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Right-to-water Alliances in Indonesia and Two Critical Disjunctions

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Abstract

Discourses on the right to water have shaped the opposition movement against Indonesia's market-oriented approach. We document how global debate against the privatisation of water has influenced discourses in this sector since 1998, and how activists have utilised such discourses in the context of national and provincial water policy. Our observations and analyses are centred on the decision of the Indonesian Constitutional Court February 2015 to annul the 2004 Law on Water Resources (UU No 7 Tahun 2004 tentang Sumber Daya Air), the legal umbrella under which private water concessions were sanctioned. We seek to understand discourse formations before and after the decision that helped end Indonesia's partial water privatisation. By deploying a textual-oriented discourse analysis of the pros and cons of the right-to-water and market-oriented approaches, this article examines the trajectory of Indonesian social movements opposed to water privatisation. It draws on leading Indonesian newspapers, grey literature—works produced outside academic and commercial publishing—and scientific publications. This article shows that there are limits to the use of the right-to-water discourse among activists, resulting in two critical disjunctions. First, an excessive focus on normative struggles against the privatisation of piped-water services has hindered more progressive, community-oriented responses to market-oriented water policies. Second, social movements in this sector have been disconnected from more recent global agendas for just water governance.

Keywords: *human rights to water, Indonesian water law, civil society coalitions*

Introduction

Indonesian civil society movements in the water sector are relatively new compared to those in the labour, peasant, and environmental sectors (see Peluso et

al., 2008; Beers, 2013). Such movements first emerged in the 1990s, when municipal water concessions were given to private enterprises under a market-based modernisation strategy; this included, for

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example, Lyonnais des Eaux in Jakarta (Argo & Firman, 2001; Ardhanie, 2005; Hadipuro & Ardhanie, 2011). They became nationally visible in 2003 (“RUU Sumber Daya Air rawan KKN”, 2003, p. 10), when several non-governmental organisations—mainly based in Jakarta—consolidated to oppose the Draft Law on Water Resources, in which water was identified as a private good rather than a public one.

Since their inception, these civil society movements in the water sector have replicated the common pattern of major Indonesian social movement trajectories during and after the authoritarian New Order: being highly influenced by global human rights discourses and, to a certain degree, dependent on international donors and influenced by their agendas (Antlöv et al., 2005; Nomura, 2007). This article reveals the processes through which global discourses on the human right to water entered the Indonesian water sector, and how activists used it to normatively challenge water privatisation. It seeks to explain the application of the right-to-water concept to counter the privatisation and pro-market discourses in policy arenas.

Global discourses in the water sector have evolved as societal development practices have changed. Among the varying historical trajectories of diverse water-related discourses—from *water sustainability* to *water security*—this article discusses a partial trajectory of *right to water*. Following the peak of industrial modernisation from the 1960s to the 1970s, environmental and community activists worldwide raised the issue of sustainability, which became a dominant concern within global development sectors in the 1980s. This *environmental awareness* also influenced the water sector. Many

nation states, as well as private sector actors and multinational water organisations, began promoting the concepts of sustainable water provision and resources, and mainstreaming these concepts within water policies as a means of tackling the problems of water scarcity and depletion (Allan, 2006). The sustainability discourse has become hegemonic since the 1980s, being the underlying principle of water service privatisation and commercialisation (Bakker, 2003b; Allan, 2006). It is against the privatisation and commercialisation of water that the right-to-water has been mobilised as a counter-hegemonic discourse and practice (Baer & Gerlak, 2015; Karunanathan, 2019).

Scholars have debated the problematic use of right-to-water as an alternative to market-oriented water governance (Bakker, 2007; Parmar, 2008; Harris et al., 2015; Sultana & Loftus, 2015; Karunanathan, 2019). The concept has often been reduced to the fulfilment of basic water needs, and consequently it has been easily abused within the neoliberal development agenda and used to legitimise the role of private firms in fulfilling basic human needs (Bakker, 2007; Harris et al., 2015). Such a right-to-water approach holds that water is an essential material for economic development, as understood within the Western liberal concept of modernisation (Parmar, 2008). Despite its ambiguity, however, the concept has the potential to create new political spaces for challenging the pro-market approach to water policy (Sultana & Loftus, 2015; Angel & Loftus, 2019; Karunanathan, 2019). Aligned with this later proposition, we seek to understand how efforts to defend the right-to-water in Indonesia could be improved.

Water is an essential material for life, in its diverse conceptions and practices. As such, the right to water should encompass the multiple ontologies of water within the lived experiences of different communities (Parmar, 2008; Yates et al., 2017). It is unfortunate, however, that the Indonesian right-to-water movement is distanced from the complex needs and problems within diverse grassroots communities, and from the more elaborate discourses and agendas of current global struggles for just water governance. These shortcomings have limited international solidarity and supportive networks for sustaining the movement in the country.

