

## A Remunicipalization Idea on Water Management in DKI Jakarta Province

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### Abstract

Since 1997, water privatization has existed but there is no significant progress on water management in Jakarta. Many households don't have access to clean water due to the leakage and outdated pipes as well as the non-legal contract between PT. Aetra Air Jakarta and PT. Palyja. The contract was not in accordance with Article 33 (3) of the 1945 Constitution of the Republic of Indonesia and not in a fair tender. The research problems focus on: what actions are taken by the Jakarta Government to take over the water management in Jakarta and Can the remunicipalization policy be used as a model in Jakarta? This research uses the normative legal method. In order to address the issue, the Jakarta Government applies the remunicipalization on water management. The government has assigned the task force to find the ideal solution. The task force comes up with 3 alternatives: status quo, contract termination, processed to the civil court.

**Keywords:** Remunicipalization; water management; water privatization.

### Abstrak

*Sejak 1997, privatisasi air telah ada akan tetapi tidak ada kemajuan yang signifikan pada pengelolaan air di Jakarta. Banyak rumah tangga yang tidak memiliki akses terhadap air bersih akibat kebocoran dan pipa yang telah usang serta kontrak non-legal antara PT. Aetra Air Jakarta dan PT. PALYJA. Kontrak tidak sesuai dengan Pasal 33 ayat (3) dari Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan bukan merupakan tender yang adil. Masalah penelitian difokuskan pada: tindakan apa yang diambil oleh pemerintah Jakarta untuk mengambil alih pengelolaan air di Jakarta dan dapatkah kebijakan remunicipalisasi digunakan sebagai model di Jakarta? Penelitian ini menggunakan metode penelitian yuridis normatif. Dalam rangka mengatasi masalah ini, pemerintah Jakarta menerapkan remunicipalisasi pengelolaan air. Pemerintah telah menugaskan gugus tugas untuk menemukan solusi yang ideal. Gugus tugas ini memunculkan 3 alternatif: status quo, penghentian kontrak, diproses ke pengadilan sipil.*

**Kata Kunci :** Remunicipalisasi; manajemen air; privatisasi air.


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## Introduction

According to the United Nation, since 1995, as stated in article 11, paragraph 1, General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons, water is an essential part of human life. (UN Committee on Economic, Social, and Cultural Rights, 2003). In 2003, the United Nation stated that the availability of clean and fresh water is one most important issue in facing the humanities today, and will be increasingly critical for the future. Water is recognized having the key role in agriculture, energy, health, biodiversity, and ecosystems as well as in combating poverty. (Scanlon, 2004). The founding fathers of Indonesia have also recognized the importance to have clean water access, as formulated in Article 33 (3) of the 1945 Constitution of the Republic of Indonesia:

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“The earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people”. Although numerous regulations have been formulated, ironically many people in the world still do not have access to clean water.

Andreas Harsono, a journalist focusing on water privatization in Jakarta on his article entitled “*Dari Thames ke Ciliwung [From Thames to Ciliwung]*” in 2004, reported that according to the statistics in 1991 only 45% of the total 7 million residents in Jakarta had the access to water with poor quality. Thus, President Soeharto changed the water management system from *Perusahaan Air Minum Jakarta Raya* (PAM Jaya) to private sector in June 1995 called water privatization (Nugraha, 2019).

Privatization was popularized by the Prime Minister of the United Kingdom, Margaret Thatcher, in the early 1980s. Private sector investment in infrastructure increases dramatically in the early 1990s, reaching its peak in 1997. A lot of Privatization happens in the third countries because of the decline in the countries’ ability to largely finance the increasingly development programs through the public sectors (Nasikun, 2003). The influence and persuasiveness of international donors, such as World Bank, IMF, WTO/GATS, etc is also one of the main reasons why so many developing countries decide to involve in the private sector on water and other infrastructures (Prasad, 2007).

At that time, President Soeharto appointed PT. Kekarpola Airindo to manage water in the eastern part of Jakarta. This company was a joint venture between PT. Kekarpola Plastindo belonging to President Soeharto's eldest son, Sigit Harjojudanto, and a British company called Thames Water. In 2009, PT. Kekarpola Airindo changed its name into PT. Aetra Air Jakarta. Meanwhile, Suharto also worked with a French company, Lyonnaise des Eaux from the Suez Group, which further established PT. Garuda Dipta Semesta together with Salim Group to manage water in the western part of Jakarta. In 2008, PT. Garuda Dipta changed its name into PT. PAM Lyonnaise Jaya (Palyja).

In fact, river Ciliwung separated those two companies. The official contract was signed on 6 June 1997. However, the water business was fully managed on 1 February 1998 by those two private companies. President Soeharto’s decision caused a controversy as he was considered violating the mandate contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Law Number 5 Year 1960 concerning Basic Regulations on Agrarian Principles/*Undang-Undang Pokok Agraria* (UUPA), and Law Number 11 Year 1974 concerning Irrigation. In short, those 3 regulations emphasize that water must be managed by the state for the benefit of the people. Furthermore, Soeharto also considered violating the Regional Regulation Number 13 Year 1992 concerning the Regional Water Supply Company of DKI Jakarta mandating that drinking water must be managed by the Provincial Government of DKI Jakarta through PAM Jaya.

