

Legal Analysis of Gorontalo Urban Drainage Development: Social Justice Perspective

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Abstract : Justice is one of the main basic ideas in a rule or law. A rule is not considered as a law if it does not provide a sense of justice to the subject it governs. The aim of this article is to analyze the context of social justice on the effectiveness of urban drainage construction facilities system in the cities. This study used an empirical-judicial method based on the Minister of Public Works Regulation Number 12 of 2014, implementation of Urban Drainage. The result of data analysis showed since the planning stage, the implementation of each infrastructure development in the city of Gorontalo continually refers to the spatial planning map and collaborates with the associations engaged in the environmental sector so that it reaches the development and control processes. In this case, an infrastructure of the drainage facility does not violate its designated zone. Yet, there are several zones whose utilization is not in accordance with their designation. Thus, the problem collides with the fulfillment of social justice which affects the implementation of drainage facilities construction.

Keywords: Social Justice; Urban Drainage Development.

Analisis Hukum terhadap Pembangunan Drainase Perkotaan Gorontalo dari Perspektif Keadilan Sosial

Abstrak : Keadilan merupakan salah satu ide dasar pokok dalam sebuah peraturan atau hukum. Sebuah peraturan bukanlah hukum jika tidak memberi rasa keadilan terhadap subjek yang diaturnya. Tujuan artikel ini untuk menganalisis konteks keadilan sosial pada efektivitas pembangunan fasilitas sistem drainase perkotaan di kota dengan menggunakan metode yuridis empiris berdasarkan Peraturan Menteri Pekerjaan Umum Nomor 12 Tahun 2014 tentang Penyelenggaraan Drainase Perkotaan. Hasil penelitian Analisis data menunjukkan bahwa setiap pelaksanaan pembangunan infrastruktur di kota Gorontalo sejak perencanaannya selalu mengacu pada peta penataan ruang wilayah dan melakukan kerjasama dengan asosiasi yang bergerak di bidang lingkungan hidup sehingga sampai pada proses pembangunan dan pengendalian, sebuah infrastruktur dalam hal ini fasilitas drainase tidak menyalahi zona peruntukannya. Meskipun masih terdapat beberapa zona yang pemanfaatannya tidak sesuai peruntukannya sehingga permasalahan terbentur pada pemenuhan keadilan sosial yang mempengaruhi pelaksanaan pembangunan fasilitas drainase.

Kata Kunci: Keadilan Sosial; Pembangunan Drainase Perkotaan

INTRODUCTION

A country is seen as advanced when its infrastructure and spatial planning are neat, modern, and guarantees its people's necessities of a decent life. This is because good spatial planning creates a good living environment. In a good living environment, there is a harmonious and balanced interaction between the components of the environment. The balance stability and harmonious interaction of environmental components depend on human effort. This is because humans considered the most dominant component influencing the environment. On the other hand, the environment also affects humans. There is an interplay of relationships between humans and their environment. This is the interaction between humans and the environment.¹

¹ Sun M. Husein, *Lingkungan Hidup: Masalah Pengelolaan Dan Penegakan Hukumnya*, (Jakarta: PT Bumi Aksara, 1993), page. 16.

There must be a balanced relationship between society and nature. Basically, this is because society and nature need each other. If nature does not exist, so does society. Nature provides people with various necessities of life. Unfortunately, urban society with its selfish tendency sometimes underestimates the so-called relationship. The relationship between the environment and society actually exist for a long. The industry also responding to the challenge of fulfilling the community's economic need must be paid handsomely by the destruction of the environment. In addition, there is a lack of public awareness to protect the environment. Thus, there is a need to build social awareness to protect the environment.² The responsibility to maintain the balance stability of people's life by arranging the environment surrounding is also borne by the state administration. As mentioned in Nurhapni's study³ entitled "The study on the Development of an Environmentally Friendly Drainage System in a Housing Area", The drainage development must meet environmental aesthetic values.

The relativity relationship between the environment and society becomes a separate legal issue if it is contextualized with the principle of justice. This is because the justice value in each law should be objective and systematic. It means not only society becomes the object of justice but systematically guarantees universal rights to the environment as living beings. These two are always causing a problem when it comes to infrastructure development, the way infrastructure development does not eliminate those values of justice. Thus, the researchers attempt to analyze these problems. Concretely, how is the effectiveness of urban drainage development in Gorontalo city based on Ministerial Regulation No. 12 of 2014 on the implementation of urban drainage in the context of social justice.