Four main sections follow this introduction. The second section briefly explains what we refer as discourse analysis and the research method we use. In the third section, we discuss discourse formulations before the enactment of the pro-market Water Law in 2004. The fourth section reveals the fictitious reform within the Water Law, and discusses the continuing struggle that ultimately resulted in the law's annulment in 2015. Last, we discuss our initial observations about civil society coalitions following the annulment of the 2004 Water Law. In our conclusion, we reflect on the achievements, limitations, and challenges of civil society struggles for just water governance in Indonesia.

Discourse Analysis and Research Method

The arguments in this article are developed mainly based on textual-oriented discourse analysis. Discourse analysis addresses not only statements, but also the mental frameworks (Fairclough, 2003) or belief systems that frame them. It seeks to understand the complex mix of theories about how the

world works, how it should work, and what we should do to bring the former closer to the latter (Cairney, 2012). In other words, a discourse is an ensemble of ideas, concepts, and categories with which meaning is given to social and physical phenomena (Hajer & Versteeg, 2005). Discourse analysis plays a prominent role in environmental politics and policy making because it allows one to see how diverse actors actively influence the definition of problems, their contestation, and their regularisation practices.

Of the five traditions of discourse analysis presented by Wetherell et al. (2001)—conversation analysis, sociolinguistics, discursive psychology, critical discourse analysis, and Foucauldian analysis—we refer to Hajer (2002) and Hajer & Versteeg (2005), which are highly influenced by Foucauldian analysis. Two premises underly their works. First, knowledge is significantly produced through discourse formulations. Second, in this context of knowledge production, reality is socially constructed when actors persuade others to shape reality in the light of their perspectives. In our case study, the reality at stake is whether water is a human right or a commodity. Unlike Hajer (2002), who uses the term *story-line*, or Wodak & Meyer (2001), who use the term *discourse topic*, we also apply the term *discourse* to the expression and representation of actors' concerns and positions on water privatisation in Indonesia.

For our discourse analysis, we do not only observe scientific publications, but also refer to some overlooked *grey literature* (McKimmie & Szurmak, 2002; Mahood et al., 2014), particularly materials published by non-governmental (NGOs) and civil society organisations (CSOs) in Indonesia, reports published by leading

Indonesian newspapers between 2003 to 2018, as well as materials published by donor agencies through their websites. In addition, we develop our arguments based on our observations of activists' discourses within the water sector in their interplays with those of the state; we participated and observed several Indonesian social fora for water justice, using them as sources of data.

The keywords we used to trace materials for discourse analysis were *water as human rights*, *water as commodity*, and *water privatisation*. However, as we found

only a few scientific publications with those keywords after 2015, we added *water* in tracing scientific publications through the Scimago Journal Ranking website. For donor agency publications, we focused on those organisations that provided financial support to Indonesia's water movements and we analysed the publications on their websites. In addition, we used keywords 'NGO/CSO name + publication'. Table 1 summarises the materials that we used for analysis.

Table 1. Materials for Discourse Analysis

Source	Keywords	
	2002-2015	After 2015
Scientific publications	'water as human rights', 'water as commodity', and 'water privatisation'	'water as human rights', 'water as commodity', 'water privatisation', and 'water'
NGO and CSO publications	'water as human rights', 'water as commodity', 'water privatisation', and 'the name of NGO/CSO + publication'	
Newspapers	'water as human rights', 'water as commodity', and 'water privatisation'	
Donor Websites	'the name of the donor'	

Source: the authors

After gathering materials from the above sources, we grouped the story-lines and discourse topics found in these sources. In parallel, we linked these materials to our analysis of Law No. 11 of 1974, Law No. 7 of 2004, and the drafts of the new water law. This article mainly serves to apply discourses analysis to understand the empirical case. Indeed, there remains much to do in using the case study to enrich the theoretical discussion of discourse analysis, to which we hope to contribute on another occasion.

Right-to-water Discourses Before the 2004 Pro-market Water Law

The replacement of Law No. 11 of 1974 regarding Irrigation with Law No. 7 of 2004 regarding Water Resources marked a new era for the Indonesian water sector, one highly dependent on foreign public and private funds for sector development. The enactment of the 2004 Water Resource Law was initially endorsed by the World Bank, in accordance to the Bank's 1993 policy of promoting pro-market oriented water sector (World Bank, 1993). The Bank provided a three-phased Water Sector Adjustment Loan (hereafter the Water

Loan), valued at USD 300 million, intended to *improve* water policy in Indonesia—i.e., to implement a pro-market water policy and implementation plan that was **acceptable to the Bank** (authors' emphasis). This statement was mentioned in the Report and Recommendation of the International Bank for Reconstruction and Development (Hadipuro, 2010).

