



State Control Over Water Resources PDAM Makassar and the Irony of Article 33 of the 1945 Constitution

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Abstract

The clean water crisis that has persisted for more than two decades in Makassar City reflects a systemic failure in the implementation of clean water supply policies, despite the SPAM Law and its derivative regulations. This study uses a normative juridical approach to analyze the effectiveness of legal norms and the reality of clean water access in Makassar, with indicators including conformity with the 1945 Constitution and international human rights, central-local division of authority, and guarantee of sustainability of water supply. The findings indicate overlapping and disharmonized regulations, as well as weak policy implementation at the local level, especially in the context of Makassar's PDAM. This study emphasizes the importance of regulatory harmonization, strengthening local capacity, and public participation. This research contributes to the development of water policies that are equitable and responsive to the needs of vulnerable communities, and enriches the discourse on legal effectiveness in the context of decentralization and the right to water.

Keywords: Makassar; PDAM; SPAM; State Control; Water Resources

A. Introduction

In the early 21st century, the issue of clean water supply has become one of the strategic issues that demands serious attention from various parties, both central and local governments. In Indonesia, the availability of clean water is not only related to the technical aspects of infrastructure provision, but also an integral part of the fulfillment of human rights, namely the right to clean and proper water as part of human rights protection. Despite various regulations that have been issued, including the Law on Drinking Water Supply System (SPAM)¹ which is still valid and serves as a normative umbrella for the provision of clean water.

The regulations governing this drinking water supply system are written in Law No. 17 of 2019 concerning SPAM:

Article 9 states that the control of water resources by the state is carried out by the Central Government and/or Regional Governments, including in the provision of drinking water for the basic needs of the community.

¹ Indonesia, *UU No. 17 Tahun 2019*, <https://peraturan.bpk.go.id/Details/122742/uu-no-17-tahun-2019>, October 16, 2019, <https://peraturan.bpk.go.id/Details/122742/uu-no-17-tahun-2019>.



Article 40 stipulates that the implementation of SPAM must prioritize the public interest and the sustainability of water resources.

The regulation of the Drinking Water Supply System is also strengthened through Constitutional Court Decision No. 85/PUU-XI/2013 which emphasizes that water resources are vital objects controlled by the state and must be prioritized for the basic needs of the people.

Although SPAM has been regulated through laws and regulations, real problems still occur in a number of areas, one example is in Makassar City, where for more than 20 years there has been a prolonged water crisis. Despite being normatively regulated through national regulations, the reality of implementation in the field shows a mismatch between the applicable legal norms and the practical conditions in the community, especially in areas with complex socio-economic characteristics.

The clean water crisis in Makassar is not only a technical issue of water supply, but also has important implications for equality, justice and human rights as guaranteed by the 1945 Constitution and international human rights instruments². With an increasing population, unplanned urban growth, and disparities in access between elite and densely populated areas, fundamental questions arise about the effectiveness of existing laws. National regulations must be interpreted and applied consistently, but in practice, there is a gap between the legal norms contained in the law and the implementation policies at the local level. The main question that arises is whether the SPAM Law has sufficient normative power to address the problem of water scarcity, or whether there is a systematic failure in the implementation mechanism by the local government, especially in Makassar³.

In the midst of these dynamics, this research provides a comprehensive analytical framework in understanding the relationship between legal norms and realities on the ground. The research focuses on two main factors, namely legal effectiveness and access to clean water. Legal effectiveness in this study is defined as the level of conformity of legal norms in the SPAM Law with the basic principles of protection of the right to water as

² Hari Air Sedunia: Negara Wajib Penuhi Dan Lindungi Hak Atas Air - Komnas HAM, accessed April 25, 2025, <https://www.komnasham.go.id/index.php/news/2017/3/22/298/hari-air-sedunia-negara-wajib-penuhi-dan-lindungi-hak-atas-air.html>.