RESEARCH METHODS

The analysis used in this study was descriptive qualitative. Specifically, It used an empirical juridical method based on a post-positivistic philosophy, viewing the social reality as something intact, complex, dynamic, full of meaning, and interactive in nature. In other words, the results of this study described and interpreted the existing conditions of drainage system, facility development and its tendency in the context of social justice. This was based on Gorontalo City Regional Regulation Number 40 of 2011 concerning the spatial planning of Gorontalo City in the year of 2010-2030. In addition, this also referred to the Regulation of the Minister of Public Works Number 12 / PRT / M / 2014 on the Implementation of Urban Drainage Systems, covering the community, their interactions with the living environment, and the government as the responsible party.

RESULTS AND DISCUSSION

1. The Concept of Social Justice

Pancasila state is a country of nationality based on social justice. This means the state serves as an incarnation of human, the being of God Almighty. The nature as individuals and social beings aims to realize justice in living together (Social Justice). This social justice is based on and imbued with the essence of human justice as a civilized creature as referred to the second precept. Human beings are essentially fair and civilized. This means humans must be fair to themselves, fair to their God, fair to others and society, and fair to their natural environment.

In living together with the society or the nation and the state, there must be a realization of social justice. This covers the three things as follows: distributive justice (sharing justice), the state towards its citizens; legal justice (obedient justice), the citizens to their country such as obeying the

² Herwina Sekarsari, et al, *Efektivitas Pasal 16 Perda Nomor 4 Tahun 2011 tentang RTRW Kota Malang terkait RTH bagi Masyarakat*, <<https://media.neliti.com/media/publications/35456-ID-efektifitas-pasal-16-peraturan-daerah-nomor-4-tahun-2011-tentang-rencana-tata-ru.pdf>> , Accessed on February 5, 2019

³ thapni dan Hani Burhanudin, *Kajian Pembangunan Sistem Drainase Berwawasan Lingkungan di Kawasan Perumahan*, Jurnal Perencanaan Wilayah dan Kota, Volume 11 Nomor 1 2011: 1-12

laws and regulations; and commutative justice (justice between fellow-citizens), a reciprocal justice relationship between citizens with one another.⁴

As a country with social justice, the Indonesian state is based on Pancasila as a country of nationality. This aims to protect all its citizens and its motherland, to advance the public welfare, and to educate the citizens (special objectives). In addition, it also has objectives correlate to the international world, as follows "... To participate in establishing the world order based on the freedom of eternal peace and social justice ". In this case, the state of Indonesia as a country of nationality is based on social justice, protecting and prospering its citizens. This also applies in the association of the international community with basic principles of independence and justice in people's lives.

The realization and protection of justice in living together, in a country of nationality, requires the state to create a statutory regulation. In this case, a country of nationality based on social justice must be referred to the law. Thus, as a legal state, they have to meet the following three main conditions: recognition and protection of human rights, free trial, and legality by means of the law and its forms. As a consequence, specifically, as a state based on social justice, Indonesian state must recognize and protect human rights. This is stated in the 1945 Constitution Article 27 paragraph (1) and (2), Article 28, Article 29 paragraph (2), Article 31 paragraph (1). As a country of social justice, the state has the obligation to protect its citizens' human rights. Meanwhile, the citizens have to obey the laws and regulations as a manifestation of legal justice in living together.

The manifestation of social justice is done based on the will to carry out public welfare to the whole society. This includes its citizens and residents. Social justice in the field of society has become an aspect of "justice" and "humanity". This was violated by the colonizers in the colonial era. This is written in the first paragraph of the opening of Pancasila. In addition, political democracy is also related to social justice. This is in the form of granting equal rights to all citizens based on the law and the state's social structure.

Political and economic justice are the foremost substances of social justice, aspiring the social development with the hope the general welfare can be manifested. Social justice provides a balance to the position of individuals in society and the state. The existence of social justice in the fifth principle of the basic philosophy, the state of Pancasila, indicates in a Pancasila state, the prosperity and "general welfare" must be manifested in the form of social justice for all citizens in Indonesia. This is mandated in the Preamble of the 1945 Constitution.