It should be noted that the contract that was not in a fair mechanism and caused the state and people lose significant amount of money. After the privatization, the price of water gradually increases. Currently, the tariff of water for middle household is IDR 7,450.00 while for the upper middle household is IDR 9,800.00. This provision was stated

in the Governor Regulation of the Special Capital Region of Jakarta Province Number 91 Year 2017 concerning Second Amendment to the Governor Regulation Number 11 Year 2007 concerning Automatic Tariff Adjustment (PTO) for Drinking Water. The price increase in Jakarta is beyond expectation since at the beginning it was only IDR 1,700.00/m<sup>3</sup>.

When compared to the other cities, the water tariff in Jakarta is classified into the most expensive one in Indonesia. The following table explains the water tariff differences in Jakarta and in the other cities in Indonesia (Zamzami, 2015).

**Table 1. Water Tariffs in Indonesian Big Cities**

No.	City	Tariff (per m <sup>3</sup> )
1.	Jakarta	IDR 7,020.00
2.	Surabaya	IDR 2,600.00
3.	Medan	IDR 2,294.00
4.	Bekasi	IDR 2,300.00
5.	Makassar	IDR 2,000.00
6.	Semarang	IDR 2,600.00

Source : A Research conducted by Zamzami in 2015

Water tariff in Jakarta is also considered as the most expensive one in Southeast Asia. According to the data obtained from the Jakarta Legal Aid Institute, the water tariff in Singapore is only IDR 3,500.00 per m<sup>3</sup> and the water is ready to drink. Furthermore, the water tariff in Jakarta is also more expensive than that in Malaysia which is only IDR 2,200.00 per m<sup>3</sup> and in Thailand which is only IDR 2,900.00 per m<sup>3</sup>.

This high price is caused by the Automatic Tariff Adjustment Policy. In a cooperation agreement, the private sector determines the water in return. The problem is that this water tariff uses a full cost system recovery. Thus, the customers must pay not only the production costs but also all private company expenses, including profits.

Based on PAM Jaya's received evidence submitted by the Advocacy Team to the court, the water imbalances averagely increase 8% per year. When projected to 2023, the water imbalance received by the private consortium may reach IDR 19,085.00 per m<sup>3</sup> (Zamzami, 2015). This is why the private sector always asks for a tariff increase from the Governor of DKI Jakarta. It is highly expected by the private sector that water tariff may be increased once every six months to match the continuously increasing imbalances every six months. The imbalance values automatically increase every six months based on the approved calculation, while the water tariff may only be increased due to the agreement approved by the governor (Lako, no year).

Because the water tariff in Jakarta continuously became more expensive and burdened the citizens, they sued and asked the water tariff in Jakarta to be decreased. This lawsuit was granted by the Supreme Court in 2007, yet did not prevent the state and citizens from losses due to the water's and customers' tariff differences that will be borne by PAM Jaya as the debt form (shortfall). The basic calculation regarding to Palyja's claim

was that since the 12% of its customers were poor, the tariff used was that for group II, as much as IDR 1,050.00 per m<sup>3</sup> in 2009. Meanwhile, the water imbalance in the same period was equal to IDR 7,125.00 per m<sup>3</sup> (Ardhianie, no year). Therefore, the difference of IDR 6,075.00 per m<sup>3</sup> was borne by PAM Jaya and calculated as debt to PT. Palyja.

To pay it, PAM Jaya took the money from the Regional Budget (APBD) due to the guarantee given by the the Provincial Government of DKI Jakarta. Based on the findings of the Audit Board of the Republic of Indonesia in 2016, the accumulated losses incurred by PAM Jaya since the contract was made reached IDR 1.2 trillion. PAM Jaya must also pay the shortfall for Palyja as much as IDR 266.5 billion and for Aetra as much as IDR 273.8 billion (Friana, 2018).

Due to the high water tariff in Jakarta, many poor citizens were unable to access the clean water proven from the composition of customers dominated by the middle to upper class citizens by 52.22%, while the lower to middle class citizens only reached 47.78%. In addition, water in some poor areas in Jakarta did not run each day which made the community have to buy water from the mobile water traders. During the Jakarta Provincial Development Planning Conference on April 10, 2019, Head of the National Development Planning Agency (known as *Bappenas*), Bambang Brodjonegoro said that to buy water, the poor might spend up to IDR 40,000 per m<sup>3</sup>.

The water problems in Jakarta were not only related to the high water tariff, but also the poor management and access to clean the water pipes. As long as managed by a private consortium, the facilities and targets to reach at the end of the contract have not experienced a significant increase.