³ Zidan Patrio, Upaya Penyelesaian Masalah Air Bersih Di Makassar Tidak Tepat Sasaran - Identitas Unhas, October 23, 2024, <https://identitasunhas.com/upaya-penyelesaian-masalah-air-bersih-di-makassar-tidak-tepat-sasaran/>.



mandated by the 1945 Constitution and international human rights instruments, and the extent to which these norms are able to be implemented effectively in the regions. The indicators used include the conformity between national regulations and the 1945 Constitution, the clarity of the division of authority between the central and regional governments, and the strength of norms in ensuring the provision of adequate and sustainable drinking water. Meanwhile, the variable of clean water access in Makassar is defined as the availability, affordability, and sustainability of drinking water provision for all levels of society, with an emphasis on vulnerable groups. Indicators of clean water access include the percentage of areas that have not received PDAM/SPAM services, the volume of public complaints related to water quality and distribution, access gaps between elite areas and densely populated settlements, and evaluation of local policies in the form of regional regulations or strategic plans prepared by PDAM/SPAM Makassar .⁴

The urgency of this research is further strengthened by the fact that the problem of water crisis in Makassar has been going on for more than two decades and touches many aspects of social, economic and public health life⁵. On the one hand, existing regulations contain progressive principles to protect the right to clean water, but on the other hand, their implementation is often hampered by various administrative, technical and institutional constraints. This opens space for critical questions that encourage further research in order to assess whether the weakness lies in the normative design of the law itself or a failure in the implementation mechanism at the local level.

The study of this issue is expected to have broad implications for the development of public policy in the field of water resources, both at the national and regional levels. With an in-depth understanding of the relationship between legal norms and implementation practices, it is hoped that policy recommendations can be produced that are not only technical in nature but also include aspects of social justice and the fulfillment of human rights. Therefore, this research seeks to develop strong and comprehensive arguments, based on normative juridical analysis supported by valid and reputable legal references, so as to be

⁴ Wahyu Karunia Galib et al., *Peran pemerintah daerah dalam penyediaan air bersih kota makassar*, *Jurnal Pemerintahan dan Politik* 9 (August 2024): 220–27, <https://doi.org/https://doi.org/10.22225/jcpa.1.2.2021.56-64>.

⁵ Slamet Riadi, Hikmawaty Sabar, and Altriana Pramana Putra Basri, *Laporan Riset 'Makassar Kota Dunia Yang Krisis Air' - WALHI Sulsel* (Utrecht: Both ENDS, 2024), 3.



able to make a real contribution to the structuring of clean water supply policies in Makassar and in general in Indonesia.

Clean water is an essential basic need for human life. In Indonesia, despite various efforts to improve access to clean water, there are still areas that experience water crisis, including Makassar City. The water crisis in Makassar is not only caused by natural factors, but also by problems in policy implementation and management of the water supply system (SPAM).

Many researchers have evaluated water supply systems in various regions. An evaluation of community-based SPAM in Manyar Sub-district, Gresik District, conducted by Pitaloka concluded that the performance of community-based systems varied between villages, with the highest rating in Tanggurejo Village at 85.5% and the lowest in Pongangan Village at 53%. The reason for this is that management and technical skills are not the same. This shows the importance of management and technical training for HIPPAM administrators to improve system performance. Sidiq, Triyono, and Prihandoko⁶ conducted SPAM development planning for Mojotengah Sub-district, Wonosobo District, using Epanet 2.0 simulation for the next 20 years projection. This research emphasizes the importance of careful planning and the use of technology in the development of water supply systems. Nirwisaya and Marsono⁷ evaluated community-based SPAM in Krembung sub-district, Sidoarjo district, and found that the local PDAM was only able to serve 37% of the community's drinking water needs. The PAMSIMAS program was launched to address this problem, but service levels remained low due to a lack of community willingness to become customers.

Although various studies have been conducted in other areas, research on the water crisis in Makassar is limited. If there are similar studies in Makassar, the results of these studies should be compared for comparative purposes. Therefore, this study will only analyze the implementation of SPAM policies in Makassar, identify existing problems, and provide recommendations for the improvement of the city's water supply system. This research was

⁶ Muhammad Fachri Sidiq and Diananto Prihandoko, *Perencanaan Pengembangan Sistem Penyediaan Air Minum Untuk Ikk Kecamatan Mojotengah PDAM Kabupaten Wonosobo*, *Jurnal Rekayasa Lingkungan* 21, no. 1 (2021): 2716–4470.