Social justice according to the Preamble to the 1945 Constitution is intended not only for the Indonesian people but also for all mankind. Social justice can also be returned to the nature of monodualism in human beings. Thus, social justice is in line with the nature of our country, a monodualism state. This means in social justice, there is a static unchanging unity between the individual and public interests. This must be manifested in dynamic balanced. In terms of the prioritized interest must be adjusted to the situation and conditions. Generally, the public interest must come first before individual interests. This is consistent with the socio-cultural background of Indonesian society which is communal. Accordingly, the state work scope duties to maintaining social justice can be distinguished as follows:⁵

- a) Maintaining the public interest, specifically on the state interest as a country;

⁴ Ahmad Zaenal Fanani, *Teori Keadilan dalam Perspektif Filsafat Hukum dan Islam*, (Yogyakarta: UII Press, 2010), page. 5.

⁵ paper by Erna Mastiningrum, *Konsep Keadilan Sosial dalam Negara Hukum Pancasila*, delivered in the course of Legal Philosophy at Doctoral study program of law, the faculty of law, University of 17 August 1945 Surabaya. <https://afifhasbullah.com/konsep-keadilan-sosial-dalam-negara-hukum-pancasila/#_ftn15> , accessed on August 2, 2019

- b) Maintaining the public interest, the common interest of the citizens, Which cannot be done by the citizens themselves;
- c) Maintaining the common interest of the citizens individually, which can not be entirely done by the citizens. This is in the form of assistance from the state;
Maintaining the interest of citizens individually, which cannot be fully carried out by the citizens. This is in the form of assistance from the state. Sometimes the state maintains all individual interests (the poor and neglected children);
- d) Not all Indonesians must be protected, For instance, the ethnic groups, citizens, families, and individual citizens;
- e) If the welfare and high dignity of general life for the whole nation are not enough, there must be the welfare and high dignity of life for ethnic groups, every group of citizens, every family, every individual citizen. Its maintenance organized by the state or by individuals, with or without state assistance.

The realization of the principle of social justice is done by developing a nation. This should truly be implemented, useful, and enjoyed by all of the citizens. In addition, in its realization, National Development serves as an effort to achieve the goals of the state. Thus, the National Development must use the principle of justice as an operational basis and in determining various kinds of policies in state government.

Therefore, it is very clear within the Pancasila state, all forms of social imbalance and distribution of national wealth must be eliminated. These imbalances not only do not guarantee the realization of social justice but also becoming an inhibiting factor for solidarity, which is an important force to share the burden of development. For this reason, it is necessary to develop a fair attitude towards others, maintain a balance between rights and obligations, and respect the rights of others.

2. Urban Drainage System

One of the regional infrastructure objects that are currently not in line with the utilization control is the drainage system in cities. Drainage system facilities mean streaming, draining, removing, or diverting water. In general, drainage defines as a series of water structures to reduce and/or remove excess water from an area or land, so that it can be used optimally. An urban drainage system is an infrastructure consisting of a collection of canal systems within the city. This functions to drain urban land from flooding/inundation due to rain. This can be done by streaming excess water surface into water bodies through the canal system.⁶ The functions of city drainage mention in the following:

1. To dry the parts of the city where the land surface is lower than inundation. Thus, it does not cause negative impacts, the damage to urban infrastructure and public property.
2. To stream the excess water surface to the nearest water bodies as quickly as possible. Thus, it is not flooding or inundating the city and the damages other than people's property and urban infrastructure can be avoided.
3. To control some of the water surfaces due to rain and used it for water supply.
4. To absorb water surfaces to preserve groundwater.

The types of drainage can be distinguished based on their formation history as follows:⁷

1. Natural drainage;
2. Artificial drainage;

⁶ Achmad Erwin Nurhamidin Dan M. Ihsan Jasin, Fuad Halim, *Analisis Sistem Drainase Kota Tondano (Studi Kasus Kompleks Kantor Bupati Minahasa)*, "Jurnal Sipil Statik", Vol. 3, No. 9, September 2015, page. 600

⁷ *Ibid.*

3. Types of drainage based on building location:
4. Surface drainage;
5. Subsurface drainage.

3. The Development of Drainage System Facilities in Gorontalo City

The spatial planning aspect puts more emphasis on its proper implementation and the ideal foundation of Pancasila. The implementation of spatial planning is seen as an effort to achieve the goals of spatial planning, space utilization, and space development.⁸ The goal is to create a safe, comfortable, productive, and sustainable national territory space based on the insight of the Archipelago and National Defense.⁹ An important process to achieve the goal of spatial planning is to carry out its functions well. This covers the process of spatial planning, space utilization, and space development.