After more than 22 years, since the contract was officially applicable, PT. Aetra and PT. Palyja could not meet the target. In Jakarta, 413 million m<sup>3</sup> of water is used per year. But, the water supply from the District Water Utility reservoirs is only limited to 200 million m<sup>3</sup> per year. It indicates that the rest of water needed by Jakarta is dependent on the underground water reservoirs (Kumar, 2017). According to the statistics obtained from PAM Jaya, PT Palyja only covered 60.27%, and PT. Aetra also covered only 60.38%. Consequently, the population who did not have an access to the clean water should use the ground water. Currently, with a population of DKI Jakarta citizens reaching up to 10 million, there are 816,929 pipe line connections or equal to 12.3 people per connection. The pipe line connections in Jakarta also which reached the middle and upper class citizens were up to 52.22%, while those to the lower and middle class citizens were only 47.78%.

This paper is intended to help the decision or policy makers improve the recently inadequate clean water services in DKI Jakarta. Water services in DKI Jakarta have been operating on for more than 22 years but there are still various complaints expressed by the public regarding to these water services. This paper is not resulted from a research funded by a particular source. However, this paper is expected to become one reference for the

decision and policy makers that the water services in DKI Jakarta continuously gets better and better.

## Research Problems

Based on the previously described background, some research statements are formulated as follows: first, what actions may be performed by the DKI Jakarta Government to take over the water management in DKI Jakarta Province?; and second, can water remunicipalization policy be used as a model for the water management in DKI Jakarta Province?

## Research Method

This research uses the normative legal method with statute and case study approach. The legal approach was chosen since the research objects were various regulations. Meanwhile, the case study approach was selected since the research objective is related to the legal norms or rules implemented in the legal practices. This study used the primary, secondary and tertiary sources. The data was collected from the documentary study. This study examined various existing documents related to laws and regulations.

## Discussion

The failure of a private company to manage water has angered the Jakarta citizens. Thus, the Coalition of Jakarta People Refusing the Water Privatization (*KMMSAJ/Koalisi Masyarakat Menolak Swastanisasi Air Jakarta*) filed a Citizen Law Suit (CLS) due to Unlawful Acts made by the authorized party on November 22, 2012. Although *KMMSAJ* lost the Judicial Review in 2018, but they continuously urged the Provincial Government of DKI Jakarta to take over the water management from the private sector or known as water remunicipalization. Finally, Provincial Government of DKI Jakarta agreed to the second option. This research discussion is divided into 2 parts: 1. the actions made by the Provincial Government of DKI Jakarta to take over the water management in DKI Jakarta; and 2. the water remunicipalization policy that can be used as a model in water management in DKI Jakarta Province.

## The Actions made by Provincial Government of DKI Jakarta on Water Management

Since the beginning, the Partnership Agreement on water management in DKI Jakarta was legally flawed and has violated Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stating, "The earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." According to Dr. Hamid Chalid, SH, LL.M on his testimony for the Judicial Review of Law Number 7 Year 2004 concerning Water Resources, the Government wants to enhance its authority on administration (*bestuurdaad*) and

management (*beheerdaad*) by implementing both water privatization and water resource management as stated in the Constitutional Court Decision Number 85/PUU-XI/2013.

In its final decision, the Constitutional Court believed that water as an important aspect of production gives essential impacts on lives of many people, therefore water must be controlled by the state and used for the greatest prosperity of the people. Thus, the state water supervision and control management are absolute. The Constitutional Court stressed that water management should be implemented by BUMN or BUMD as also stated in Constitutional Court Decision Number 85/PUU-XI/2013.

The Governor of DKI Jakarta, Anies Baswedan supported the efforts made to take over the clean water management from the private sector. On August 10, 2018, the Governor Decree No. 1149 Year 2018 was published to establish the Evaluation Team for Drinking Water Management. One of the duties was to evaluate the drinking water governance policy in accordance with the Supreme Court decision. The evaluation team issued three recommendations related to water management in DKI Jakarta: the status quo, unilaterally contract termination, and taking over the public management which was divided into three ways: buying the shares of both PT. Aetra Air Jakarta and PT. PAM Lyonnaise Jaya, partnership termination, and gradual acquisitions of Water Management Installation (IPA) by PAM Jaya (Firmansyah, 2019).

a) Status Quo

Status quo was a popular option used to tackle the water management issues in various cities. For example, the France government tended to wait for the contracts to expire to avoid the compensation payments. During the waiting periods for the contracts to expire, the government might prepare a new management model (Kishimoto, 2015). The Water Management Team also recommended this option to the Governor of DKI Jakarta to take over the water management. However, this should at least be recommended by the private parties themselves. According to Nila Ardhianie, a member of Water Management Team, this is mainly because the recommendation has numerous weaknesses to the interests of the Provincial Government of DKI Jakarta and its citizens as the Provincial Government of DKI Jakarta might not be able to reach the target of adding the piped water services due to the exclusivity rights of the private partners in their investment and management (Setiyadi, 2019).

If this option was taken, the shortfall potential might continuously increase because the water tariff automatically increased uncertainly unless the Automatic Tariff Adjustment policy has ended. In addition, this recommended option has the greatest loss impact because the government guaranteed the profits for those two private companies respectively by 22% and 15.8% based on the Partnership agreement of PAM Jaya with PT. Aetra and PT. Palyja (Firmansyah, 2019). Even when PAM Jaya could not gain the minimum profit, the government should continuously provide the benefits to PT. Aetra and PT. Palyja. The guaranteed profit value is IDR 2.7 billion per day or IDR 8.5 trillion if the contract was continued until 2023 (Firmansyah, 2019).