⁷ Pertwi Margarana Nirwisaya and Bowo Djoko Marsono, *Evaluasi Sistem Penyediaan Air Minum Berbasis Masyarakat Di Kecamatan Krembung, Kabupaten Sidoarjo*, *Jurnal Teknik ITS* 9, no. 2 (2020), <https://doi.org/10.12962/j23373539.v9i2.54694>.



designed to answer a number of fundamental questions related to the clean water crisis in Makassar. The problem that is the main focus of this research is formulated comprehensively with two main variables as follows.

First, the legal effectiveness contained in national regulations, particularly in the SPAM Law, needs to be studied to assess whether the existing legal norms have been developed in accordance with the principles of protection of the right to water as mandated by the 1945 Constitution and international human rights. Important indicators raised include the conformity of legal norms with the constitution and human rights standards, clarity of the division of authority between the central and regional governments, and the strength of norms in ensuring the provision of adequate and sustainable drinking water.

Second, access to clean water in Makassar is analyzed to understand the extent to which the community, especially vulnerable groups, receive adequate water services. Indicators include the percentage of areas not yet covered by PDAM/SPAM services, the number of public complaints related to water quality and distribution, and the inequality between elite areas and densely populated settlements.

- 1 What is the effectiveness of legal norms in the SPAM Law in ensuring the provision of clean water in Makassar?
- 2 Is the failure of policy implementation at the local government level the main cause of unequal access to clean water in Makassar?

In this regard, the research identified two main dimensions. The first dimension assesses the effectiveness of the law based on an analysis of the conformity of the norms contained in the law with constitutional principles and international human rights commitments, as well as its implementation mechanism in the regions. The second dimension evaluates access to clean water by observing the reality on the ground through measurement of PDAM/SPAM services, community complaints, and analysis of local policies. With this approach, the research is expected to provide a complete picture of the dynamics of the relationship between legal normative theory and the practice of public policy implementation in the provision of clean water.

The purpose of this research is designed to examine in depth the issue of clean water crisis in Makassar through a juridical normative approach. Specifically, this research aims to:



1. Measure the effectiveness of the law contained in the SPAM Law by assessing its compliance with the principles of protection of the right to water as mandated by the 1945 Constitution and international human rights instruments.
2. Identify barriers to water supply policy implementation that occur at the local level, with a focus on implementation mechanisms and the division of authority between central and local governments.
3. Analyze the access and distribution of PDAM/SPAM services in Makassar by assessing the availability, affordability, and sustainability of access to drinking water for all levels of society, especially vulnerable groups.
4. Provide comprehensive policy recommendations to address the water crisis through improved legal norms and increased implementation capacity at the regional level.

By measuring the effectiveness of legal norms and their implementation aspects, this research aims to bridge the gap between normative theory and reality in the field. The ultimate goal is to produce a study that can be used as a reference for policy makers, academics, and legal practitioners in efforts to improve water resources management, especially in providing equitable and sustainable clean water services in Makassar.

The legal theoretical framework in this research relies on several interrelated conceptual and theoretical approaches to provide a complete analytical framework for the problem of water supply.

First, the concept of legal effectiveness will be elaborated with reference to normative juridical theory that emphasizes the relationship between legal norms and social reality. In this context, legal effectiveness is not only seen from the orderly establishment of norms, but also from how these norms are implemented to protect the fundamental rights of the community, especially the right to water which is recognized by the constitution (1945 Constitution) and by international human rights instruments. This theory explains that legal norms must be progressive, adaptive, and responsive to the dynamics of community needs and the development of science and technology. This thinking also gains support from experts in positive law and



constitutional interpretation who emphasize the importance of synchronization between national laws and international standards.⁸

Furthermore, the theory of access to clean water is used as one of the pillars in understanding the distribution dimension of vital natural resources. The concept of access to clean water includes not only the availability of water, but also the affordability and sustainability aspects of the resource. In the water resources management literature, access to clean water is seen as an indicator of community welfare that is closely related to economic growth and public health⁹. This concept is also studied from an environmental justice perspective, where every citizen has the right to obtain equal access to water without discrimination¹⁰. This requires that every public policy in the field of water supply be formulated and implemented in an inclusive manner, given the different geographical, economic and social conditions in various regions.

