

## **Current Situation on Water Rights System**

### **1 Vietnam**

The Law on Water Resources, enacted in 1998, clearly provides the water rights system (the scheme for water use permission) in Vietnam.

Clause 1, Article 22, Law on Water Resources

They have the right to exploit and use water resource for purpose of living, agricultural, forestry and industrial production, mining, electricity generating, water transport, aquaculture, sea fishery, salt making, sport, recreation, tourism, medicine, health rehabilitation, scientific research and other purposes as stipulated by this Law and other provisions of law.

Clause1, Article 24

Organizations and individuals that exploit and use water resources must get permission from the competent State agencies except the cases stipulated in Clause 2 of this Article.

The characteristic point is that water rights system in Vietnam adopts a license system with regard to wastewater disposal as well as exploitation and utilization of surface water and groundwater.

However, water rights system has not been well-functioned in Vietnam. It is because

- The ministry in charge of implementing water rights system at the national level is not clarified according to the laws (MARD? Or MONRE?).
- The authority for water permission seems to be transferred to the local governments excessively. Therefore, there exist multiple permitters in one basin, and then they often permit water uses discretely. Accordingly, water use administrations are not always carried out in a well-coordinated manner (In Red-Thai Binh river basin, there exists an upstream-downstream issue derived from this over-transfer of the authority).
- The criteria for water permission (technical guideline) have not been developed.
- The water rights system itself does not seem to be well-accepted by Vietnam nations although it was already stipulated by the Law on Water resources.

### **2 Lao PDR**

The Law on Water and Water Resources, enacted in 1996, clearly provides the water rights system (the scheme for water use permission) in Lao PDR.

Article 14, the Law on Water and Water Resources

Individuals, juristic or organizations have the right to use water and water resources at the level of family use or in business operations.

The right to use water and water resources exists at three levels as:

- Small Scale
- Medium Scale
- Large Scale

The right to use water and water resources must be pursuant to the water sources allocation plan.

As mentioned above, water utilization and exploitation are classified into three categories, small scale, middle scale and large scale. In addition, the Law on Water and Water Resources provides a share of responsibilities of permission for water utilization and exploitation between the national government and the local government as follows.

Scale	Water resources management (Art15/19)	Water resources exploitation (Art27)
Small-scale	In principle, not necessary for obtaining permission	Local governments grant the permission.
Middle-scale	Basically a ministry in charge grants the permission, but National government grants the permission with regard to important projects.	National government grants the permission.
Large-scale	National government grants the permission.	Necessary for obtaining the permission from Assembly

However, water rights system has not been well-functioned in Vietnam. It is because

- Secondary legislature for implementing water rights system is lacking.
- Responsible organization related to water permission is unclear.

At present, the only water use licenses granted to this date are to hydropower BOT schemes. Most of water users use water without obtaining licenses. However, they have generally been given some form of approval by government through the development process.

### **3 Philippines**

Water Code, enacted in 1976, provides the water rights system (the scheme for water use permission) in Philippines. NWRB is responsible for permission for water use in principle. However, in Laguna De Bay region, Laguna Lake Development Authority (LLDA) is responsible for the permission.

Article 13, the Water Code of Philippines

Except as otherwise herein provided, no person, including government instrumentalities or government-owned or controlled corporations, shall appropriate water without a water right, which shall be evidenced by a document known as a water permit.

Water rights are the privilege granted by the government to appropriate and use water.

This water rights system in Philippines looks well-developed according to the Water Code. Also, there exist technical guidelines as well as secondary legislatures for implementing water rights system. In addition, the Water Code provides so-called customary water rights (Art 95). In Philippines, the National Water Resources Board (NWRB) has the authority for water permission.

However, Philippines have had difficulties in implementing water rights system. In Philippines, water rights system has not been well-functioned, and only 30-35% water users have obtained formal water permission from government. In addition, it is said that there are overusage of water beyond the allowable limits of the water permissions. The followings are main reasons.

- NWRB does not have enough human and financial capacity although services related to water permission wholly concentrate in the NWRB. As a result, NWRB cannot always deal with the services.
- NWRB delegate the part of the services related to water permission to the deputized agencies such as branch offices of the Department of Public Works and Highways (DPWH), the National Irrigation Agency (NIA), the National Power Corporation (NPC), and Water Districts, but this delegation system has not been well-functioned. It is because (a) these deputized agencies themselves often suffer from lack of human and financial capacities, and (b) there often happen conflicts between new applicants and deputized agencies because some of agencies such as water districts are also water user.
- The Water Code stipulates that domestic and municipal uses have priority over other uses in times of emergency including severe drought. On the contrary, the Water Code does not provide a compensation system for other disadvantaged water users derived from the priority system. That often leads protests of other water users including irrigation users against water intakes for domestic and municipal uses. As a result of such protests, permitter cannot often issue the water permission for domestic and municipal uses.
- The water rights system has not spread among the Philippines nations although it is provided by the Water Code, and necessity of conservation and sustainable use of water resources also has not been recognized among them. That may lead the inobservance of the Water Code including the water rights system.
- Some public sector water users insist on intaking water without water permission.

- Enforcement measurement provided in the Water Code is inadequate. Additionally, monitoring and regulation against violation are not implemented appropriately.

The dysfunction of the water rights system has given bad effects on the water allocation in Philippines.

Meanwhile, concerning the delegation, Philippines government has a plan to establish RBOs in twelve river basins, which will shoulder the part of the services related to water permissions.