The drainage system development in the implementation process of spatial planning has so far been carried out autonomously by the regional government. However, if you look at it broadly and generally, the implementation of the law of Spatial Planning still faced challenges. These can be seen in the number of urban areas in several islands in Indonesia. They still get a reoccurring flood every year, with an increase in frequency, depth, and duration. Furthermore, another common problem is the disorderly use of land.

Even though based on the law of spatial planning, the goal of drainage development is to create an orderly drainage system. In fact, there are still a lot of various violations and a disorder from the local business and government officials. This problem does not necessarily justify the elements violating orders. It is also questioned the performance of the local government in overcoming this matter. The principle of decentralization adopted in the implementation of the Spatial Planning Law gives absolute and firm rights to local governments to take any action towards careless drainage system development activities. This problem has also happened in the urban area of Gorontalo.

In Gorontalo City, the regulation on spatial planning is passed in the form of Gorontalo City Regional Regulation Number 40 of 2011, Gorontalo City Spatial Planning year 2010-2030, it further referred to Perda RTRW of Gorontalo City. In conclusion, the technical implementation of the drainage system development in Gorontalo city is still partial. Even though the principle is in line with the applicable regulations and fulfills a feasibility study. This is according to the Minister of Public Works Regulation Number 12 / PRT / M / 2014, the implementation of an urban drainage system. It is stated from the licensing process to the construction of the drainage system facilities, the process is always done in an orderly manner. This is because the drainage system is a mandatory facility to control urban water volume. Thus, the flood can be avoided. Looking at the aims of by safety and by benefit, it does not require many integrated reviews as long as it fully refers to the public interest.

However, the context of sustainable spatial planning certainly requires an effective strategy. This is because there will be a continuous development of urban conditions. This allows the city drainage system facilities to be rehabilitated and their utilization monitored regularly by the authorized government. In 2017-2018, there was 45 times the construction of urban drainage system

⁸ Indonesia, Law Number 26 of 2007 on the Spatial Planning (currently referred to the Spatial Planning Law, Article 1.

⁹ Indonesia, Spatial Planning Law, Article 3: "Spatial planning is aimed at realizing a safe, comfortable, productive, and sustainable national territory space based on the Archipelago's Insight and National Defense

- a. the realization of harmony between the natural environment and the artificial environment by paying attention to human resources; and
- b. The realization of spatial function protection and prevention of negative impacts on the environment due to spatial use.

ilities across Gorontalo City.¹⁰ The development is focused on the flood control program, development and management of irrigation networks, swamps and other waterways. Specifically, in 2017, there were 13 drainage/culvert developments and three times rehabilitation done by the PUPR office. Meanwhile, in 2018 there were 16 drainage developments and irrigation network improvement, and 13 times rehabilitation. Based on these data, it is concluded the Gorontalo city government has made sufficient efforts to carry out sustainable construction of drainage facilities. These are mostly done in the suburban area of the city center adjacent to rice fields and swamps. Even after the observation of targeted physical realization for the last 2 years, the implementation was not reached 100% of the pre-planned zone area.

The government's efforts have actually been quite significant considering that infrastructure facilities are communal and detailed. Thus, the implementation must be systematic and comprehensive, starting from planning to management and/or its control. The drawbacks will be manifested once the development and rehabilitation carried out by the government (in this case the Gorontalo City PUPR office) do not match with the stated planning. The challenges can be various. Thus, this may inadvertently and slowly rise common negative impacts which often complained of by the public. For example, the existence of puddle water due to the overflowing volume of rainwater. This problem is common in settlements areas traversed by drainage. However, it is still very important to monitor the utilization of spatial facilities such as the drainage system. This will be such an irony if the things complained by the community were caused by themselves. Therefore, the control activities carried out by the Gorontalo city government, the use of facilities by the community, and the impact of the development on the environment should be re-examined. This includes the functions and their roles. Thus, the extent aspects of justice will be detected.