The status quo alternative requires a strong political will from the authorities. If this option is chosen, there is no guarantee that the remunicipalization will continue after the water privatization contract period expires. The reason is that the period of the current Governor will end in 2022, while the water privatization contract will expire in 2023. There is no guarantee that Governor Anies Baswedan will be re-elected in the next period. Meanwhile, there is no guarantee that other elected governor will agree with the remunicipalization plan. In fact, it is still possible if the new governor extends the contract with the private sector because the citizen lawsuit over the water privatization has lost in the Judicial Review. Thus, the status quo is certainly not a wise choice to choose.

On the other hand, if the Provincial Government of DKI Jakarta chooses the status quo, the government does not need to pay for the acquisition of facilities because all assets will be given to the government when the contract is completed (Firmansyah, 2019). However, just like privatization, the status quo is not a recommended choice due to its ineffectiveness (Hall, 2005). If the contract continues until 2023, there will be many parties affected, such as PAM Jaya's employees, customers, and the poor households.

b) Unilaterally Contract Termination

The second recommendation from the Water Management Team was to unilaterally terminate the contracts with those two companies. Consequently, the contract supposed to expire in 2023 might expire at least 3 years faster. The contract termination has a legal consequence due to the violation of contractual obligations made by one of the parties (Hall, 2005). In Article 6: 285 Nieuw Burgerlijk Wetboek (NBW) regulates that if there is a failure in the contract implementation, the creditor can file a termination contract, both in whole or partial (Hernoko, 2014). This is also regulated in the formulation of Article 1266 and Article 1267 of the Indonesian Criminal Code stating that defaults can be used as the grounds for a cancellation claim. In some cases, there are also some municipalities which have stopped the privatization due to the serious breach of contract. This is referred to as "termination for cause."

However, this recommendation is difficult to apply because the government must prove that the private sector has broken the contracts and agreements, or the court will require arbitration as the preliminary process. According to Muhammad Reza, the coordinator of *Koalisi Rakyat Nasional untuk Hak Atas Air*, Indonesian government did not dare to take this step because the arbitration used to settle the partnership agreement was the Singaporean arbitration mechanism which mostly won the private sector.

If the option is taken, there will be termination fees that must be paid by the government. In this case, the Provincial Government of DKI Jakarta must pay the termination fees of more than IDR 1 trillion for one company. In addition, this choice will adversely affect the business climate in Indonesia, especially in DKI Jakarta.

According to Nila, this option was not a realistic option from the legal studies and services (Rizki, 2019). However, *KMMSAJ* has actually recommended this option to the Provincial Government of DKI Jakarta. According to *KMMSAJ*, water privatization has violated the citizens' constitutional rights from the beginning that the government might not wait any longer. Consequently, the Provincial Government of DKI Jakarta will be sued by the private sector on the accusations of default. However, Jeanny Sirait, an advocate from the Jakarta Legal Aid Foundation believed that the Provincial Government of DKI Jakarta would easily break the arguments from the private sector.

c) Civil Authorities' Take Over Mechanism

Civil Authorities' take over is the third option proposed by the Water Management. Tatakati Tatak, a member of Water Management Team, explained that this civil authorities' take over mechanism was divided into three ways: buying PT. Aetra and PT. Palyja, partnership termination, and Water Treatment Plan (WTP) or Water Management installation (IPA) gradually taken over by PAM Jaya (Firmansyah, 2019). If the Provincial Government of DKI Jakarta bought the shares, the Provincial Government of DKI Jakarta must spend IDR 1.3 trillion for PT. Aetra and Rp.650 billion for PT. Palyja. In addition, the Provincial Government of DKI Jakarta must pay the debt of PT. Aetra up to IDR 2.1 trillion (Firmansyah, 2019).

According to Tatak, this was a difficult choice to implement that the Provincial Government of DKI must pay those costs. According to Nila, this process was also not easy since there must be a long discussion and negotiation. In addition, this option was also required to pass the transparent process (Rizki, 2019).

The advantage of this option is that the government can avoid lawsuits. In addition, this option refers to the honest business principles that the image of Indonesia can be well maintained. However, in some cases, despite changes in the owners, public companies may be forced to continue obtaining profits and having little space left to build a new culture and value for public services. The high repurchasing cost many result in high water bills and may prevent the public companies from responding to the social and environmental challenges. This is the disadvantages of this option because contracts are usually designed for the benefits of private investors and repurchasing is an expensive option for the community (Rizki, 2019).

The second option was partnership termination. This option had the same risk with the unilateral contract termination in accordance with Article 49.3 of Partnership Agreement made in 1997 as follow:

Article 49.3

In the event of Changes to the Legislation which substantially and substantially affect the ability of the Second Party to carry out this agreement economically, the Second Party may submit notification to the First Party requesting a period of 30 (thirty) days from the date of notification the Second Party. Such negotiations



must try to provide a fair and appropriate adjustment to the obligations of the Parties to consider Amendments to the Laws and Regulations. If the Parties cannot agree to a just and reasonable adjustment as stated above, then the Second Party may terminate this agreement by giving a written notice of not less than 30 (thirty) days to the First Party, after which the provisions of clause 42.6 ( a).