#### **4 Thailand**

At present, there exists no law providing water rights system in Thailand.

In Thailand, the necessity of water rights system has been recognized from the viewpoint of water demand management because of recent population increase and industrialization. In reality, there have been some attempts to enact the water resources law including water rights system since 1992, but the law has not been enacted yet.

Now, a revised draft on water resources law was completed and is waiting submission to parliament after public consultation. The draft provides water rights system, and requires that claimants desiring water beyond a certain limit (that for household use) need to ask the River Basin Committee (RBC) for permission.

#### **5 Sri Lanka**

In Sri Lanka, water rights system (the scheme for water use permission) was introduced by the State Land Ordinance in 1947. However, this water rights system based on the State Land Ordinance have not been applicable in Sri Lanka. At present, water allocation is implemented not by water rights system but by Sri Lankan customs. For example,

- Seasonal allocations in the case of irrigation projects are decided at a Project Management Committee in consultation with stakeholders.
- In Mahaweli basin, (a) The Water Management Secretariat of the Mahaweli Authority of Sri Lanka (MASL) prepares two seasonal operational plans for water use in association with Irrigation Department and Ceylon Electricity Board on the basis of information relating to water demands and the conditions of hydraulic works in each year, and then (b) these plans are approved by the Water Management Panel of MASL, which consists of senior representatives of the government agencies concerned with the management of the Mahaweli scheme, the Government Agents, and representatives of major farmers' organization.

- In the areas of minor irrigation schemes in the dry and intermediate zones, there have existed the customs of water allocation suitable for such areas. For example, they rotate water delivery or cultivated lands when severe droughts happen.

Aforementioned long-established customs for water allocation emphasize on water uses for irrigation, and they have little consideration on other water uses. Recently, however, water uses excluding irrigation water are increasing. Thus, it is recognized that water rights system need to be implemented because appropriate water allocation among multiple water sectors are difficult under the Sri Lankan long-established customs. Also, ideas on new water rights systems have been formulating.

## **6 Indonesia**

In Indonesia, water rights system (the scheme for water permission) was provided by Water resources Law (Law No.7 of 2004 on Water Resources), which is newly established in 2004.

Clause No.7 (1) ... the water rights comprises the rights to utilize and the right to exploit water.

Due to the enactment of the new Water Resources Law, some schemes for water resources management including water rights system were transformed. However, the enactment Government Regulations (GR) for implementing the new Water Resources Law has not been finalized. Therefore, old schemes under the previous law are still often applied to. Then, here, legal frameworks both in the previous law and the current law are shown in the below.

### **The situation under the previous law**

Concerning the water rights system, the Constitution of the Republic of Indonesia 1945 stipulates "Water resource, although governed by the state, must be utilized for the welfare of the people". The water rights system itself was first mentioned in the Basic Agrarian Law No.5/1960, and then, the 1974 Water Law stipulated "water is as a gift of the Almighty and everyone has a right to its use, although certain uses require permission and other do not". In addition, the GR No.22 of 1982 on Water Management provided the definition of the water rights system ("Water Use Right is the right to utilize water for certain interests.").

According to the GR of 1982, water utilization was classified into 2 kinds along with whether or not permission is required to obtain.

- Basic need in daily life, for domestic purpose, and for domestic livestock – permission is not required.

- Economic uses including urban water supply, hydropower, industry, mining, and commercial agriculture – permission is required.

Here, the example of water license system in the Brantas river basin in the East Java Province, which has been managed by Jasa Tirta I Public Corporation (PJT-I) is shown in the below. The decrees issued by the governor of the East Java Province stipulates about water license system as follows.

- (1) Licensor is the governor of the East Java Province.
- (2) PJT-I will guarantee the supply of water, to the extent feasible considering available discharge.
- (3) The license will be issued following the issuance of technical recommendation from PJT-I, a recommendation from chief of regency as chief of the Irrigation Committee and consideration from the Consideration Group on Surface Water Licensing.
- (4) Other relevant rules and regulations are fulfilled.
- (5) The beneficiaries shall pay a fee for operation and maintenance of water resources infrastructure.

In reality, water distribution within each basin is supposed to be based on a water allocation plan in Indonesia. The allocation plan is firstly drafted by PJT-I or II, other RBOs, or the Regional Office of Water Resources Services (Balai PSDA), and then, shall be agreed on by the representatives of the water users and the water manager in a coordination forum called the Water Resources Management Committee (PPTA or PPTPA). Water rights are taken into account in the process of drafting the water allocation plan.

### **Frameworks under the 2004 new Water Resources Law**

The current law was developed in 2004 as the part of the water sector reform in Indonesia. The water rights system and the water license system are provided in the new Law itself (In the previous framework, the water rights system was provided in the GR).

Under the new Water Resources Law, the water rights system summarizes as follows.

- The new law provides 2 kind of water utilization, (a) usage for daily basic needs and non-commercial uses, and (b) commercial exploitation.
- Regarding the usage for daily basic needs and non-commercial uses, people use water without any permission unless water use exceeds 2 liters per second per household head.
- Regarding the commercial exploitation, it is required to obtain water license from relevant government organization.
- Water rights cannot be transferred or leased.

In order to implement the water rights system provided by the new 2004 Water Resources Law, it is necessary to develop the new GR for Water Rights and other guidelines. However, these GR and guidelines are now being prepared and have not completed. Therefore, the new water rights system has not been implemented at the present stage.

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