The problem currently faced is the availability of water to meet human needs, which is decreasing in number. On the one hand, there is a view that water is a commodity (economic good) while on the other hand says that water is a social good. These different approaches influence state policies in water management on how the state regulates and manages water in fulfilling the right to water for their citizens. The right to water implies that everyone should have access to water without discrimination.

Methods: This study uses a normative approach, which reviewing water as social economic issues and adjusting by the legal rules relating to water and human rights.

Results: Changing the paradigm of water from social goods to economic goods, this change is also based on water scarcity faced not only by one country but has become a global issue. Economic issues are the main topic in the global conversation, by reducing water in a social perspective, which should be the responsibility of the state as Article 33 paragraph (3) of the Constitution of the Republic of Indonesia 1945. This legal basis has logical consequences for the state to keep water as a social commodity oriented to the public interest.

Conclusions: The pattern of economic approaches through privatization in the management of water resources has resulted in co-opting water as a collective source of life. Water is forced in commercial motivation rather than as a constitutive element that regulates water for the "sustainability of collective life" and "to the maximum extent possible for the prosperity of society." The fulfillment of the right to water by the state certainly cannot be directly fulfilled, the important thing is that there are progressive efforts to fulfill it, with community involvement in the management of water resources, especially local communities.

Keywords
rights to water, economic good, social good, the role of the state
Introduction
Water in the history of human life has a central position and is a guarantee for the continuity of human life on earth. According to Sayyid Qutub, water is the basis of life. The elements in it can only be formed according to the Islamic decree.

What is the fundamental role of humans in the formation of water? Its role is simply to consume it. It is only He who has sent it down from Islamic Thought. It is possible to argue that its existence is a mandate and a gift from the Creator to be used and that its preservation should also be preserved for the sake of human survival. Therefore, the management, control, and ownership of water sources should also be established.

Initially, water was a common property (res commune) passed down from generation to generation. According to Vandhana Shiva, there is a foundation of water democracy which includes mentioning that water is essential for humans, it also said that water is public property because water is not a human invention, cannot be owned as private property and sold as a commodity.¹

Water is a basic human need whose existence is guaranteed by the constitution, namely Article 33 of the 1945 Constitution paragraph 3, which reads, “Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.” This constitution clearly shows a social contract between the government and its citizens.²

Article 33 of the 1945 Constitution is a provision that forms the basis for the control and management of natural resources by the state to be used for the greatest prosperity of the people. Mohammad Hatta was the person who influenced the substance of the provisions of Article 33 of the 1945 Constitution. Article 33 of the 1945 Constitution seems to have become its legal terminology.³

Mohammad Hatta formulated that being controlled by the state in Article 33 of the 1945 Constitution does not mean the state itself becomes an entrepreneur or an ordernemer. It is more accurate to say that the state’s power lies in making regulations for the smooth running of the economy, regulations that prohibit the exploitation of the weak by people with capital.⁴

Water is mentioned in the provisions of Article 33 paragraph (3) of the 1945 Constitution, although it does not explicitly mention the water right. Other articles on human rights in the 1945 Constitution also do not mention water rights. However, in the Constitutional Court’s Decision on Judicial Review of Law Number 7 of 2004 concerning Water Resources, the water right has been stated to derail the right to life guaranteed by the 1945 Constitution. Like the right to life, which is one of the human rights, the leading state is the government is obliged to respect, protect, and fulfill it. This obligation was constitutionally affirmed in 1945.⁵

The Constitutional Court, in its decisions, emphasizes the role of the state that must be maximized in fulfilling the rights of citizens to water. The water right is recognized as a distinct human right in both the constitution and international law. As a human right, the state must fulfill these rights. For this reason, in its decision, the Constitutional Court also imposes restrictions on the management of water resources with an emphasis on the protection of citizens’ human rights.⁶

However, the role of the private sector is not closed in water exploitation. The first limitation in the decision of the Constitutional Court stipulates that the exploitation of water must not interfere, negate or override the people’s right to water. The last aspect that becomes a sign regarding the involvement of the private sector in water exploitation is that with a licensing mechanism, the private sector can be allowed to cultivate water. However, granting this permit is the last thing to be done once it has been ascertained that all citizens’ water needs are fulfilled. This means that while emphasizing the role of the state in fulfilling the water right, the private sector is still possible with strict terms and conditions.⁷

