

## Chapter two

# An end to the struggle? Jakarta residents reclaim their water system

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Privatisation of water services in Jakarta has failed. The evidence speaks for itself. Water services coverage in the Indonesian capital remains low at only 59 per cent.<sup>1</sup> The infrastructure is in bad shape with the leakage level as high as 44 per cent, a situation repeatedly denounced by the Governor.<sup>2</sup> As a result, among the lucky half of the population that does get access to piped water, water quality is poor.

Consequently, on 24 March 2015 the Central Jakarta District Court annulled the privatised water contracts following a citizen lawsuit. Water privatisation was deemed negligent in fulfilling the human right to water for Jakarta's residents. The court also ordered the water services to be brought back to the state-owned water company.<sup>3</sup>

The private sector got officially involved in Jakarta's water services in 1997, when Suharto's dictatorial power was still solid in Indonesia. At the time, foreign water companies Thames (UK) and Suez (France) obtained a 25-year concession over water management, granting them the exclusive right to deliver water services in the capital city. Each operator was given control over half of the metropolitan area: the western part is serviced by PT PAM Lyonnaise Jaya (Palyja, owned at 51 per cent by Suez and at 49 per cent by Indonesian infrastructure company Astratel Nusantara) and the eastern part by PT Aetra Air Jakarta (Aetra, owned by Singapore-based Acuatico since 2007 with Indonesian company PT Alberta Utilities holding 5 per cent of shares).

Since then, the private operators have been earning high profits in a low-risk business while causing huge financial losses for the public Jakarta Drinking

Water Utility (PAM Jaya), which oversees the contracts with the private concessionaires. These public losses added up to as much as IDR 510 billion in 2010 (approximately US\$54 million) and could reach IDR 18.2 trillion if the cooperation agreement were to continue until its expiry date in 2022.

The government is discontented because the capital city's water services are poor and public money is being spent to cover losses caused by privatisation.<sup>4</sup> Water tariffs increased on 10 occasions since, making it much higher than in other cities while service quality remains poor. Outages are frequent and in 2013 alone nearly 40,000 complaints were filed by users regarding tap water deficiency.<sup>5</sup>

Not only are residents and public managers discontented with privatisation, water workers too have been negatively affected.<sup>6</sup> Some 2,800 of the 3,000 utility workers were transferred to the private companies after the concession was signed, but their contractual situation remained unclear. Afterwards, the new workers recruited directly by the private companies obtained better conditions, for example on skills training, health insurance, salary and allowance, as well as safety. This has created a double standard within the workforce. One worker who had been working for nine years with the water utility declares never having received a basic salary raise since privatisation.

## Citizens unite to remunicipalise

Even though the resistance against water privatisation is as old as the privatisation itself, it gained momentum in 2011 when residents, water workers and civil society organisations formed the Coalition of Jakarta Residents Opposing Water Privatization (KMMSAJ). The coalition has organised through various strategies, from rallies, public discussions and policy dialogues, to requesting information disclosure, circulating petitions and filing a citizen lawsuit.

In January 2012 KMMSAJ also brought to light an alleged corruption case that involves PAM Jaya and the two private operators by petitioning the Corruption Eradication Commission (KPK). This corruption case, currently being investigated by KPK, would involve IDR 561 billion (US\$43.2 million).<sup>7</sup> *Tempo Magazine*, which investigated the case, found a link between this corruption case and the Jakarta gubernatorial election in 2012.<sup>8</sup>

The most important step was taken in November 2012 when KMMSAJ initiated a Citizen Lawsuit against water privatisation. The defendants in the lawsuit were the President, the Vice-President, Finance Minister, Public Works Minister, and the Governor of Jakarta. Other defendants include the Jakarta House of Representatives, Jakarta water company PAM Jaya's president director, and the two private operators Palyja and Aetra.<sup>9</sup>

In this lawsuit, the plaintiff accuses the defendants of negligence by unlawfully arranging the water privatisation contract agreement. Indeed, the contract itself is considered as violating the Constitution and other regulations related with water resources and clean water provision, which require delivery by the state through a public water company.

This lawsuit played an important role for its influence on policy-makers. After the Citizen Lawsuit was launched, the Governor of Jakarta Joko Widodo declared in March 2013 that water privatisation would be ended. In October 2014 then-deputy governor of Jakarta Basuki Tjahaja Purnama confirmed that the government was considering the acquisition of the private firms' shares through Jakarta's public water utility PAM Jaya considering the class-action lawsuit.<sup>10</sup>

The Governor's plan to acquire the private operators' shares through PAM Jaya was taken seriously by the court, and the verdict was postponed twice to create space for an out-of-court settlement. The governor of Jakarta issued a letter in February 2015 instructing the public water company PAM Jaya to take over water services from the private operators. The Central Jakarta District Court's 24 March decision to annul the privatised water contracts on the grounds that the water privatisation was negligent in fulfilling residents' human right to water confirms that this is the road taken. Remunicipalisation is just one step away!