Article 42.6 (a)

If the termination occurs according to Clause 41.2 or 49.3, the First Party must pay the Second Party in Rupiah with a valid check, bank draft or wire transfer from the funds immediately available, the same amount of money as it should be:

- (1) Net Book Value of New Assets, Intangible Assets Determined and Inventory of Used Goods and Goods Made, Financed, and Acquired, Built, or Renewed by Second Parties regarding the Project and all money owed to the Second Party based on the Agreement this; added with
- (2) Second Party direct costs and expenses, which after their best efforts cannot be avoided or reduced by the Second Party, arising from termination (or if agreed between Parties transferring rights to the First Party) all Material contracts (point 1) and ( point 2) Clause 42.6 (a) is collectively referred to as the "Termination Base Price ; reduced by
- (3) The entire amount of money received by the Second Party according to the Project's insurance policy regarding the repair or replacement of damaged Assets, Intangible Assets Assigned and Inventories of Consumables Goods.

Provided that if the amount received pursuant to Clause 42.6 (a) (3) is greater than the Base Price of Termination, the Second Party must submit to the First Party the amount of the excess. In recent years, partnership termination has become a common thing for the contract formation to include the terms "termination for convenience." Termination for convenience is one of the options that many cities in the world have taken in addition to the status quo. Many agreements allow the city to end the agreement as long as the private party has been given prior notice.

The third option is the gradual take over management as reflected in the Presidential Regulation Number 122 Year 2015 concerning Drinking Water Supply Systems(*SPAM/Sistem Penyediaan Air Minum*). Article 36 states that the implementation of SPAM is the responsibility of the Central Government and/or Regional Government to fulfill a healthy, clean and productive life in accordance with the statutory provisions. Therefore, to implement *SPAM*, the central and/or regional government-owned enterprises and/or *BUMD* were formed by the central government and/or regional government based on their authority. The Presidential Regulation Number 122 Year 2015 allows *BUMN/BUMD* to have a partnership with the private business entities if *BUMN/BUMD* is unable to finance the needs of *SPAM* operations related to the pipelines used inside and outside the service areas of *BUMN/BUMD* with the principles as stipulated in Article 56.

According to the Water Management Team, this option is the best for both parties and the safest way to take over the water management in Jakarta. However, this method requires long negotiation process with PT. Aetra and PT. Palyja. Thus, the Provincial Government of DKI Jakarta should immediately decide to take this option as a way out to take over the water management. Unfortunately, the Provincial Government of DKI Jakarta seems to be secretive on the negotiation process.

### **Jakarta Policy Model on Water Management**

It is worth remembering that remunicipalization is not the end of efforts to improve the water management in Jakarta, but in fact the initial process of a long journey. There is still much work to do to improve the water management in Jakarta. Although negotiations with private sector smoothly took place, there were technical issues which might not be avoided, such as the transfer of financial statements, information systems, worker transitions, institutional knowledge recovery, and the need to build new cultures for managers, engineers, technicians, etc. (Kishimoto, 2015).

Hence, removing the structure and logic from privatization takes years, the ideology and mechanism from neoliberalism have been ingrained in every layer of organization. As a result, rebuilding public services requires more than just a change in ownership but also the planned efforts to re-create and reconsider how to evaluate the management (Kishimoto, 2015). Although remunicipalization needs a long process and caution, the government should have immediately made various actions in response to the various arising problems to face, such as climate changes. It is estimated that in 2025, nearly two third of all nations will globally experience water stress. In 2030, it is estimated that the annual water demand will be approximately 1.34 billion m<sup>3</sup>, which is approximately 2.5 times bigger than that in 2000. The government should take appropriate actions due this rapidly increasing demand for the future generations (Kumar, 2017).

Fortunately, local governments and communities can learn from the cities in the north and south countries successfully implementing the remunicipalisation to their water management. However, the situation of each city is unique and has never been identified, yet in fact, knowledge exchanges are positive to make better changes.

Before learning and implementing the examples from cities around the world, a Dutch researcher, Michelle Kooy and a Canadian researcher, Kathryn Furlong, suggest that in order to develop a thorough explanation, it is better to reflect the experience of wider range cities, yet the experience of cities in Europe should not be placed in the center of theorization (Kooy, 2018). Thus, this discussion not only takes the examples and points of view from the western countries, but also those from Asia, Africa, and South America.

To successfully implement the remunicipalization on water management, below are the model examples of Remunicipalization policies in the world affecting the success or failure of Remunicipalization:

a. Community Involvement in Water Management

Remunicipalization aims at improving the water management for people to receive the highest quality of water. Public involvement becomes crucial role in the remunicipalization process, not only because they understand their needs and what to be improved, but also the process to provide an overview. This becomes something useful as their knowledge, commitment, and demand related to the workers and consumers in the new water management model. The community can also provide innovation by involving them in important decision making. This process can make the new public companies become more transparent and more accountable (Kishimoto, 2015).