After the decision of the Constitutional Court, through the initiative of the DPR, the Draft Law on Water Resources was drafted. On September 17, 2019, through the plenary session of the DPR, the bill became the Water Resources Law. Law Number 17 of 2019 concerning Water Resources revokes and does not apply Law Number 11 of 1974 concerning Irrigation (State Gazette of 1974 Number 65), Supplement to State Gazette Number 3046). Although Law Number 11 of 1974 concerning Irrigation was re-enacted after Law Number 7 of 2004 concerning Water Resources was annulled by the Constitutional Court.⁸

The formulation of water as a human right is explicitly stated in Article 6 of Law no. 17 of 2019 concerning Water Resources, which states that “The state guarantees the people’s right to water to meet the minimum daily basic needs for a healthy and clean life in sufficient quantity, good quality, safe, sustainable and affordable”.
In this century, the world issue of water resources is almost always faced with the strong current of liberalization of natural resources. No doubt water is then considered a new commodity. Even Donald Water said that water is oil in the XXI century; whoever controls water will rule the world.9

Access to water becomes a problem when experiencing a paradigm shift. Water is no longer considered a social good but an economic good. The current discourse on water resources today also concerns how to give value to these resources and then to whom the management will be entrusted. Resource liberalization is an almost inevitable contestation. The value of a natural resource is only measured economically. This capitalization process is a symbolic conquest of natural resources.10

The International Conference on Water and Environment in Dublin, Ireland in January 1992, issued four principles known as The Dublin Principles, one of which reads: “Water has an economic value in all of its competing uses and should be recognized as an economic good.”11

The strong current of capitalism that places water as an economic good raises question and is the focus of this article, how does the paradigm shift in water from social good to an economic good affect the state’s role in managing water resources for the fulfillment of the right to water?

**Methods**

This study uses a normative approach, which reviewing water as social economic issues and adjusting by the legal rules relating to laws and regulations concerning Water Resources, Law No. 17 of 2019 concerning Water Resources, Decision of the Constitutional Court Number 85/PUU-XI/2013. Besides that, the laws, and regulations about Human Rights, especially the Right to Water, both international and national instruments, namely the International Covenant on Economic, Social and Cultural Rights along with General Comments, as well as Law no. 39 of 1998 concerning Human Rights. The type of data used is secondary data in the form of primary and secondary legal materials with literature study data collection techniques, then the data is analyzed qualitatively. The legal rules and regulations data collected from Ministry of Law and Human Rights and Constitutional Court of Republic of Indonesia, United Nation Human Rights Office of The High Commissioner (OHCHR), and Komisi Hak Asasi Manusia Republik Indonesia (KOMNAS HAM RI). Qualitative data obtained through literature is used to analyze water phenomena as a public interest that turn into an economic paradigm by specifically looking at the problem in Indonesia.

List of the primary and secondary legal materials:

1. Primary:
   a. Law No. 17 of 2019 on Water Resources.
   b. Law No. 39 of 1998 on Human Rights.
   c. Decision of the Constitutional Court Number 85/PUU-XI/2013.

2. Secondary

   the International Covenant on Economic, Social and Cultural Rights along with General Comments.

**Results and discussion**

**Shifting the water paradigm from social good to economic good**

In the conventional paradigm, water, apart from being a basic human need, is also a social good that is not owned by anyone but in the form of global commons, which is managed collectively, not to be sold or traded for profit. This traditional view has changed and been abandoned because water is not just a ‘social good’ but has become an economic commodity. This conventional paradigm contradicts the modern water management paradigm based on the intrinsic economic value of water, based on the assumption of limited and scarcity of water and the need for investment or the provision of clean water, as the fulfillment of the rights of every citizen.12

No water, no civilization is a phrase that may be appropriate to describe the importance of water in life. Without water, life will be extinct, and thus civilization will also be destroyed. Therefore, everyone feels they have a right to this one resource. It was this sentiment that contributed to the complexity of water resource management in the first place. Certain
groups which perceive water as a commodity are increasingly viewing this situation as a water resources business opportunity. There is a clear shift in the perspective of certain groups on the value of water, where water is no longer considered a social good but an economic good. No doubt, water is then considered as a new commodity whose management is approached with economic principles. This is the beginning of the commodification, commercialization, and privatization of water resources being taken for granted.13

The availability of clean and widely accessible water is vital for all living things on earth. Hence, water is a social good. According to Peter H. Gleick, the definition of social good is:

One widely used definition is that social goods have significant “spillover” benefits or costs. Literacy is a social good{XE “social good”}, for example, because it benefits not just literate individuals but also makes possible a higher level of civilization for all members of society.14

For Gleick, water as a social good has benefits for many people, and social goods open up a better life.

