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Public-Private Partnership In Water Supply Of DKI Jakarta

Public-Private Partnership in Water Supply of DKI Jakarta

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ABSTRAK

PAM Jaya selaku perusahaan daerah bertanggungjawab atas pemenuhan air bersih di DKI Jakarta, dituntut untuk melaksanakan kemitraan dengan swasta yaitu PT Palya dan PT Aetra Air Jakarta. Setelah adanya kerjasama masih banyak masyarakat yang belum mendapatkan layanan air bersih. Tujuan dari penelitian ini untuk mengetahui dan menganalisis pelaksanaan Public Private Partnership yang dilaksanakan oleh PAM Jaya dan mitra swasta dalam penyediaan air bersih di DKI Jakarta. Metode penelitian menggunakan metode penelitian kualitatif. Teori yang digunakan yaitu pemanfaatan Public Private Partnership yang dikemukakan oleh Emanuel Savas (2000) yang terdiri dari roles and function, competition, regulation, risk, procurement, dan financing. Hasil penelitian ini pelaksanaan Public Private Partnership dalam penyediaan air bersih di DKI Jakarta belum berjalan efektif dikarenakan tidak terpenuhinya pemanfaatan Public Private Partnership. Tidak adanya proses competition dan procurement antara mitra, tidak adanya regulasi yang diacu, sehingga berdampak kepada PKS yang tidak mencerminkan kepentingan publik. Terdapat peran & fungsi PAM Jaya dan mitra swasta yang tidak dijalankan, pembagian risiko yang tidak jelas dan kompensasi kepada mitra swasta lebih merugikan pihak PAM Jaya sehingga adanya shortfall. Penulis menyarankan perlu adanya perbaikan pada kontrak Perjanjian Kerjasama, Pemerintah Provinsi DKI Jakarta mengeluarkan peraturan yang tegas dan jelas, meningkatkan pelayanan kepada masyarakat, tidak lagi menggunakan bentuk kerjasama konsesi.

Kata Kunci : Public private partnership, penyediaan air bersih, kontrak Perjanjian Kerjasama

ABSTRACT

Drinking-Water Company (PAM) Jaya as a regional company is responsible for supply clean water in DKI Jakarta, is demanded to conduct partnerships with the private sector, namely PT Palya and PT Aetra Air Jakarta. After the partnership, there are still many people who do not have access to clean water services. The purpose of this study is to find out and analyze the implementation of the Public-Private Partnership implemented by PAM Jaya and private partners in the supply of clean water in DKI Jakarta. The research method used qualitative research methods. The theory used is the utilization of the Public-Private Partnership proposed by Emanuel Savas (2000) which consists of roles and functions, competition, regulation, risk, procurement, and financing. The results of this study the implementation of the Public-Private Partnership in the supply of clean water in DKI Jakarta has not been effective because of the failure to fully utilize the Public-Private Partnership. The absence of competition and procurement processes between partners, the absence of regulations referred to so that the impact on the Cooperation Agreement (PKS) did not reflect public interests. There were roles and functions of PAM Jaya and private partners that were not conducted, unclear risk-sharing and compensation to private partners were more giving loss to the PAM Jaya, resulting in a shortfall. The author suggests that the PKS contract is needed, also the Provincial Government of DKI Jakarta needs to issue strict and clear regulations, improve services to the public, and no longer use the form of concession cooperation.

Key Words: Public-private partnership, the supply of clean water, contract Cooperation Agreement (PKS)