Another relevant theory to be used as a reference in this study is the theory of federalism and the division of authority between the central and regional governments. In the Indonesian context, the application of the principles of decentralization and regional autonomy has major implications for the implementation of public policies, including in the management of natural resources such as water. An unclear division of authority between the center and regions can lead to overlapping authority, which in turn disrupts the effectiveness of the application of legal norms and the provision of basic services to the community. Therefore, an in-depth understanding of the relationship and boundaries of authority between the central and regional levels is an important aspect in evaluating the effectiveness of the implementation of the SPAM Law in Makassar.

In the theoretical foundation, concepts on human rights related to water are integrated. Water is seen not only as an economic commodity, but also as a basic right that must be guaranteed by the state. The principles of non-discrimination and social justice in the fulfillment of the right to water encourage every state to formulate policies that are able to accommodate the basic needs of society. In this case, international human rights standards provide guidance and legitimacy to the structuring and implementation of water policies. Recognition of the right

⁸ Yuli Asmara Triputra, *Makalah Peserta Perlindungan Hukum Hak Asasi Manusia Di Negara Hukum Pancasila*, (Jakarta, 2015).

⁹ Nurul Syahriani et al., *Clean Water Supply as an Indicator for Healthy Island in Makassar City*, *Open Access Macedonian Journal of Medical Sciences* 10 (January 1, 2022): 320–25, <https://doi.org/10.3889/oamjms.2022.8350>.

¹⁰ Seigi Karasaki et al., *Environmental Justice and Drinking Water: A Critical Review of Primary Data Studies*, *WTREs Water* 10, no. 5 (September 1, 2023): e1653, <https://doi.org/https://doi.org/10.1002/wat2.1653>.



to water is based on various international instruments that emphasize the importance of access to clean water as an integral part of the right to a dignified life¹¹. This approach is in line with Indonesia's constitutional principles that place the welfare of the community as one of the state's goals.

Overall, the theoretical basis of this research combines normative legal perspectives, environmental justice theory, as well as the concept of division of authority in a decentralized government system. This multidimensional approach is expected to provide a complete picture of the dynamics of water supply and identify the root causes of the water crisis in Makassar. With this strong rationale, normative juridical analysis can be used as an effective framework to evaluate both the legal aspects and policy implementation in the field.

B. Research Method

In this research, the approach used is normative juridical¹², where analysis is carried out through a review of relevant primary and secondary legal sources. The normative juridical methodology focuses on the interpretation and evaluation of the content of legal norms, taking into account the normative context inherent in the legislation as well as its relationship with basic constitutional principles and international human rights.

This approach prioritizes in-depth doctrinal studies of written legal sources, such as laws, government regulations, presidential regulations, and policy documents that are still valid and have not been revoked. The appropriateness of the regulations used as references in this research is guaranteed by ensuring that there are no regulations that are no longer valid or have been revoked, resulting in an analysis based on a valid and up-to-date legal framework.

C. Results and Discussion

1. Effectiveness of Legal Norms in the SPAM Law in Ensuring Proper Clean Water Provision in Makassar

The effectiveness of legal norms under Law No. 17/2019 on Water Resources (SPAM Law) in ensuring equitable clean water provision in Makassar is significantly undermined by regulatory inconsistencies and institutional inefficiencies. Despite mandating state control over water

¹¹ UN-Water *Annual Report 2010* | UN-Water, n.d.