Water as a public good is the marginal cost of producing a social good is zero, according to economic literature. In addition, social goods have the nature in use and the need for city parks. Another trait is lacking excludability so that none of the members of society do need it. The market price of these goods and services can be equal to (or close to) zero. Therefore, goods as social goods needed by the state’s people must strive for it. It does not mean that water has no value, but that is inappropriate to use market forces to describe the sacrifices that consumers of clean water have to pay.15

The shift in water as an economic good found its momentum in January 1992 when the International Conference on Water and Environment took place in Dublin, Ireland. The conference produced four principles - which became known as the Dublin Principles -, one of which was

“water has an economic value in all its competing uses and should be recognized as an economic good {XE “economic good”}. Within this principle, it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price. Past failure to recognize the economic value of water has led to wasteful and environmentally damaging uses of the resources. Managing water as an economic good is an important way of achieving efficient and equitable use, and of encouraging conservation and protection of water resources.”16

The Dublin Principal argument at a glance shows there is a concern for the protection of increasingly limited water resources. Water is an economic good that departs from wasteful use efforts are needed to use it efficiently and fairly and encourage conservation and protection of water resources.

However, if we look further, there are global powers that play a role. The World Bank has a huge role in the water resources sector. And not the only role, but also power. This role and power are obtained through the policies and conditions that accompany the loans, which unfortunately greatly encourages the privatization of water in developing countries such as Indonesia.

This new perspective on watermarks is the start of a paradigm shift about who owns water, how to understand its function, and how to use it. Especially after many international organizations gave their support for a new perspective on water, as Budds and McGranahan (2003) said,

“...In the wake of Dublin, many international organizations realigned their position in the water sector, and the World Bank came to play a central role in developing and promoting new approaches consistent with its interpretation of the Dublin Principles, in particular the treatment of water as an economic good, ... Bilateral development agencies also started to promote private sector participation in their recipient countries, including DFID and USAID.”17

Even the World Bank is actively encouraging the governments of developing countries to minimize their role in public services and shift them to the private sector. The sequence of World Bank policies concerning the water resources sector demonstrates this effort to broaden the task of the private sector.18

For privatization groups, they argue that if a product is available for free, the market function that should allocate resources efficiently will not be achieved, it means there is no guarantee that the water availability is proportional to the level of consumption carried out. People tend to overuse water. The way that the government can control this is by limiting its use through regulations, tax, or by imposing it as a private good, namely goods that are excludable and rival.19
The changes in the perspective of water as an economic good then brought about a tremendous transformation in approach through the economic law of supply and demand. The consequence is that price becomes the key to control demand, which in turn makes the reallocation of water use to uses with a higher water value.

Indonesia has been imposing water as an economic good since the early 1980s, the government’s efforts to encourage and develop community participation in water resource management, especially in the sub-irrigation sector and clean water supply. Subsequently, in the 1990s, efforts to attract interest and cooperate with the private sector in the irrigation sector appeared to expand. The attempt to withdraw the private sector from managing water resources is inseparable from the policies of the new order government at that time were controlled by foreign capital forces.

The intense privatization of water resources has become complicated, pitting the public sector against a group of capital owners. It is the same as confronting resources that control human life versus the subject of ownership for trading. It seems justified when Law (UU) number 7 of 2004 on water resources has been promulgated. The enactment of this law on February 19, 2004, was followed by the issuance of several regional regulations (Perda) related to water privatization. The privatization of water in Indonesia highly contributes to the clean water crisis because Law no. 7 of 2004 provides opportunities for the privatization of the drinking water sector and the control of water sources (groundwater, surface water, and some river bodies) business entities and individuals. As a result, the water rights of every individual are threatened with the agenda of privatization and commercialization of water in Indonesia.