Prior to the enactment of the Adjustment Loan, the Indonesian government's Inter-Agency Task Force on Water Sector Policy Reform prepared an analysis. It invited two respected non-governmental organisations (NGOs), the Center for Economic and Social Research, Education, and Enlightenment (Lembaga Penelitian, Pendidikan dan Penerangan Ekonomi dan Sosial, LP3ES) and the Secretariat for the Preservation of Indonesia's Forests (Sekretariat Kerjasama Pelestarian Hutan Indonesia, SKEPHI), to partake in the public consultation process. The involvement of LP3ES and SKEPHI, along with other *local* NGOs in West Sumatra, West Java, and South Sulawesi, fulfilled the public consultation criterion mandated by the Bank. However, this pro-market coalition was not without opposition. During the third phase of the loan's realisation, the Indonesian Government had to enact a water law that promoted a pro-market approach. The Indonesian government failed to do so as scheduled (World Bank, 2005), facing massive resistance from the anti-debt civil

society movement. The planned law sparked debate across the country, providing momentum not only for criticising southern countries' dependence on foreign loans, but also the privatisation of public services, i.e. clean water.

The drafting of a market-driven water law led to the rise of a coalition of NGOs that promoted a wider social movement opposed to the water privatisation mentioned in the draft. This movement was driven by three organisations: the Indonesian Forum on Globalisation (Infog),³ the International NGO Forum on Indonesian Development (INFID), and the People's Coalition for the Right to Water (Koalisi Rakyat untuk Hak atas Air, KRuHA). Their views on water debt and water privatisation were at the centre of mass media coverage,⁴ and they organised several public discussions to mobilise the public against the pro-market water law. Interestingly, this coalition also served as a *broker*, minimising conflict by negotiating with a coalition of pro-market NGOs that supported the water law (Cairney, 2015). State agents, such as members of legislature (which had been politically mandated to sanction the drafting of the water law), the Ministry of Public Works, and the World Bank were also invited to discussions by the generators of this social movement. Furthermore, academics from such institutions as the Soegijapranata Catholic University, Universitas Gadjah Mada, Bogor Agricultural Institute,

³ In 2006, Infog's role was taken over by the Amrta Institute, which had been established by Infog's former director.

⁴ See "RUU Sumber Daya Air rawan KKN", 2003; "Merebut air merebut kehidupan", 2003; "Koordinasi sumber daya air lemah", 2003; "DPR jangan tergesa-gesa sahkan RUU SDA", 2003; "RUU SDA lebih menguntungkan pengusaha swasta

asing", 2003; "Hal negatif RUU SDA", 2004; "Kekeringan di Jawa kian menghebat", 2003; "Water resource bill needs examining", 2003; "RUU Sumber Daya Airancam nasib 100 juta petani", 2003; "RUU Air bisa picu konflik antar daerah", 2003; and "RUU SDA sarat privatisasi implikasi buruk bagi kaum miskin", 2003.

Airlangga University, and Mercu Buana University were involved, as were independent researchers, social foundations (e.g. Geni Foundation) and peasant unions (e.g. Klaten Free Farmers Association).

The coalition opposed to the pro-market water law and development strategies—the three NGOs, the academics, and the other civil society organisations—developed counter-discourses under the paradigms of political economy, developmental ethics, and the underlying concept of human right to water. Their right-based discourse formulations were also seemingly influenced by, or corresponded to, international academic and non-academic publications and donor policies. In the following section, we summarise the counter-discourses to the pro-market approach.

When Water is a Commodity: Privatisation of Water Service Provision

The pro-market law framed water as an economic good, meaning that it identified profit as a target of water services. The counter-coalition viewed such a pro-market approach as prioritising the interests of industry and private water companies over citizens' needs. In practice, the attribution of economic value to water would allow companies to extract profit from higher water service tariffs, as well as export water by selling water to other regions or trading it through agricultural and food products (Hoekstra, 2003). Such water commercialisation often happens at the expense of peasants and other poor communities, who pay lower tariffs or even no tariff at all (Hadipuro, et al., 2014).

The civil society coalition identified such commercialisation as water

liberalisation, with the support of the World Bank, International Monetary Fund, and transnational corporations (see Public Citizens, 2003; Grusky, 2003; Bakker, 2003a). Such support was not without cost. Water liberalisation meant increasing dependency on foreign debts. INFID, one of the three initiators of the counter-coalition, translated and re-published Patricia Adams' *The Odious Debt* (2002) and showed that the loans taken by the Indonesian government (such as the Water Loan) would become a long-term burden. It argued that such loans would be *odious*, being not to advance public interests but to create profit; long-term loan instalments were the obligation of the public sector (i.e. the state) (Adams, 2002). Based on this framework, the counter-coalition rejected all statutory regulatory products related to the Water Loan, as we explain further in Section 5.