This model has been applied in Paris, France through the *Parisien de l'AEau Observatoire* (Paris Water Observers). *Observatoire* is a body which goes hand in hand with the City Government of Paris to evaluate and implement policies related to water. The *Observatoire* acts as a mediatory body between the communities and city government by encouraging the communities to express their expectations and facilitate their understanding on the current water issues (Kishimoto, 2015). Although the *Observatoire* does not have the power to make decisions, public opinion is still well listened (Kishimoto, 2015).

b. Upholding Public Accountability and Transparency

Remunicipalization in Cochabamba, Bolivia was failed due to the lack of transparency on its water company called SEMAPA (*Servicio Municipal de Agua Potable y Alcantarillado*). The government did not provide a strong voice for public which then made people lost their faith in the ability of citizen representatives to change the internal dynamics. As a result, the city of Cochabamba continuously suffered from the prolonged water crisis (Razavi, 2019).

Indonesia has guaranteed the public information disclosure through Law Number 14 Year 2008 concerning Transparency of Public Information. The Law recognizes, "that the right to obtain information is a human right and public information disclosure is one of the democratic state's important features upholding the sovereignty of people to realize good governance." The Law also states that public information disclosure is a means to optimize the state's public administration oversight, public body, and anything resulting in public interests.

In many cities around the world, public information disclosure becomes one success factor for water management. This is due to the fact that public information disclosure is one initial step to build the community participations in public water management. Therefore, the community must be given information which allows them to ask for better results. Information on water must not be delegated and the information access must be made for public. This is what distinguishes public companies from private companies because private companies consider information as confidential (Hall, 2005).

Unfortunately, many cases in Indonesia still found that the government or public bodies difficult to get information on public policies. The research from National Legal Development Agency (*Badan Pembinaan Hukum Nasional*) found that only 20 of 34 provinces in Indonesia formed an information commission. This condition made the community not having the space to provide criticisms and suggestions for any public policy designed by the regional governments. This also led to a lack of community participations (Kristiyanto, 2016). In addition, without participation and freedom to information, there will be no interaction involving the government and community which eventually led to the abuse of power.

To prevent from the abuse of power, the Indonesian government must guarantee and fulfill six public rights stated by Achmad Santosa (Arifin, 2016):

- 1) Public's rights to monitor and observe the public officials' behaviors in performing their duties (right to observe);
- 2) Public's rights to obtain information (access to information);
- 3) Public's rights to participate in the formation of public policies (right to participate);
- 4) Public's rights for protection in revealing the truths or facts (whistle blower protection);
- 5) Right or freedom of expression realized through the qualified freedom of press.
- 6) Right to appeal.

The government and other organizing institutions must remember that public services need to be transparently performed by each service unit of government agencies and other organizing bodies due to the quality of public service bureaucracy's performance which has broad implications in achieving the public welfare (Kristiyanto, 2016).

c. Maximizing the Role of Workforce in Water Management

Workforce plays an important role in the success of Pulau Pinang Water Supply (*Perbadanan Bekalan Air - PBA*) Pinang, Malaysia in serving the water needed by its citizens. Currently, Pinang is one of the cities with the cheapest water tariff in Malaysia and throughout the world. *PBA* also produces the highest profits among the water providers in Malaysia. In fact, Pinang has made an achievement of 99% access for drinking water at the lowest price and 98% of income efficiency (Hall, 2005). The interviews made with the workers, labor unions, and management staffs indicate that commitment to have good quality public services is embedded at every level in the company. Working and serving people is their motto. In addition, there is a strong commitment among workers to have a working culture promoting excellences in public services (Hall, 2005).

The other example is in Porto Allegro, Brazil having the best quality of life and human growth index in 2004. Thus, water and sanitation have an important role to this achievement. In Porto Allegro, the water and waste sector is managed by *Departamento Municipal de Aqua e Esgotos* (DMAE), a company mainly operating in

water and waste sectors. *DMAE* is a public company responsible for handling the city water management. Since the workers are recognized having a very important role, the *DMAE* makes some investments related to their education, health, insurance, vehicle, and other areas (Hall, 2005). As a result, many workers have an access to the educational scholarships, leadership trainings and technical subjects. The results of these investments were recorded in the company social audits and annually published since 2000. They also won various important prizes for social responsibility.

From those two examples, it is important to note that committed and qualified workers are the key points to provide good services. Thus, working conditions and worker safety must become the priority in public water management. In doing the remunicipalization, the fate of the workers from the private sector must be taken into account. Integrating these workers requires special attention due to their extensive knowledge on water networks and services. Therefore, a negotiation process is recommended by involving the elected board members, workers' representatives, and managers in order to immediately agree on the framework (Hall, 2005).