4. Implementasi Keadilan Sosial Pembangunan Fasilitas Sistem Drainase Perkotaan The Implementation of Social Justice for the Development of Urban Drainage System Facilities.

The beginning of discussing justice is actually relative but realistic. Why? This is because according to the researchers, the context of justice refers to the fulfillment of adequate rights and obligations. However, it also refers to the limiting rules. Talking about the human ego, the sufficiency of right, there will be an endless and insufficient discussion on this matter. Let alone the issue of the rights of the public interest. The people who are communed into society will definitely think that they are the "king". This is because our country's sovereignty is in the hands of the people. The success or failure of a government is judged and decided by society. In addition, some peoples' greediness can not be avoided in matters of public interest. Again, it is inevitable if the government makes a policy or law without providing justice to the people.

Perda RTRW in Gorontalo City is designed to address social impacts from planning to infrastructure development and post-development. This indicates the construction of a drainage system facility, its development, must realize social justice. The context of social justice, infrastructure development, and public interest become an integral part of the implementation of Perda RTRW in Gorontalo City.

Regarding the development of the drainage system, the aspect of justice will be seen in the conflicts that arise in post-development societies. The process of building infrastructure facilities in any place involves the losses of the community and the surrounding environment. As previously explained, infrastructure development is part of national development. It will prioritize more on well-

¹⁰ Based on the List of Water Resources (SDA) Physical Activity Packages for the Public Works and Spatial Planning Agency in the Fiscal years of 2017 and 2018.

running development without any obstacles and without looking at the after-effects. From planning, determining location permits to development, the government will certainly do it aggressively. This is for the welfare and improvement of the community's autonomy. Referring to Thomas Aquinas' theory of justice, the above-mentioned context can lead to general justice (justitias generalis), justice refers to the will of law that must be fulfilled for the public interest. This theory is slightly related to distributive justice (Justitia distributive) by Aristotle, justice should be proportional once it is applied in the field of public law generally. In this case, social justice refers to the aspect of infrastructure development of drainage system facilities.

One of the goals of justice in the context of the paradigm development is to form a prosperous society. A prosperous society is a society whose basic needs are fulfilled. However, this thing is not enough because a prosperous society must also have justice.¹¹ This is called public justice or social justice. Sustainable national development such as drainage system facilities requires more effort from the government. Even though in development, the parties who benefit most are the community. Meanwhile, the government continues to be on the disadvantages side. However, it is impossible to say something like this.

In the construction of drainage system facilities, the common problem occurs, is indicated in the context of conflict of public justice or social justice, This is called the occurrence of excess capacity, an overflowing volume of rainwater makes the affected area is inundated by water.

The causes of *excess capacity* can be various, such as:

- a) Small dimensions of the drainage channel,
- b) Accumulation of garbage in the sewers,
- c) A drainage zone which is lowland,
- d) drainage channels that are not used basen on their designation (without permission) and/or,
- e) flood control rehabilitation or control program is not implemented,
- f) The reforestation in green areas near drainage minimize water absorption.

This then raises the question "who should be responsible for these problems?". If perceived in the concept of justice according to Aristotle, the above causes are proportional covering various aspects, such as:

- a) human aspects; looks at the needs of the community as actors of the public interest and demands for human rights who need a decent and comfortable place to live.
- b) environmental aspects; justice looks at environmental sustainability and environmental impacts around the drainage zone.
- c) governance aspects; This aspect includes the government's responsibility to achieve the goals of good governance. Its justice measures to what extent the government responsibility has optimally fulfilled the right of justice from the two previous aspects.
- d) every year the government always proposes the development, rehabilitation, management, or improvement of areas such as the drainage zone. This was proposed through the Musrenbang (Deliberation of Development Planning) starting at the village to provincial levels. After being approved, the proposal is packaged into a work program in the field of Water Resources (SDA) per fiscal year. Based on the analysis of the work package list for the year of 2017 and 2018,¹² the government represented the PUPR Office to carry out a flood control and rehabilitation program with almost 100% achievements. Some developments

¹¹ Nurwino Wajib (Kementerian PUPR Direktorat Jenderal Cipta Karya), *Arsip Warta: Keadilan dalam Konteks Perkembangan Paradiigma Pembangunan*, < www.kotaku.pu.go.id/>, Accessed on August 5, 2019

¹² Daftar Paket Kegiatan Fisik SDA, *Op.cit.*

which do not reach 100%, experience obstruction in the change of dimensions of the drainage channels due to physiographic factors.

