ilmu Hukum.* Jakarta: Kencana.
- Marzuki, S. (2007). *Upaya Litigasi & Non Litigasi Atas Pelanggaran Hak Ekosob Di Indonesia.* Makalah. Yogyakarta: PUSHAM UII.
- Morgan, B. (2004). "The Regulatory Face of The Human Right to Water". *Journal of Water Law, Vol.15.*
- Palupi, S. (2007). *Merumuskan Indikator Pemenuhan dan Perlindungan Hak Ekonomi, Sosial dan Budaya.* Yogyakarta: PUSHAM UII.
- Picoloti, J.M. (2003). *The Right To Water in Argentina.* Cordoba (Argentina): CEDHA.
- Salman, S.M.A. (2014). "The human right to water and sanitation: is the obligation deliverable?". *Water International, Vo.39 No.7.*
- Salman, S.M.A. and Siobhan McInerney-Lankford. (2004). *The Human Right to Water Legal and Policy Dimension.* The World Bank Washington DC.
- Scheinin, M. (2005). *Justiciability and the Indivisibility of Human Right (The Road To A Remedy).* Australia: Universitas New South Wales.
- The Sphere Project. *Piagam Kemanusiaan dan Standar Minimum dalam Respons Bencana.* (2004). Grasindo. Jakarta.
- UNICEF dan WHO. (2017). *Progress on Drinkung Water, Sanitation and Hygiene 2017. Update and SDG Baseline.* Jenewa. Swiss.
- United Nations. (2005). *Responsibility of States for Internationally Wrongfull Acts 2001.* Jenewa Swiss.
- WASHplus. (2013). *Integrating Water, Sanitation and Hygiene Into Nutrition Programming.* USAID. Washington. USA.
- WHO. (2001). *Water Quality: Guidelines Standards and Health: Assessment of Risk and Risk Management for Water-related Infectious Disease.*