By framing water as a source of profit, the private sector applies a cherry-picking approach and only serves the most profitable areas (Swyngedouw, 2003). This is why most water concessions in the past three decades have happened in urban areas, where the services become more efficient through large-scale provision (Bakker, 2003a). Pro-market law treats water as a commodity, allowing the private sector to sell water to consumers on the basis of *willingness-to-pay* instead of *ability-to-pay* (Bakker, 2003a). Moreover, with a market-oriented approach, it is impossible to reconcile the commitment to universal water provision, as in the case of sub-Saharan Africa (Jaglin, 2002). The private sector concentrates on wealthier, more populous, and more urbanised regions, cities and neighbourhoods to the detriment of low-income areas (Budds & McGranahan, 2003). This brings the right to water (Castro, 2004), as well as the

achievement of environmental justice among urban and rural regions, into question. This was highlighted by the right-based coalition through its advocacy of peasants' right to water (see Hadipuro et al., 2014).

When Water is a Social Asset: A Rights-based Approach to Water

Water privatisation invites several technical and managerial problems: maintaining existing networks, creating new investments for network expansion, and improving accountability to consumers (Jaglin, 2002; Bakker, 2003b). As the Indonesian counter-coalition to pro-market approach has observed, it is not sufficient to address these issues through formal sanction mechanisms, public participation obligations, or improved coordination among statutory institutions—what are normally prescribed as the panacea for the social-institutional costs of water privatisation. Countering the idea that water is a commodity, the rights-based coalition promoted water as a social asset. It argued that there are embedded social practices for treating water as commons, for using a common pool resource approach with a spirit of participatory and socially sustainable water management. Although the practice of water as a common pool resource is never free from contestation, and continuously requires certain institutionalisation processes in order to avoid inter-community conflict, privatisation jeopardises communities' political space in water management and increases the possibility and probability of conflict—especially between concession right-holders and peasants/other collective entities. The coalition's view of water as commons was aligned with the thoughts of activists worldwide, including Vandana

Shiva. Her book *Water Wars*, which documents increased conflicts over water due to the expansive involvement of private companies in the sector, was translated and re-distributed in Indonesia for public education by Insist and Walhi (Shiva, 2002), two leading Indonesian NGOs that fight for social and environmental justice.

The premise of water as social asset was supported by the arguments about the failure of water privatisation. The counter-coalition argued that, with the exclusive allocation of water-use rights, there would be more opportunities for corruption, collusion, and nepotism within statutory practices. Corruption would occur as private companies competed to obtain concession rights (Swyngedouw, 2003). Once a concession was given, private water management would operate on a monopoly basis rather than market competition. For example, the privatisation of water services in Buenos Aires, Argentina, failed to reduce household water expenses as Aguas Argentina's monopoly was inconducive to water tariff reduction (Loftus & McDonald, 2001; Grusky, 2003). This was similar to the Indonesian case, when Suharto's New Order regime invited two multinational water companies—the Thames Water and Suez Lyonnaise des Eaux—to sign contracts with the state to supply water to Jakarta's residents (Harsono, 2003). Social assets were transformed into private assets, while simultaneously facilitating corruption, collusion and nepotism (popularly known in Indonesia as *korupsi*,

kolusi and *nepotisme*, or KKN)⁵ in the water sector.

The right-based coalition furthermore sought to promote the improvement of the public sector. Public water management has proven to be more efficient and accountable, as cases from Brazil, Hungary, Malawi, and Honduras show (Hall, 2001). It is believed that public water management allows the application of a holistic view of social and environmental conflicts over water resources, as the management is not primarily concerned with profit (see also Grusky, 2003 for several case studies worldwide).

The Fictitious Reform of the Pro-market Approach in the 2004 Water Law and The Continuous Struggle Against It

Despite the objections from the civil society movement, the pro-market draft of the water law was enacted in 2004. Interestingly, some anti-privatisation discourses were accommodated in the law, indicating that civil society opposition did not face a complete loss. However, theirs was not an ultimate victory either. Civil society initiatives were fundamentally defeated by legislative and executive power, mostly because public participation was reduced to a limited and formalistic *public consultation* (Susilo et al., 2016). As a result, the accommodated discourses did not deal with *progressive* issues, which were over-ruled by pro-privatisation articles. This *reform of the pro-market approach* dominated the 2004 Water Law.

⁵ Harsono (2003, p. 71) identifies this as *A Sweetheart Deal*, mentioning that 'In alliance with the Suharto family Suharto cronies, Thames and Suez won favourable concessions without public consultation or bidding'.