## The privatisation context in Jakarta

The cooperation agreement with Aetra and Palyja was restated in 2001 to adjust with the political and economic situation post-1998 financial crisis. It was followed by a five-year target adjustment.

It was not until 2011 that PAM Jaya openly expressed disappointment with the contract agreement and proposed renegotiation. The director of PAM Jaya stated that privatisation would sink the public water utility into huge financial

losses (up to IDR 18.2 trillion) if the cooperation agreement continued as planned until its expiry date in 2022.

The renegotiation process did not run smoothly. Aetra was the first to agree to compromise with some renegotiated items, which were included as addendum to the cooperation agreement in December 2012. The approved items were: to lower the Internal Rate of Return, which was considered too high, from 22 to 15.8 per cent (the Financial and Development Supervisory Agency, BPKP, evaluated the reasonable rate for water services in Jakarta at 14.68 per cent); to eliminate current shortfall debt; and to decrease the leakage level from 29 to 25 per cent. Palyja, on the other hand, refused to make any changes.

The cooperation agreement has been problematic because of its emphasis on the private operators' business profit. The payment mechanism adopted in the contract agreement differentiates between "water charge" and "water tariff". The former is the rate paid by PAM Jaya to the private operators, while the latter is the rate paid by customers to PAM Jaya. The water charge is subject to adjustments regardless of policy decisions related to the water tariff.

The initial water charge as of 1 April 2001 was IDR 2,400, and was to be adjusted every six months. This soon created a structural problem because PAM Jaya did not have similar flexibility in increasing tariffs because most residents could not afford it.

The water charge could be raised liberally by the private operators without considering the water tariff policy, guaranteeing continued private profits. For PAM Jaya, every water charge increase that was not followed by a parallel water tariff increase led to a financial shortfall. This brought the government to issue a policy that allowed raising the water tariff automatically every six months, effective from 23 July 2004 to 2007. Not surprisingly, Jakarta's water tariff has become the highest among other big cities in Indonesia.

This structure has caused massive financial losses for PAM Jaya. In 2011, when the President Director of PAM Jaya proposed contract renegotiation, financial loss was evaluated at IDR 154.3 billion, in addition to a decrease in asset value from IDR 1.49 trillion before the privatisation to IDR 204.46 billion in 2014.<sup>11</sup> A letter of support issued by the provincial government of Jakarta later assumed all these losses from public money while guaranteeing excessive revenue for the private operators despite dismal service quality.

At the same time, the cooperation agreement gave much leeway to the private operators in terms of performance targets. The regulation of performance targets, which are important to ensure quality services to citizens, was designed in such a way that the private operators could easily evade them. For instance, technical targets could be amended from time to time in accordance with the private operators' Financial Projections. The same case applied to the service standards.

## Poor private performance, expensive water tariff

With no pressure whatsoever, the private operators' performance has been unsatisfactory. In a recent statement, PAM Jaya explained that the service coverage ratio in 2013 was targeted for 66.37 per cent, but the private operators were only able to reach 59.01 per cent,<sup>12</sup> or lower than that of 2008. The leakage level is 44 per cent, higher than the average level of other drinking water companies nationally, which is 31 per cent.<sup>13</sup> The Interior Ministry's regulation specifies that the leakage level should not be higher than 20 per cent.

While receiving poor water services, customers have to pay expensive water tariffs. At the beginning of the concession, the average water tariff in Jakarta was IDR 1,700/m<sup>3</sup>. It continued to increase rapidly, mostly through the Automatic Tariff Adjustment policy, as the private operators kept pushing frequent increases in the water charge. Currently, the average water tariff in Jakarta is IDR 7,020/m<sup>3</sup>, which is much higher compared to that of other big cities in Indonesia (see Table 2.1).

Table 2.1 *Comparison of average water tariffs in several big cities, Indonesia (2012)*

City	Tariff (per m <sup>3</sup> )
1 Jakarta	IDR 7,020
2 Surabaya	IDR 2,600
3 Medan	IDR 2,294
4 Bekasi	IDR 2,300
5 Makassar	IDR 2,000
6 Semarang	IDR 2,600

Sources: (1), (2), (4) *TribunNews* 31 January 2012; (3) *Bisnis Indonesia* 24 September 2012; (5) Department of Public Works; (6) *Okezone* 10 May 2012.

## Water supply challenges in Jakarta

In a heavily populated city like Jakarta (9.6 million inhabitants), providing safe drinking water through a piped network is no simple task. In the context of rapidly increasing demand, the piped water infrastructure supplies 297 million cubic meters of water per year. Additional water needs tax groundwater resources, and excessive exploitation is causing environmental problems such as land subsidence and saltwater intrusion. Besides, use of Jakarta's groundwater is a serious public health concern because it is vastly contaminated with E-coli (as much as 90 per cent<sup>14</sup>).