It is also important to involve workers in the remunicipalization process and equip them readily = support the development of water services in Jakarta. These workers must also be given some preparations and trainings to introduce the cultural values applied in public companies to face the water management challenges in DKI Jakarta. Thus, the Provincial Government of DKI Jakarta must invest a strong commitment to improve the water management and services to the workers of PAM Jaya, PT. Aetra, and PT. Palyja. We can also take into account of PBA Pinang, Malaysia which has the motto, "*Working and Serving the People.*"

d. Designing the Development Strategy and Water Management

The cause of failure in remunicipalization was experienced by Dar Es Salaam, Tanzania due to the absence of well-planned strategies, either by the government or public water management body of Dar Es Salaam Water and Sewerage Corporation (DAWASCO). After the remunicipalization, DAWASCO narrowly focused on the cost recovery without trying to change the system which eventually leads to the problematic tactics. To avoid the same situation as experienced by Dar Es Salaam, Jakarta must learn from the other cities in the world which successfully implemented their strategies to manage their water.

In 1973, the *PBA* Pulau Pinang, Malaysia adopted the "Commercial Outlook with Social Obligation" strategy. This strategy ensured the openly water access at the affordable price but still guarantee the profitable income. To implement this, *PBA* Pulau Pinang, Malaysia has adopted the appropriate technology to increase the water access and revenue efficiency (Hall, 2005). The commercial views adopted by *PBA* Pulau Pinang, Malaysia were paying attention to the association articles, adopting the commercial accounting system, involving both internal and external auditors, providing customer-friendly services, recording the systems of payments, bills, and collections, as well as developing the trusted and accurate systems for consumers and

engineers. In addition, *PBA Pulau Pinang*, Malaysia has also installed a leak detection device and rehabilitation system that *PBA Pulau Pinang*, Malaysia possibly detected the leaking pipes at various different geographical locations. Thus, it is concluded that, the commercial views also include the budget cuts and revenue efficiency improvements (Hall, 2005). We can also take the other example from *DMAE Porto Allegro*, Brazil, to reinvest profits in water and sanitation facilities. In seven years, around 70% of the invested money comes from the water tariffs (Hall, 2005).

Before doing the remunicipalization, anticipation and preparation are greatly crucial. Experience shows that many advantages may be obtained by having the government start a preliminary study or research at least for two years before the contracts expire (Kishimoto, 2015). In addition, the public water management body must develop indicators to measure the success level of new water management model (Kishimoto, 2015).

Some other efforts to make during the initial remunicipalization process are dealing with the development of public services starting by changing the perspectives, where the provisions on clean water must be understood as a social contract between the government and communities that the government's legal obligations are provided to meet the needs of communities on water. With these perspective changes, it is expected that there will be some changes in how to manage the water service utilities.

e. Data Management and Information System

Information System is one important issue used for billing, utilization of water data collection and management, and work monitoring (Kishimoto, 2015). Information system also plays an important role to increase transparency, promote effective allocations, utilize and conserve water, as well as to ensure the maintenance and physical resilience of water sources (The World Bank, 2015). Unfortunately, this issue is frequently underestimated. This system transfer must not be ruled out that the changes to public companies may successfully run. However, transferring the data and information systems from private to public companies is not easy. There is a lot of information which should be processed, such as customers' characteristics, descriptions and locations of water equipment and networks, data managements from water meters, billing history, intervention rules, claims, incident types which possibly overwhelm the managers and staffs. In fact, the best trained water operators in the world have complained about how tiring it is (The World Bank, 2015).

What we can also learn from the remunicipalization in Paris that negotiations with private operators are necessary even if they have a tricky possibility to proceed. Negotiations are required to ensure that the water services may continuously run smoothly. Thus, the compromise in several fields is unavoidable. However, it is better if *PAM Jaya* or the new public company has its own information system which only requires data recovery management to ensure that the services may continuously run smoothly and avoid the time-consuming negotiations.

f. Staying Cautious in Political Involvement

Political involvement in water management is like a double-edged sword. On one hand, water management will not be able to be returned to the public's hands without the authorities' political interference. On the other hand, if the interference comes into the company's daily lives, it can hamper the company's performance. One factor supporting the *PBA* Pulau Pinang Malaysia could implement its duties to smoothly serve the communities since the company autonomously operated without any political intervention from the authorities, although since 1973 the water utilities should still follow the federal government's policy for the staff recruitment (Hall, 2005).

*PBA*'s daily activities, such as making the operational and management decisions, including its policies, were all free from any political intervention. In one interview conducted with a retired senior management staff, saying that the state politicians never got involved in day-to-day operations or influenced the policy making. In fact, *PBA* managers professionally used their responsibilities and duties, guided by a senior management team committed to the public. Therefore, *PBA* could focus on carrying out its core tasks and commitment to balance its benefits with the public interests. In this working environment, the senior management could formulate plans and decisions without having any fear of the disappointing politicians and job transfers or demotions (Hall, 2005).

Political will is also greatly necessary to succeed the remunicipalization. Involving the city council to provide assistance from the other fellow city councils succeeded in remunicipalization (Hall, 2005). The global trends show that water privatization was proven failing to evenly distribute the water. Therefore, the remunicipalization, returning completely the private assets to the public/government is seen as a logical mechanism to end the water crisis.