For instance, the 2004 Water Law mentions that the state must guarantee citizens' right to live healthy and productive lives in a clean environment and to access water for their everyday needs (Article 5). This can be identified as a victory for the counter coalition. Nevertheless, the substance of this article is eroded by the pro-market and pro-privatisation spirit that permeates other articles. The law fails to clearly identify how the state would, in practice, protect communities' use of water in a pro-market and pro-privatisation environment; rather, it allows private companies to *participate* in the development and management of water provision systems (Article 40:4). In addition, specific articles providing private companies with a privileged role in climate modification (Article 38:2), sea-water utilisation (Article 39:2), and river basin appropriation—all of which were opposed by the anti-privatisation movement—had been omitted from the latest revision of the law before its final enactment. The pro-privatisation coalition argued that the main goal of the privatisation was to allow private companies to participate in water provision systems, while the omitted roles were considered minor. In Law No. 11 of 1974 regarding Irrigation, private participation had only been guaranteed through the involvement of community cooperatives (see Article 11). The replacement of the 1974 Law with the 2004 Law was intended to provide significant space for private companies' participation in water supply systems, which had

Ardhianie identifies this as having occurred *through closed-door negotiations* (Ardhianie, 2005, p. 227), which can be categorised as collusion and nepotism.

previously been run by public institutions or cooperatives.

The 2004 Law did not include the words *commodity* or *commercial use*, both of which had been rejected by the counter-coalition. However, the term *water use rights* is used to refer to the commercial appropriation of water (Article 1:15)—see the case of Turkey for an example of how the term is used to blur water privatisation practices (Islar, 2012). Moreover, although the term *water export* was omitted from earlier drafts, the enacted law allows *water-*

use appropriation for other countries if the state has met its basic obligations (Article 49): i.e. provided enough water for basic domestic needs, environmental sanitation, agriculture, energy, industry, mining, transportation, forestry and biodiversity, sports, recreation and tourism, as well as environmental protection (Article 29:2). The exclusion of the term *commercial use*, and the omission of articles that were considered minor by private companies, simply provided a symbolic accommodation of counter-coalition discourses.

Table 2. Substantial Differences between Irrigation Law 1974 and Water Law 2004 from the Perspective of the Right-Based Coalition

Issue	Irrigation Law 1974	Water Law 2004
Provision guaranteeing citizens' right to access water	Central (Article 11 (1))	Central (Article 5)
Role of private sector	Article 11(2): no space for private sector involvement except for cooperatives	Article 40(4): private companies can <i>participate</i> in developing or managing water provision systems
Role of the state	Central (see Article 11(1) above)	Partial (Article 40(4) above; Article 77(3) allows private sector funding)
Principles on commercial use	Through cooperatives (see Article 11(2) above)	Participation of private companies (Article 40(4)), water use rights (Article 1(15)), and water export (Article 49)
Functions of water	Social function (Article 2)	Social, ecological, and economic functions (Article 4)

Source: the authors

Generally, the final 2004 Law effectively echoed the discourse that proponents of pro-market water law had developed over time. It also rationalised privatisation as a *harmless* part of

development, arguing that: i) privatisation would affect only the remaining available water resources after basic community needs were fulfilled; ii) water-use rights refer to a particular quota, and thus a

limited amount is subject to regulation; and iii) conflicts and potential conflicts over water could be addressed by scaling use and management according to municipal, provincial, and national regulations.

Despite the ambiguous adoption of the counter-coalition's discourses within the Law, there were substantial positive precedents for the Indonesian social movements beyond the water sector. The society movement continued its struggle, not only using its previous lobbying strategies (as observed by Susilo et al., 2016; Cairney, 2015) but also by instigating a judicial review of the law. The civil society movement, with the support of Muhammadiyah—one of Indonesia's largest Muslim organisations—filed a case with the Constitutional Court of Indonesia against the enactment of the 2004 Water Law.

Struggles through Legal Channels

In 2005, the civil society coalition filed its first request for a judicial review of the Water Law. This was denied by the Constitutional Court, which concluded that the 2004 Law was consistent with the National Constitution and its requirement for the state to promote the public welfare (Article 33 of the Constitution of 1945). Only two of the nine judges supported the civil society movement.

Nevertheless, the anti-privatisation movement persisted and pursued another judicial review. At that time, such a measure was uncommon, as regulations only allowed for enacted laws to be reviewed once by the Constitutional Court

⁶ While this article was being written, the Government of Indonesia issued a new water law, Law No. 17 of 2019 on Water Resources, on

(Article 60 of Law No. 24 of 2003 regarding the Constitutional Court). For a second judicial review, the Constitutional Court would have to first provide an interpretation of the 2004 Law and conclude that another judicial review was necessary as the government lacked the appropriate legal framework for protecting the public welfare. Ultimately, the Court deemed that Government Regulation No. 16 of 2005 on Drinking Water Provision System—the implementation act for the Water Law—violated the constitutional requirement that the government protect the public welfare as it allowed for-profit water tariffs. Based on this reasoning, among others, the pro-market Water Law was annulled on 18 February 2015.