Most residents use groundwater because piped water services cover less than half of the population. This unserved population is mostly composed of poor communities, in North and West Jakarta for example. In these neighbourhoods, residents have to buy water in jerry cans at a cost as high as IDR 15,000/day (US\$1.15), while daily income is generally less than IDR 30,000.<sup>15</sup> Even more dismal is sanitation coverage that stagnates at a low 5 per cent, accelerating environmental degradation.<sup>16</sup>

In taking back the responsibility for water services, public utility PAM Jaya will have to tackle these daunting challenges.

## Public water works better in Indonesia

With ever deepening problems, Jakarta has no other realistic options than terminating the water privatisation contract and bringing back services to PAM Jaya. In Indonesia, public water management is proven to perform better than privatised utilities. Water services in cities such as Surabaya, Palembang, Banjarmasin, Medan and Malang, which are fully managed by public entities, perform far better than Jakarta's and at lower water tariffs (see Table 2.2).

In taking over the water services from the private operators, three possible scenarios have been considered: 1) PAM Jaya buys the private operators' shares; 2) the governor declares through a decree that the contracts are unilaterally terminated; 3) the citizen lawsuit leads the court to nullify the contract agreements and water management returns back to PAM Jaya. After the court's decision of March 2015, the city administration is eager to pursue the third option. The governor hopes that an expected private operator attempt in

appealing the court decision will be rejected. At the same time, the city administration's legal bureau is also preparing in case that the private operators resort to international arbitration.<sup>17</sup>

Table 2.2 *Comparison of water utilities performance in several cities, Indonesia*

Water utilities	Average water tariff	Leakage level (%)	Service coverage (%)
1 Surabaya	2,800	34	87
2 Palembang	3,800	30	93
3 Banjarmasin	4,120	26	98
4 Medan	2,226	24	66.62
5 Malang	4,000	30	80
6 Jakarta	7,800	44	59.01

Sources: (1) The Indonesian Drinking Water Association (Perpamsi) 2013; (2) *TribunNews* 2013; (3) Department of Public Works 2013; (4) Perpamsi 2010; (5) Malang Drinking Water Company 2015; (6) *JPNN* 2013.

## Towards remunicipalisation: Financing

Should the governor decide to follow the initial plan for PAM Jaya to buy Palyja's shares, PAM Jaya needs to gather sufficient funds for the repurchase. In early 2015, PAM Jaya stated that if the share purchase were to take place, it would consider assistance from banks.<sup>18</sup> PAM Jaya, however, still has another alternative through internal financing if public water management can generate enough savings through enhanced efficiency due to the merger of two contracts into one sole public operator.

Based on Amrta Institute's estimation, the efficiency gains from terminating the privatisation contract could yield as much as IDR 171 billion. These savings would come from the reduction of operational costs compared to the private operators', costs which were previously borne by PAM Jaya through the water charge. After privatisation is ended, PAM Jaya will be free from the water charge scheme and will be able to stop accounting costs not related with water production.<sup>19</sup>

For instance, there would be no more costs for "technical assistance", which in the Jakarta contracts refers to the fees paid to shareholders every year. Under public management, administrative fees will be reduced significantly. Salary

costs will go down too as expensive foreign executives will no longer need to be paid. Direct public management has a significant advantage on costs of insurance and rent for buildings. Travel, external consulting services, advertising will be reduced dramatically compared to the amount spent by private operators.

## Public-public partnership as a way forward

Furthermore, the next task for PAM Jaya in the post-privatisation period would be to rethink water management to improve services. The public water utility could benefit from external expertise through a partnership with another public institution, known as public-public partnership (PuP).

A PuP is “collaboration between two or more public authorities or organisations, based on solidarity, to improve the capacity and effectiveness of one partner in providing public water or sanitation services. They have been described as: “a peer relationship forged around common values and objectives, which exclude profit-seeking.”<sup>20</sup>

As mentioned above, a number of public water utilities in Indonesia have outstanding performances. PuPs would give an opportunity for PAM Jaya to work together with other good water utilities such as in Surabaya, Palembang, Banjarmasin, Medan, Malang, and even with foreign public water utilities, in the areas of “training and developing human resources, technical support on a wide range of issues, improving efficiency and building institutional capacity, financing water services, and improving participation.”<sup>21</sup>

The priority objectives of such an initiative would be to improve its basic performance on service coverage and to reduce leakage. PAM Jaya has set to achieve the goal to increase water coverage to 80 per cent in 2015, which at current production rates would amount to a 10,999 liter/second deficit, and to 97 per cent in 2030, which will create 22,636 liter/second of water production deficit. Teaming up with a public water utility that has proven to be able to boost service coverage and reduce leakage level could bring the experience, skills, and technology necessary to up production considerably.

A PuP could eventually be an opportunity for public operators to work together to achieve ambitious goals. The people of Jakarta should receive drinkable water, and serious efforts to boost sanitation coverage must be made.



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## Endnotes

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