Based on the research conducted by the Public Services International Research Unit (PSIRU) in 2014, there were 180 remunicipalization cases throughout the world. 136 remunicipalization cases took place in high-income countries, while the other 44 remunicipalization cases were in low and middle income countries (Hidayat, 2019). In Addition, PSIRU has conducted water management research in several major cities in the world since 2006 (cities with populations of more than 1 million people). Of 400 cities, 90 percent of their water services were operated by the government (Hidayat, 2019).

The research conducted by PSIRU also stated that private companies only made a very small contribution to water management (Hidayat, 2019). In fact, these companies are now reducing their activities at the global level. Water privatization developed rapidly from 1980s to the end of 1990s since handled by the international financial institutions, using the privatizations as the grant or debt conditions. In its development, the fate of international water service companies has dramatically collapsed due to their failure to obtain maximum benefits in the developing countries. In addition, the research conducted by PSIRU also stated that the concrete form of remunicipalization was the establishment

of public-public or government-government partnerships based on the shared values and goals, more than just solely the profit-making interests.

The lack of commercial considerations allows the earned revenues reinvested to develop the local capacity, which is beneficial for the development of water management system sustainability. In contrast, the private sector which always prioritizes maximum profits is definitely not in line with the context of a country which has the needs to improve its water service coverage.

DKI Jakarta should consider its water management not entirely managed by the private sector. Global trends have shown that even in liberal countries, water is still fully managed by the government through its public authorities. In fact, Indonesia is a country with the water surplus which annual water potential averagely reaches 4 trillion cubic meters. Meanwhile, the neighboring countries with small geographical areas, such as Singapore and Brunei, have managed their own water averagely 100 percent as the water supply for their residents.

Due to the clean water management, many cities in the world have implemented the remunicipalization programs. However, may cities successfully implemented the remunicipalization programs while others didn't. Dealing with clean water management, the Provincial Government of DKI Jakarta should learn from both successful and not successful cities implementing the remunicipalization programs. There are several important points that should be well notified by the Provincial Government of DKI Jakarta related to the water management successfully implemented by several cities,, including community participation, accountability and transparency, the importance of workers' role , water management strategies, data management and information system, as well as political involvement. These factors can determine success or failure in future water management. In addition, the Provincial Government of DKI Jakarta must also thoroughly plan for its water management, starting from the regulation problems, learning from the history of PAM Jaya's water management failure, mapping the water networks, and dealing with the complicated licensing issues.

Transparency and community involvement in water management is greatly essential. If not transparent, the Provincial Government of DKI Jakarta does not have the possibility to return the water management to the government/public authorities. Non-transparency can lead to collusion, corruption, and nepotism in water management in DKI Jakarta. In addition, water management in DKI Jakarta should be kept away from politics. If the water management is influenced by politics, it usually results in problems.

## **Conclusion**

This paper shows that there are two main problems related to the issue about: many losses may occur due to the water privatization. The most appropriate action to take in overcoming the problems is by doing the remunicipalization on water privatization. The Provincial Government of DKI Jakarta has formed a Water Management Team to conduct an in-depth study on the best take-over efforts should be made by DKI Jakarta. The



research results show that there are three options to possibly implement: status quo, unilaterally contract termination, and civil take over. Of these three options, the Provincial Government of DKI Jakarta has chosen to take the option to have a civil take over beginning with the Head of Agreement (HoA) between PT. Aetra with PAM Jaya. Beside that, cities around the world commonly do the remunicipalization. Some succeeded while the other did not. From these cities, the Provincial Government of DKI Jakarta may learn from their success and failure on their water management. Several important policy points that should be considered by the Provincial Government of DKI Jakarta on water management: involving the communities' role, upholding accountability and transparency, maximizing the workers' role in water management, carefully designing water management strategies, managing the data and information systems, and carefully involving politics. Those may determine the success or failure in the future of its water management. In addition, learning from the history of PAM Jaya, the government must also thoroughly plan the water management, starting from the regulation problems, network maps, and complicated licensing issues.

## Suggestions

There are two suggestions recommended by this paper, first, in the efforts to restore the water management, a civil take over is the right step to make, yet requires careful preparations. The Provincial Government of DKI Jakarta should not waste more time to renegotiate with the private sector. Moreover, this renegotiation still uses business to business approach and the process is classified from public. It would be appreciated if the Provincial Government of DKI Jakarta starts seriously responding to the water problems and prioritizing the interests of wider communities rather than just business interests. The Provincial Government of DKI Jakarta should directly get involved and not just refer these problems to PAM Jaya. The Provincial Government of DKI Jakarta should also be transparent and involve the community to take over the water management. If the Provincial Government of DKI Jakarta remains closed or not transparent, it is impossible to return the water management to the public authorities. Keep in mind that non-transparency can lead to collusion, corruption, and nepotism in the future water management body. Second, although cities around the world have differences in terms of history, culture, and law, the Provincial Government of DKI Jakarta has nothing to lose learning from those successful and unsuccessful cities on their water management. Thus, the Provincial Government of DKI Jakarta may understand what causes the success and failure in implementing the remunicipalization that the government may prevent from failure without repeating the same mistakes made by the cities unsuccessfully implemented the remunicipalization. The efforts to return the water management to the public authorities is not yet successful but this is just the beginning of a business that will take a long time and requires a lot of energy.

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