Discourse Formulations and Policy Struggles after the 2015 Annulment of the 2004 Water Law

Following the 2015 judicial review and the annulment of the 2004 Water Law, the counter-privatisation coalition's major activities were limited to influencing the drafting of a new water law. Two drafts were prepared, one consisting of 50 articles and another consisting of 69 articles; this second version became the basis for public hearings. However, tension has remained between right-to-water and market-friendly approaches.

The first, or market-friendly version, identifies the private sector as playing a positive role in water provision.⁶ Although it seemingly protects the basic right to water by endorsing the use of water resources for humanitarian purposes (Article 28:1), and even then only through public consultation

15 October 2019. This new law is similar to the market-friendly version discussed here.

(Article 28:4), it still allows international partnerships. As stated in Article 35(6), '*Penyediaan prasarana sumber daya air dapat dilakukan melalui kerjasama pembiayaan dengan badan usaha swasta atau pemerintah lain*' (The provision of water resource infrastructure can be done in financial partnership with private enterprises or other governments) (authors' emphasis). At the same time, this draft has redefined the right to water as mere usage rights, as implied through the terms *permit* and *sanction* (see also Article 7:4 about '*izin perusahaan sumber daya air*' or permits for commercial water utilisation).

The second version strongly promoted the right-to-water concept, specifically referring to it in four articles and obligating the State to protect these rights (Articles 6–9). Article 6 of the draft states '*Sumber Daya Air dikuasai oleh negara dan dipergunakan untuk sebesar-besarnya kemakmuran rakyat*' (Water Resources are under the auspices of the state and to be used and utilised for the public welfare); Article 7 asserts that '*Negara menjamin hak rakyat atas air secara cukup, aman, dan terjangkau*' (The State guarantees sufficient, safe, and affordable access to water in fulfilling the public right to water). Article 8 declares that '*Sumber daya air tidak dapat dimiliki dan/atau dikuasai oleh perorangan, kelompok masyarakat atau badan usaha*' (Water resources cannot be owned and controlled by individuals, communities, or enterprises). Article 9 offers a specific point regarding the right-to-that was absent in the market-friendly law draft: Point (1) mentions that '*Hak rakyat atas air sebagaimana dimaksud dalam Pasal 7 meliputi hak untuk menggunakan air bagi pemenuhan kebutuhan pokok minimal sehari-hari, pertanian rakyat, dan kegiatan*

bukan usaha' (The right to water, as mentioned in Article 7, includes the right to use water for basic daily needs, community-based farming, and non-commercial use). Moreover, Article 43 of the second draft limits the allocation of water resources for commercial purposes by referring to the state obligation to protect the people's right to water (*hak rakyat atas air*).

We observe that, since the annulment of the 2004 Water Law, several critical junctions have remained overlooked by normative struggles. Outside of advocacy strategies for influencing the law, Indonesian water social movements have focused narrowly on privatisation and commodification discourses by mainly dealing with the privatisation of piped water services.

In the 2000s, the two global players within the Jakarta water concessions (Thames Water and Suez Lyonnaise) slowly left their water concession contracts. With less pressure from global actors, it was relatively easier for the counter-coalition to advocate for the incorporation of right-to-water discourses within the new draft. Still, the privatisation of Jakarta's water utilities continues to be deemed crucial by the coalition, because Thames Water and Suez Lyonnaise released their shares to domestic and regional private companies rather than the public. At the same time, the issues of privatisation and commodification have gone beyond the technological, and as such the social movement must also needs to tackle these changes (which will be elaborated upon below). Unfortunately, as far as we have observed, the counter-coalition has yet to keep pace with private-sector *innovations* in water commodification—i.e. water grabbing for and through infrastructure

development, bottled water and other non-networked water services, and massive water engineering for plantations, mining, and agriculture.

Bottled water industries in Indonesia have been very active in influencing the drafting of the new water law. During the public hearing of the second draft version of water law,⁷ bottled water companies criticised the draft and introduced their own version.⁸ These actors seem to have significant political opportunities, as they have the support of the Ministry of Industry. In 2002, the People's Coalition for the Right to Water (KRuHA), one of the key members of the counter-privatisation coalition mentioned above, advocated against Aqua Danone's water grabbing practices in West Java.⁹ However, the organisation did not manage to transform this grassroots struggle into a national advocacy campaign, let alone a new water law. It played a peripheral role in the aforementioned discussions of privatisation and commodification, playing a supporting role rather than leading public discourse. This led to the silencing of human-right-to-water discourses. In one discussion, for example, with key speakers from BPP SPAM (the government body for drinking water infrastructure development), the Ministry of Public Works, the Jakarta State Water Company, Aspindo (the Indonesian Mining Service Association), Aspadin (the Association of Bottled Water Companies), and KRuHA, as well as two public policy experts and a member of

⁷ It was organised at the National Parliament in May 2017 and attended by both authors; the first author also presented some critical views and recommendations for some fundamental transformations within the public sector.