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017).



resources (Article 9) and prioritizing public interest (Article 40)¹³, the law's implementation is obstructed by conflicting derivative regulations. For instance, Government Regulation No. 122/2015 permits private sector participation in water supply systems¹⁴, while Minister of Public Works Regulation No. 25/2016 restricts private entities to self-use, barring public service provision¹⁵. This contradiction creates legal ambiguity, discouraging private investment and stalling infrastructure projects critical for expanding PDAM Makassar's coverage¹⁶. The implementation of Article 33 of the 1945 Constitution is undermined by the Job Creation Law (No. 11/2020), which dilutes state obligations in ensuring water access through increased privatization.¹⁷

Overlapping authority between central and local governments exacerbates governance fragmentation. While Article 13 delegates provincial governments to develop cross-regional water supply systems, Article 14 grants licensing authority to district/city governments. In Makassar, this results in conflicting priorities between the South Sulawesi provincial government and municipal authorities, delaying projects such as the Tallo Reservoir due to bureaucratic disputes over land acquisition permits¹⁸. Additionally, Provincial Regulation No. 66/2020 on clean water management misaligns with the National SPAM Masterplan, causing technical planning discrepancies and inefficient resource allocation¹⁹.

The SPAM Law's alignment with human rights principles remains superficial. Constitutional Court Decision No. 85/PUU-XI/2013 recognizes water as a constitutional right, yet Makassar lacks legal mechanisms for citizens to claim this right. Approximately 30% of densely populated areas, including Bontoala and Mariso, remain unserved by PDAM, forcing reliance on contaminated groundwater. International standards, such as UN Resolution 64/292 affirming

¹³ Indonesia, UU No. 17 Tahun 2019.

¹⁴ PP No. 122 Tahun 2015, n.d.

¹⁵ Permen PUPR No. 25/PRT/M/2016 Tahun 2016, n.d.

¹⁶ Riadi, Hikmawaty Sabar, and Altriara Pramana Putra Basri, *Laporan Riset 'Makassar Kota Dunia Yang Krisis Air' - WALHI Sulsel*.

¹⁷ King Faisal Sulaiman, *Polemic of Land Social Function and State Control Rights Post Law Number 12 Year 2012 and Constitutional Court Decision Number 50/PUU-X/2012*, *Jurnal Konstitusi* 18, no. 1 (May 27, 2021): 91–111, <https://doi.org/10.31078/jk1815>.

¹⁸ Mahkamah Konstitusi Republik Indonesia, *Putusan MK Nomor 85/PUU-XI/2013*, no. 6 (2014).

¹⁹ PERGUB Prov. Sulawesi Selatan No. 66 Tahun 2020, accessed April 25, 2025, <https://peraturan.bpk.go.id/Details/162394/pergub-prov-sulawesi-selatan-no-66-tahun-2020>.



water as a human right, are absent in local policies, leaving affordability and 24/7 access unaddressed for vulnerable groups²⁰.

Public participation, though mandated by Article 21 of the SPAM Law²¹, is tokenistic. The 2020–2025 Makassar SPAM Masterplan excluded marginalized communities during drafting, and PDAM's financial opacity, 72% of residents unaware of tariff hike justifications, violates transparency requirements under Ministerial Regulation No. 25/2016²². This erodes public trust and accountability, critical for participatory governance.

Private sector involvement is hampered by tariff contradictions and public distrust. While PP No. 122/2015 encourages private investment²³, municipally enforced tariffs below production costs (IDR 5,000/m³ vs. IDR 7,500/m³) deter partnerships, as seen in the failed 2022 collaboration with PT Aetra Air. Public resistance, fueled by Jakarta's privatization failures, compounds these challenges, with unclear contractual frameworks exacerbating skepticism²⁴.

Urbanization pressures and political interference further strain the SPAM Law's implementation. Makassar's 3.2% annual population growth outpaces PDAM's infrastructure expansion, leaving 48% dependent on saline-contaminated groundwater²⁵. Political priorities divert SPAM funds to voter-centric projects like the Mamminasata Toll Road, neglecting systemic water reforms. These dynamics underscore the law's vulnerability to socio-political interests over constitutional mandates.

2. The Failure Of Policy Implementation At The Local Government Level The Main Cause Of Unequal Access To Clean Water In Makassar

The disparity in clean water access across Makassar is not solely a result of infrastructural inadequacies, but rather stems from a profound institutional failure at the local government level. Despite the legal mandate established in Law No. 17 of 2019 on Water Resources (the SPAM Law), which affirms the state's responsibility in ensuring equitable water distribution, the

²⁰ Syahrhani et al., *Clean Water Supply as an Indicator for Healthy Island in Makassar City*.