The cancellation of the Water Resources Law was carried out because it did not guarantee restrictions on water management by the private sector, hence, it violated Article 33 of the 1945 Constitution concerning Indonesian natural resources that must be controlled by the state for the benefit of Indonesian citizens. So that there is no legal vacuum, the Irrigation Law is enacted again. On September 17, 2019, the House of Representatives had ratified the Draft Water Resources Law (RUU SDA) into Law No. 17/2019 concerning Natural Resources.

It is awaited that the making of the new Water Resources Law will not repeat the old law so it can create water management that can maximize the people’s right to water and protect the state against that right. Then in the new Water Resources Law, it can be seen how far it can eliminate the opportunity for clean water to be privatized. Therefore, the core issue is whether water should be treated as a public good, the fulfillment of which must be controlled by the state, or water as an economic good which is understood as a commodity whose fulfillment would be better if carried out by the private sector. In this case, the government’s role in supporting and implementing the new Water Resources Law is necessary, so the fulfillment of water needs during the dry season is met without incurring huge costs.

The paradigm shift framework for water policy can be described in Figure 1 by referring to Thomas Kuhn’s Paradigm Theory.
and concepts; in other words, it does not yet have a paradigm. In this context, the juridical regulation of water has not yet emerged and still places water as common property. The state has no role and is still purely managed by the community simply or traditionally.

The second phase in Kuhn’s terminology is called Normal Science; the theory began to emerge, which then dominated other disciplines. This is the result of a paradigm that has been agreed upon by the scientific community. In the context of the Indonesian legal system, Legal Positivism is thought to place positive law as the main thing. Regarding water regulation in Indonesia, for the first time, regulations related to water management were the birth of the Algemeen Water Regulation (AWR) 1936. The origin of the AWR 1936 departed from the interests of the Dutch colonial government through the politics of cultuur stelsel (forced cultivation). The AWR 1936 does not provide a solid basis for efforts to develop the use/utilization of water and or water sources to improve people’s living standards. Still, in the normal phase of science after 29 years of independence, Law No. 11 of 1974 concerning Irrigation was born. The contents of the 1974 Irrigation Law, which amounts to 17 articles, are based on the principle and basis of regulations, namely viewing water as a social function aimed at the greatest prosperity of the people. The regulatory substances include, among others, state control over water, the concept of the right to water, and management of water resources.

The third phase is termed the critical phase, a contradictory situation. In terms of water resources management, there is a paradigm of water as an economic good which is contradictory to water as a social good. The enactment of Law No. 7 of 2004 concerning Water Resources was inseparable from the situation where global power through world financial institutions was very influential. The impact of the 1998 economic crisis increased Indonesia’s dependence on international financial institutions. The Dublin Principle emerged in 1992 when water emerged as an economic good. The World Bank has a huge role in the water resources sector. And not the only role, but also power. This role and power are obtained through the policies and conditions that accompany the loans, which unfortunately greatly encourages the privatization of water in developing countries such as Indonesia. Law No. 7 of 2004 concerning Water Resources has the character of water as an economic good was finally revoked by the Constitutional Court through Decision No. 85/PUU-XI/2013.

The last phase is the need for new ideas to emerge to get out of the crisis. The establishment of Law no. 17 of 2019 reaffirms the relationship between the state, the people, and water, emphasizing the necessity of state intervention in water regulation. Consideration of the state’s obligation to respect, protect and fulfill the human right of access to water. However, Law no. 17 of 2019 has a weak point epistemologically, which remains characterized by purely positivistic strengths. Water in its initial position has a religious value as something sacred for human life. For that, we need the concept of incorporating spiritual values into water resource management and safeguarding water resource management by local or traditional communities.

It is necessary to build a legal framework between God, the State, and Society. The relationship between God, the State, and Society was inspired by Werner Menski’s idea, known as the Triangular Concept of Legal Pluralism Theory. For Werner, the legal product is a triangular synergy between Religion, State, and Society. In terms of water resources management, see Figure 2.