⁸ Their discourse managed to gain wider attention through mass media coverage. (See,

national parliament, the forum concluded that the private sector would still play a crucial role in the development of the water sector ("Private sectors still needed", 2017).

Pro-market coalitions have shown a more advanced standpoint in the first draft of the new water law, for example in anticipating the issue of climate change. Article 25, Point 11, of their proposal addresses issues of climate change mitigation and adaptation by allowing the private sector to play a positive role in providing necessary infrastructure and restoring rivers (such as in the case of Payment for Environmental Services). They present themselves as more *progressive* than the counter-movement, which is meant to support grassroots but remains focused on the privatisation of piped drinking water systems.

As shown by the Jakarta water concessions, such privatisation is no longer the main interest of global capitalists. As such, civil society movements should focus on crucial issues such as big infrastructure, socially-and-ecologically unfriendly river restorations, massive ground water extraction, alternative means of achieving Sustainable Development Goals, as well as pro-poor water governance. Such issues are not accommodated within the second draft version of new water law; a critical push is necessary so that such issues are

for example "Kemperin minta industri AMDK", 2018).

⁹ See http://www.kruha.org/page/id/document_detail/2/14/Paper/RUNTUHNAYA__MITOS__NEGARA__BUDIMAN_.html (accessed on 29 July 2019).

anticipated in a manner that benefits the public.

Shifting Global Discourses and a New Need to Respond to Grassroot Struggles

Looking beyond Indonesia, there have been many changes in global struggles for just water governance. In demanding universal recognition of humans' right to water, global movements have reached beyond piped and networked water services, also dealing with food and energy matters. Global discourses on private sector involvement within the water sector have also shifted, a fact driven primarily by the behaviour of the private sector (see for example in Bakker, 2003b). Investment in piped water systems is no longer attractive for foreign private companies, and as such the issue of commodification has not been emphasised. Discourse formulation and critical attention have been directed to the virtual trading of water, for example through food and agricultural products. This offers a more comprehensive approach to human rights.

Given that the private sector has much less interest in piped drinking water systems, especially given the model's failure in England and Wales, many international donors have also shifted away from advocating *the right to water*. Issues that have drawn international attention include *a fair world without poverty, access to clean drinking water beyond the networked system/decentralised water and sanitation provision systems, forest protection, and tackling climate change through the water sector*. Below are some recent key discourses employed by leading international donors and scientific publications.

The Trans National Institute (TNI) still deals with issues of *privatisation, remunicipalisation of piped drinking water system, and water justice*. However, it has re-articulated the issue of privatisation by offering public alternatives that explore *the potential of other state-owned enterprises to lead an alternative, more human-centred, and environmentally-sensitive development approach* (see <https://tni.org/>). The organisation also campaigns against water grabbing, seeking to build a just, democratic, and sustainable planet; this is also linked to the food and agriculture sector, the mining sector, and the issue of deforestation. The Rockefeller Foundation has been promoting *health for all, and the well-being of humanity throughout the world*, see Rockefeller foundation (<https://www.rockefellerfoundation.org/>) with its approach being closely linked to urban development programmes such as the Asian Cities Climate Change Resilience Network, Fresh Water, and Resilient Cities.

Meanwhile, water discourse is not an issue for the Centre of Public Integrity (<https://publicintegrity.org/>), which has focused on *Protecting Health, Safety, and Democracy*. Triple eleven (11.11.11) (<https://www.11.be/en/>), another donor agency, still provides support for access to clean drinking water. However, its main vision is *a fair world without poverty*, and especially for Indonesia, one of the countries it supports, *saving the forests benefits for everyone*. Some organisations, such as the Public Services International Research Unit and Pacific Institute, do continue to focus on *privatisation, the human right to water, and water and conflict*. Pacific Institute in particular has aligned its discursive strategies with publications in academic journals, dealing with such key issues as *climate change vulnerability and resilience, water and*



poverty, water-energy nexus, and water, food and agriculture.