It is different when discussing the human aspect in the paradigm development. The public, as the connoisseurs of the public interest, have the same responsibility as the government in maintaining public facilities. This is make the facilities neat and usable. Meanwhile, talking about the overall concept of justice in this aspect is actually a necessity. The community is so dependent on the government related to disasters or damage to public facilities. However, they do not play an active role in preserving the sustainability of these infrastructure facilities. In other words, the government maintains The maximum controls, its use by the community, on the other hand, is not in line with government permission and often misused.

Meanwhile, in the context of justice in the environmental aspect, any drainage development will never conflict with spatial planning. Spatial planning is a spatial unit within an area mapped according to its allotment. The map is the result of determining each spatial zoning. Thus, the zoning of green areas is different from the zoning of drainage channels. Even though the zoning is located side by side, the government tries not to eliminate the function of the green area around the drainage channel. This is in line with Ketut Ciptaningrum's explanation,¹³ even if forced, in constructing drainage channels, the PUPR office will at least sacrifice a few trees whose roots block the drainage. The PUPR office is also working with the Green City Community Forum and coordinating with the Environmental Agency (BLH) to do tree planting. This is to substitute the trees cut down due to drainage construction.

Proportionally, the three mentioned aspects create social justice. If the government strives to preserve the environment and reconstruct drainage facilities for the benefit of the community, the community should be willing to raise their awareness to preserve their living environment. However, raising public awareness is not enough, the government must become more proactive in fighting violations caused by the community. This is for the realization of social justice for all people in Gorontalo city.

Not only doing the law enforcement, it is also required an openness by the government to receive input from the public. The involvement of the community is not only as a recipient of rights but can be used by the government as a control function in the aspect of infrastructure maintenance. There is equal opportunity for the community, as facility connoisseurs and as guardians in the sustainability of the environment around drainage and in the sustainability of regional development. In other words, this is called the principle of participation. However, if the conflict in development rises. For instance, indirectly causing an imbalance in social life, it is necessary to restore a fair and balanced infrastructure development system for all people (justice for all).¹⁴ This is to overcome distortions and to make corrections in development.

CONCLUSION

There are actually two inseparable contexts in the concept of social justice of paradigm development. The Indonesian state as *rechstaat* has guaranteed this matter in Pancasila and the 1945 Constitution. Therefore, there is no development for ignoring social welfare. However, in the context of spatial planning, the development of drainage system facilities infrastructure, the principle of social justice must be achieved not only by humans as active subjects in development but also by the environment and institutions. It is futile to build the best and grandest infrastructure by sacrificing living things around the development zone. Environmental rights must be fulfilled in the context of

¹³ Interview with Ketut Ciptaningrum, Head of the Urban Drainage Section for the Water Resources Sector of PUPR office on Gorontalo City, July 12, 2019

¹⁴ Purwanto, *Perwujudan Keadilan dan Keadilan Sosial dalam Negara Hukum Indonesia: Perjuangan yang tidak mudah dioperasionalkan*, Jurnal Hukum Media Bhakti, year 2017

drainage development. This is not only to maintain the function of the living environment but also helping to maximize the handling of excess capacity by the drainage. Another aspect of institutionalism is the principles of good governance. Social justice means justice for many people, all groups, and many parties. The principle of good governance will not be manifested if the government in charge of the construction and drainage utilization does not well-coordinated with each other.

SUGGESTION

In the case of drainage development in the city of Gorontalo, the development to the issue of controlling utilization is the responsibility of the Public Works and Spatial Planning office, and the Water Resources sector at the PUPR office. Based on the data, they have good coordination and cooperation, especially in terms of tree evacuation and other environmental factors to construct drainage system facilities. The best solution for social justice in the paradigm of infrastructure development for drainage system facilities is to foster a sense of complementarity between the community as individual subjects, the government as the implementer, and the environment to strengthening the relations (natural factors).

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