Placing water as God’s property, the state and society only must manage it. It can be said that water is again placed as a sacred item for human life. The state should fulfill the right to water which places water as a social good and must also have religious values. Religious values provide awareness of the state’s responsibility in fulfilling the water rights.

The role of the private sector in water resources management should be limited. This restriction avoids exploitation which threatens water resources. This restriction also provides opportunities for the private sector to participate without leaving religious values, the absence of greed, or in the other hand, water has economic and religious value, and the last is the protection of water resources in indigenous or local communities so that potential water sources are maintained and utilized for the sustainability of the ecosystem. Indigenous peoples have a long history of local wisdom, and the state must protect and maintain their existence from attacks by capital owners who are only profit oriented.

The role of the state and fulfillment of the water rights

The state is an organization held by a nation and inhabits a particular area based on the law for the common good. A country certainly has the ideals of shared prosperity based on justice and humanity value. A democratic state fights for the realization of the public interest or res publica. Indonesia, as a country in the form of a republic, must establish itself to be oriented to the public interest.
The water right is a human right that does not come from the state; it is the specific ecological context of human existence that gives rise to the water rights. As a result, the inclusion of the state in water management as a form of control rights contained in Article 33 paragraph (3) of the Republic of Indonesia’s 1945 Constitution is a form of protection of these human rights, which cannot be eliminated by anyone, because the water right is a natural right. As a result, water as a human need is a right that the State must fulfill in order to recognize the right to life itself.27

The water right is a dimension of rights that stems from the “right to an adequate standard of living” and the “right to health.” In the Universal Declaration of Human Rights (DUHAM, this right is affirmed in Article 25 of the DUHAM as follows:

Everyone is entitled to a decent standard of living for the health and well-being of himself and his family, including the right to food, clothing, boards, and health services, necessary social services, and the right to security when unemployed, sick, disabled, abandoned by his partner, old age, or other circumstances that result in a deterioration in the standard of living that occurs beyond his power.28

Furthermore, the explanation of the water right contained in General Comment No. 15 on the Right to Water, the word “included” in Article 11 paragraph (1) of the Covenant on Economic, Social and Cultural Rights, the list of rights in an adequate standard of living is not a limited list.
Article 11 paragraph 1 of the EKOSOB Rights Covenant establishes several rights derived from, and are necessary for, the realization of the right to a decent standard of living “including food, clothing and decent housing.” The use of the word “included” indicates that the list of rights is not intended to be a limited list. The water right falls into the category of necessary guarantees to ensure a decent standard of living, especially since water is one of the necessary conditions for survival. Furthermore, the Committee has previously recognized that water is a human right included in Article 11 paragraph (1).

General Comment No. 15 also explains that the water right is an inseparable right concerning the right to achieve the highest standards of health (and the right to adequate housing and food) and being a bridge for other rights.

The water right is inclusive. The inclusive nature makes this right to be owned individually and jointly by everyone. One person’s claim to this right does not make another person lose his claim to this right. The universality of this right is demonstrated by the recognition made by the world community. Many rights do not necessitate any special treatment to be held. Every human being can automatically have this right.

The implication of acknowledging the water right is to give the State the task to organize such a mechanism so that public access to water can be made available. This mechanism must be regulated so that it does not provide an opportunity for the State to transfer its responsibilities to other parties. Consequently, it does not mean that everyone has to get water for free without any limits on the amount of use, which will create the possibility for those who are vital to get more water resources, but rather the recognition of the water right provides an opportunity for the State to make arrangements for restrictions on water resources. Certain restrictions on certain people or groups of people to ensure that the right to water for each person must be fulfilled.

Normatively, the formulation of the recognition of the water right is also contained in Law no. 17 of 2019 concerning Water Resources in Article 6, which means that in the regulation phase, the government has an instrument for recognizing water rights. Then what about the fulfillmen aspect or implementation aspect?

At the implementation stage, it is still far from expectations, as can be seen from budget politics in the clean water sector. Adequate development budget to encourage access to safe drinking water in 2030, so far, the government’s allocations for the last five years for the clean water sector have been around Rp. 3.5-6.5 trillion with an average per year of Rp. 4.5 trillion. If this amount can be maintained every year until 2030 there will be around Rp. 45 trillion. It is still very far from the development needs until 2024, which is Rp. 147 trillion, even funding needs in 2030 amounting to Rp. 238 trillion.