The changing concerns of international donors are echoed within the academic literature, international journals as researchers have paid attention to the changes in the water sector and critically reacted to that. Reviewing the Scimago Journal Ranking System for journals on water, we can see publications have focused more on the topics of *big infrastructure* (*Water Alternatives*, 2016–2018), *dam removal* (*Water Alternatives*, 2017), and *river restoration* (*Water Alternatives*, 2017, and *Water Resources & Economics* 2017). The topic of *sustainability* has drawn serious attention, as has *water security* (*Water Environment Research*, 2018, and *Water Resources Planning and Management*, 2018 and *Water*, 2015). Other leading topics within the research sphere include *water, food and energy nexus* (*Advances in Water Resources*, 2018, and *Water*, 2016), *virtual water* (*Water Resources Management*, 2018), *climate change* (*Water SA*, 2018), *resilience* (*Journal of Water, Sanitation, and Hygiene for Development*, 2017, and *Urban Water*, 2018), *pro-poor implementation of Sustainable Development Goals* (*Journal of Water, Sanitation and Hygiene for Development*, 2018); *water and health nexus* (*Water Resources Management*, 2018, and *Water SA*, 2018), and *digital network governance* (*Advances in Water Resources*, 2018, and *Water Alternatives*, 2015). Although this does not represent all academic discourse worldwide, this summary does show the link between academia and international donor organisations' tendencies.

To a certain extent, recent global discourses represent the need to connect the water sector with other development

sectors, and to represent the interconnectedness of these aspects within humans' everyday lives. Our main concern remains the extent to which Indonesian social movements can emphasise interconnectedness among sectors in a manner that is based on the grounded reality of peoples' needs and ongoing conflicts among users, rather than merely follow contemporary trends. Indonesia is facing many sectoral struggles regarding water-related problems beyond those commonly identified as part of the water sector: the peasant movements against cement factories to protect karst water resources, the struggles of fisher folks against sea reclamation, and communities' struggles against bottled water companies. As the anti-privatisation movement continues within the trajectory of the counter-coalition, isolating it from the grounded needs of struggling communities across the archipelago, the movement will lack the solid grassroots support it needs.

It is necessary to translate the meaning of normative struggles for just water law into a good law that can provide a normative instrument against undemocratic state and capital interests while simultaneously protecting heterogenous communities. At the pragmatic level, it is unfortunate that counter-movements have not been able to follow international discourses even as they have remained dependent on foreign donors. This is another challenge: if foreign donors remain the backbone of counter-movements, their strategies need to be balanced with grassroots aspirations, which should be the main driver for directing campaign and advocacy issues. This is necessary to stave off the decline of social movements in the Indonesian water

sector, which were quite strong in the early 2000s.

Conclusion

The drafting of Indonesia's Water Law (Law No. 7 of 2004 regarding Water Resources) provided an impetus for the emergence of civil society movements that opposed water privatisation, an agenda that was clearly articulated within the draft Law. Three civil society organisations—Infog, INFID and KRuHA, without dismissing others—motored this anti-privatisation movement. However, rather than acting antagonistically, these three organisations also served as *brokers* between two existing coalitions: those opposed to privatisation and those promoting water commodification. As a crucial step, they pressured the government to incorporate human rights principles into its draft Water Law. Although the law that was ultimately enacted did adopt some of the anti-privatisation movement's discourses, these elements were only minor, and did little to curb the grand discourse of water privatisation. These accommodations were merely intended to reduce potential conflict and to give the process a semblance of democracy.

The anti-privatisation movement persevered, and in 2015 the Constitutional Court of Indonesia annulled the Law after a second judicial review—the first instance of multiple judicial reviews in Indonesian history. The anti-privatisation movement gained new political recognition and created new opportunities to promote what it identified as public interests. Challenges, however, remained, as contestation

continued over normative and regulatory frameworks. Unfortunately, privatisation discourses have continued to dominate policymaking processes.

Our textual-discourse analysis of Indonesian mass media, grey literature, academic studies, and publications of (international) donor organisations found that early anti-privatisation activities were coherent, to an extent, with global discourses on the right to water. As such, there was a degree of solidarity and international support for the anti-privatisation and anti-commodification movements in Indonesia. Such coherence with critical global discourses has been lacking in recent years, and as such there has been international support for the national movement. Civil society movements worldwide fight for just water governance by tackling the issues of climate change, big infrastructure, river restoration, dam removal, water-food-energy nexus, health-for-all, virtual water grabbing, and digital network governance. The weakening of anti-privatisation since the annulment of the 2004 Water Law can also be attributed to the fact that they have limited their focus to the issue of water privatisation and commodification within the piped-water sector, even though these issues expand beyond piped water and affect all dimensions of community life. It is a challenge to re-connect civil society struggles in the Indonesian water sector with more recent global struggles. No less important, there is a need for the anti-privatisation movement to recognise the everyday problems faced by grassroots communities to ensure said communities' access to and management of water and water resources.



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