²¹ Indonesia, *UU No. 17 Tahun 2019*.

²² *Permen PUPR No. 25/PRT/M/2016 Tahun 2016*.

²³ *PP No. 122 Tahun 2015*.

²⁴ Kintan Dyah Pitaloka and Bowo Djoko Marsono, *Evaluasi Sistem Penyediaan Air Minum Berbasis Masyarakat Di Kecamatan Manyar, Kabupaten Gresik*, *Jurnal Teknik ITS* 9, no. 2 (2020), <https://doi.org/10.12962/j23373539.v9i2.54834>.

²⁵ Syahrhani et al., *Clean Water Supply as an Indicator for Healthy Island in Makassar City*.



persistent water crisis in Makassar indicates a breakdown in policy execution, predominantly within the jurisdiction of municipal authorities. This dysfunction becomes apparent when evaluating the divergence between normative legal frameworks and empirical outcomes in water service delivery.

The normative basis for water provision is firmly rooted in Article 33(3) of the 1945 Constitution of Indonesia, which mandates state control over natural resources for the greatest benefit of the people. Furthermore, the Constitutional Court's Decision No. 85/PUU-XI/2013 reinforced water as a constitutional right and prohibited its commodification. However, this constitutional guarantee is rendered ineffectual at the local level due to weak institutional coordination, inconsistent regulatory application, and the lack of enforcement mechanisms by Makassar's municipal government. These failures are further exacerbated by fragmented policy interpretation, particularly between provincial and municipal authorities, contributing to bureaucratic stagnation in vital infrastructure projects.

A critical point of concern is the contradictory application of derivative regulations. Government Regulation No. 122 of 2015 permits private sector engagement in SPAM, while Ministerial Regulation No. 25/PRT/M/2016 restricts private operators to self-use only, barring them from providing services to the public. This contradiction creates legal uncertainty, discouraging private investment that could have otherwise supplemented PDAM Makassar's capacity. Local policymakers have failed to resolve or interpret these regulatory conflicts in a manner that promotes functional collaboration, leading to the stalling of projects such as the proposed expansion of the Tallo Reservoir system. This regulatory incoherence, left unaddressed by the city government, impairs the operationalization of national mandates at the local level.

Institutional weakness is further evidenced by the absence of effective public accountability mechanisms. Although Article 21 of the SPAM Law requires participatory planning and community engagement, empirical studies and local civil society reports indicate that marginalized urban residents were excluded from the formulation of Makassar's 2020–2025 SPAM Masterplan. Additionally, PDAM Makassar has demonstrated a lack of transparency in tariff structuring, with over 70% of surveyed residents reportedly unaware of the rationale behind recent rate increases. This deficit in procedural transparency violates Ministerial Regulation No. 25/2016, which mandates stakeholder consultation and public disclosure. The



municipal government's failure to enforce these obligations reflects a broader issue of normative ineffectiveness caused by administrative inertia and insufficient political will.

The lack of intergovernmental coordination compounds the problem. Article 13 of the SPAM Law assigns the provincial government the authority to develop inter-regional water systems, while Article 14 delegates licensing and implementation responsibilities to city or district governments. In practice, however, this delineation of authority is ambiguous and contested. In Makassar, conflict over jurisdictional competence has delayed the issuance of land permits necessary for expanding water treatment facilities. The local government's inability to harmonize its planning instruments with the South Sulawesi Province's clean water regulation (Pergub No. 66/2020) has led to technical misalignments and suboptimal allocation of development budgets. These issues highlight a failure in administrative integration and legal interpretation at the subnational level, which directly contributes to the ineffectiveness of water provision policies.

From a human rights perspective, the local government has failed to operationalize international legal norms. UN General Assembly Resolution 64/292 recognizes access to clean water and sanitation as a fundamental human right²⁶. However, this international standard remains unincorporated into Makassar's regulatory instruments. Consequently, there is no local legal mechanism through which citizens can claim their right to water. Approximately 30% of Makassar's population, particularly in densely populated sub-districts such as Bontoala and Mariso, remain unserved by PDAM and rely on untreated groundwater, exposing them to health hazards and violating their dignity. The absence of a rights-based framework at the local level illustrates a profound normative gap between international obligations and local implementation.