Until 2018, access to safe drinking water in Indonesia has reached 87.75%. However, only 6.8% of the population has enjoyed secure access. There is still a gap of 80.95% of the population in 2018 whose access still needs to be improved from decent access to safe access. Overall, as many as 93.2% of the population have not had secured access. If this figure translated into funding needs, the estimated amount up to 2030 could be Rp. 238 trillion if the inflation rate is considered. It is expected that 30% of funding needed can be allocated by the regional government.

The challenge of meeting the amount of funding is not easy. If the APBN is still unable to provide the necessary funds for the sector development budget, it is almost impossible for local governments to allocate APBD (as expected by the central government). Field data collected by the Water and Environmental Health Working Group indicate that the average APBD size for the water and sanitation sector is only around 2% per year. Fulfilling the need for the development budget for the drinking water sector is still an extensive homework for sector managers.

Homework for the government to fulfill the right to water for its citizens does not mean leaving it to the private sector or shifting responsibility by doing privatization. In principle, the state assigns the task to the state to implement such a mechanism so that public access to water can be provided.

There is a tug of war between the strengthening of the state’s role in the management of water resources on the one hand and the other hand the power of capital owners who place water as an economic good, so an alternative needed to emphasize community participation in the management of water resources [XE “Sumber Daya Air”].

In the context of justice, strengthening the aspect of justice that places cultural factors as an important factor is also formulated in this goal, namely the protection and empowerment of communities, including indigenous people to conserve water and water resources. Indigenous peoples are people with knowledge, habits, and culture passed down from generation to generation by utilizing water sources in their territory to meet their daily needs. They manage these resources together and live in harmony with the nature around them.
In conditions of limited water, arrangements are needed so that all community members have access to water in a mutually agreed manner and place. In Law Number 17 of 2019 concerning Water Resources, Article 9 paragraph (2) provides space for local wisdom in the management of Water Resources, which states that Control of Water Resources is carried out by the Central Government and, or Regional Governments while still recognizing the Ulayat Rights of local Indigenous Peoples and rights similar to that, as long as they do not conflict with national interests and the provisions of laws and regulations. The need for community participation in maintaining water resources is also emphasized in Law Number 37 of 2014 concerning Soil and Water Conservation. In Article 46 paragraph (1), it is stated that the Community has the same opportunity to participate in the implementation of Soil and Water Conservation carried out by the Government and, or Regional Government per their authority, and paragraph (2) states that the implementation of community participation is carried out with due observance of the local wisdom.

Local wisdom can be used as social capital that deserves attention in managing water resources in an area. Local wisdom has two critical roles: fulfilling the right to water for life and maintaining the relationship between humans and water resources and the surrounding environment.

**Conclusion**

Water has experienced a paradigm shift from social goods to economic goods, starting with the global situation regarding water scarcity. The pattern of economic approach through privatization in the management of water resources has resulted in the co-option of water as a source of collective life. Water is imposed in a commercially motivated rather than as a constitutive element that regulates water for “sustainability of collective life” and “to the greatest extent possible for people’s prosperity.” The water right is a human right for citizens. The existence of the state’s role aims for the prosperity of the people themselves. The fulfillment of the right to water by the state certainly cannot be directly fulfilled, what is important is that there is a progressive effort to fulfill it. The state’s limited role necessitates community involvement in water resource management, particularly the local communities with a long history of environmental-based water management. The role of the State should respect, protect, and recognize the human rights of others to a good and healthy environment.

**Data availability**

**Underlying data**

The legal rules and regulations data are publicly available and accessible at:

1. https://peraturan.go.id/peraturan/view.html?id=ae26fe65e5dc3f2acfb42714eaf4272a
2. https://www.komnasham.go.id/files/1475231474-uu-nomor-39-tahun-1999-tentang-SH%9FVDS.pdf, https://www.mkri.id/index.php?page=download.Putusan&id=2131
3. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2f2002%2f11&Lang=en.

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25. The author’s illustration refers to Werner Menski’s Theory, known as the Triangular Concept of Legal Pluralism Theory.

26. This statement comes from the development process of Menski’s theory which is used to relate to water shown in figure no. 1. **Reference Source**

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