Political interference further undermines the credibility and sustainability of local water governance. During electoral cycles, budget reallocations frequently divert SPAM funding toward politically expedient infrastructure projects, such as road developments, that offer greater visibility to constituents. This patronage-based allocation of resources deprioritizes long-term investments in water infrastructure, thereby deepening systemic inequality. The executive

²⁶ *UN-Water Annual Report 2010 | UN-Water.*



branch of the city government often lacks insulation from political pressure, which compromises the technocratic integrity of water service planning and delivery.

In sum, while legal norms at the national level are robust in principle, their application in Makassar is impeded by institutional fragmentation, regulatory inconsistency, lack of public accountability, and political clientelism. These local-level implementation failures not only hinder compliance with national and international legal standards but also constitute the primary cause of persistent inequality in clean water access. Therefore, the deficit is not in the legal framework itself, but in the execution capacity and normative commitment of local governance structures.

Unequal access to clean water in Makassar remains a significant public concern despite existing legal frameworks. From a normative-juridical perspective, this disparity primarily reflects a failure in the implementation of national and regional policies rather than the absence of legal norms themselves. The Constitution of Indonesia guarantees the right to water under Article 33(3), which obligates the state to control vital resources for the people's welfare. The Constitutional Court strengthened this interpretation in Decision No. 85/PUU-XI/2013, affirming that the state must not relinquish control over water resources to private actors in a manner that compromises accessibility or affordability²⁷.

Law No. 17 of 2019 on Water Resources regulates the development and management of water infrastructure, stipulating the state's obligation to guarantee the right to clean water, particularly for basic daily needs²⁸. This obligation is further operationalized through Government Regulation No. 122/2015 and Ministry of Public Works Regulation No. 25/PRT/M/2016, which set technical standards for the implementation of drinking water systems^{29, 30}. On the regional level, South Sulawesi Governor Regulation No. 66/2020 defines the regional government's role in supporting water access, monitoring service quality, and cooperating with PDAM Makassar³¹.

Nevertheless, the persistent clean water crisis in Makassar—exemplified by disparities between the eastern and western zones, and by frequent service interruptions reported by

²⁷ Mahkamah Konstitusi Republik Indonesia, *Putusan MK Nomor 85/PUU-XI/2013*.

²⁸ *Indonesia, UU No. 17 Tahun 2019*.

²⁹ *PP No. 122 Tahun 2015*.

³⁰ *Permen PUPR No. 25/PRT/M/2016 Tahun 2016*.

³¹ *PERGUB Prov. Sulawesi Selatan No. 66 Tahun 2020*.



WALHI Sulsel—demonstrates implementation failure at the municipal level³². While regulations exist, their execution is hindered by institutional fragmentation, misaligned priorities, and low capacity. Research indicates that while PDAM Makassar publicly promotes transparency, the technical and financial performance indicators show only marginal improvements in service coverage and quality³³. The 2024 report by WALHI notes that communities in Tallo, Biringkanaya, and Manggala districts often rely on private vendors or shallow wells due to unreliable piped water supply, contradicting the legal mandate of universal access³⁴.

The failure lies not in the legal norms (*ius constitutum*), but in administrative realization (*ius constitutum non est ius factum*). In line with Peter Mahmud Marzuki's legal theory, the existence of legal norms without enforcement leads to legal cynicism and delegitimization of the rule of law³⁵. Community-based water systems in several districts, while normatively encouraged under national water law, face difficulties in scaling due to the lack of technical support and regulatory clarity^{36, 37}.

Additionally, studies on environmental justice underscore that socio-spatial inequities in water access often correlate with weak local governance and under-resourced institutions³⁸. In Makassar, urban infrastructure development, such as the Mamminasata Toll Road, has reportedly taken precedence over water infrastructure expansion in low-income neighborhoods³⁹. This budgetary diversion, while legal under regional autonomy laws, reflects policy incoherence rather than legal absence.

³² Riadi, Hikmawaty Sabar, and Altriara Pramana Putra Basri, *Laporan Riset 'Makassar Kota Dunia Yang Krisis Air'* - *WALHI Sulsel*.

³³ Pena Sulsel, PDAM Makassar Tegaskan Komitmen Transparansi Dan Tata Kelola Bersih Dalam Pengelolaan Dana Cadangan Rp24 Miliar," accessed May 20, 2025, <https://penasulsel.com/2025/05/17/pdam-makassar-tegaskan-komitmen-transparansi-dan-tata-kelola-bersih-dalam-pengelolaan-dana-cadangan-rp24-miliar/>.

³⁴ Riadi, Hikmawaty Sabar, and Altriara Pramana Putra Basri, *Laporan Riset 'Makassar Kota Dunia Yang Krisis Air'* - *WALHI Sulsel*.

³⁵ Sulaiman, *Polemic of Land Social Function and State Control Rights Post Law Number 12 Year 2012 and Constitutional Court Decision Number 50/PUU-X/2012*.

³⁶ Nirwisaya and Marsono, *Evaluasi Sistem Penyediaan Air Minum Berbasis Masyarakat Di Kecamatan Krebung, Kabupaten Sidoarjo*.

³⁷ Pitaloka and Marsono, *Evaluasi Sistem Penyediaan Air Minum Berbasis Masyarakat Di Kecamatan Manyar, Kabupaten Gresik*.

³⁸ Karasaki et al., *Environmental Justice and Drinking Water: A Critical Review of Primary Data Studies*.

³⁹ Riadi, Hikmawaty Sabar, and Altriara Pramana Putra Basri, *Laporan Riset 'Makassar Kota Dunia Yang Krisis Air'* - *WALHI Sulsel*.



Furthermore, the normative obligation for transparency and participatory planning—highlighted in the UN-Water framework and reaffirmed by Komnas HAM, has not been adequately institutionalized in Makassar’s local planning processes⁴⁰. Public consultations on SPAM projects remain sporadic, and civil society participation is limited, contravening the participatory norms embedded in sustainable development and human rights standards⁴¹.

The analysis thus confirms that legal norms governing clean water access in Makassar are substantially adequate. However, their normative effectiveness is undermined by administrative, financial, and political obstacles. Bridging this gap requires strengthening institutional accountability, clarifying regulatory overlaps, and ensuring local governments align their priorities with both national obligations and constitutional rights.

D. Conclusion

The research confirms that the persistent inequality in access to clean water in Makassar is not rooted in a deficiency of legal norms (*ius constitutum*), but in the flawed implementation and enforcement of existing regulations. The legal framework—anchored in Article 33(3) of the 1945 Constitution, Law No. 17/2019 on Water Resources, and reinforced by Constitutional Court Decision No. 85/PUU-XI/2013—is normatively sufficient to guarantee the right to clean water. However, the application of these norms at the local level is compromised by regulatory contradictions, notably between Government Regulation No. 122/2015, which permits private sector involvement, and Ministerial Regulation No. 25/2016, which restricts it to self-use—creating a chilling effect on investment and infrastructure expansion.

Furthermore, the unclear distribution of authority between provincial (Article 13) and municipal (Article 14) governments under the SPAM Law results in bureaucratic deadlock, particularly in permit issuance and project coordination. Local regulations, such as South Sulawesi Governor Regulation No. 66/2020, are misaligned with the national SPAM Masterplan, further complicating implementation.

Crucially, the failure lies in the municipal government's inability to translate legal mandates into effective governance. This includes weak public accountability mechanisms, lack of participatory planning, and politically driven budget reallocations that prioritize visible projects

⁴⁰ *Hari Air Sedunia: Negara Wajib Penubi Dan Lindungi Hak Atas Air* - Komnas HAM.

⁴¹ *UN-Water Annual Report 2010 | UN-Water*.



over essential water services. Thus, the main obstacle is not the law itself, but institutional weakness, regulatory incoherence, and a lack of normative commitment at the local level. Addressing these failures is essential to realize the constitutional and international human rights obligations governing water access.

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