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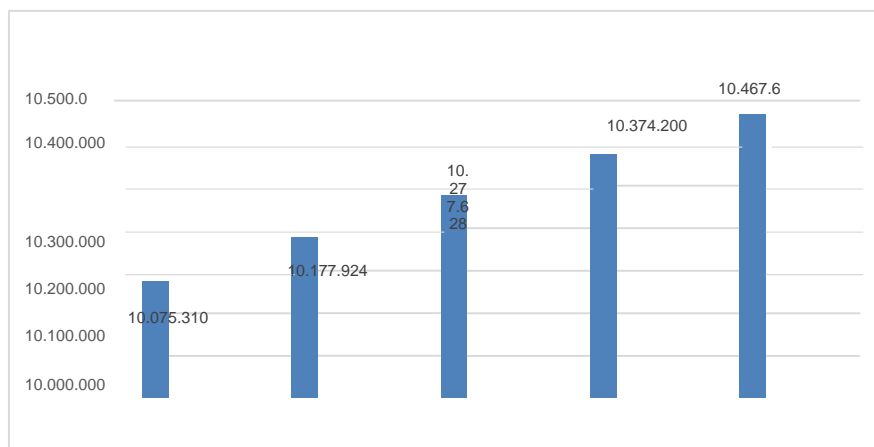
Public-private partnership, the supply of clean water, contract Cooperation Agreement (PKS)

INTRODUCTION

Clean water is an important resource of human life, as a basic need and part of human rights; the right to (access) the water. Currently, clean water is one of the important concerns in the world, because access to it becomes quite difficult and impacting negatively on human life. The access of clean water is included in the sixth Sustainable Development Goals (SDGs) target, namely Clean Water and Proper Sanitation, where the target for ensuring the availability and management of clean water and sustainable sanitation can reach 100% by 2030.

Nowadays, Indonesia still has many problems in accessing clean water and proper sanitation. In percentage, it only had reached 72% until 2019. It means that 28% was still left to achieve the SDG's target of 100% by 2030 (Ministry of Public Works and Public Housing, 2019). The density of the population in big cities will be proportional to the increasing need for clean water and as one of the main factors for water demand. High population growth rates and increased community activities will also have an impact on the community's needs in clean water, either for basic needs or for other activities. Besides, the increasing water demand is not proportional to the water sources available and affecting service quality for the need for water (Sulastri & Nugraha, 2017).

Graph 1. Number of Population of DKI Jakarta Province Year of 2014-2018



Source : *Badan Pusat Statistik* DKI Jakarta (2020)

Based on Chart 1, the population of DKI Jakarta increases every year. The population growth in DKI Jakarta which increases every year has a direct impact on the high demand for clean water. Based on data from the Drinking Water Company (PAM) Jaya website, access to clean water in DKI Jakarta currently only reaches 60%, which means there are still 40% of the people of DKI Jakarta who do not have access to clean water. Concerning the total population of DKI Jakarta which is 10 million, and the average need for each person is 150 liters/day, the need for clean water in DKI Jakarta annually reaches 547.5 million m³. Meanwhile, the supply that can be provided is only 296.65 million m³. The community digs the land to build a well, to meet these needs and this activity annually reaches 251.8 million m³, while the potential for groundwater and safe limits that can be utilized annually is only 186.2 million m³. This results in a decrease in water quality, because the groundwater has been polluted, and it is not hygiene for consumption and not including in

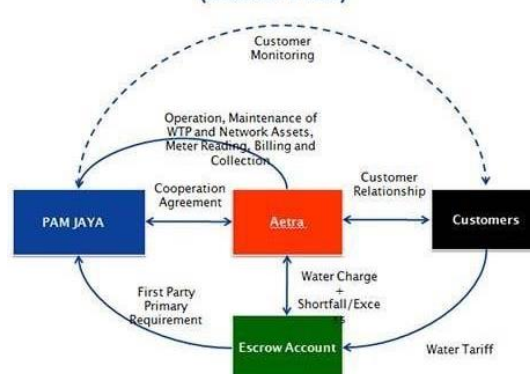
clean water criteria.

In providing the needs of clean water for the people of DKI Jakarta, the Provincial Government of DKI Jakarta has established a PAM called PAM Jaya. It is specifically written on the DKI Jakarta Regional Regulation (Perda) No. 13 of 1992 concerning the DKI Jakarta Drinking Water Company (PAM Jaya). PAM Jaya is also trying to maximize the distribution of water through pipes by taking raw water sources from Jatiluhur Reservoir, Tangerang, and 13 rivers in Jakarta. However, with the high need for clean water in DKI Jakarta, distribution to the public using pipes has only reached 60% (PAM Jaya, 2019).

With the monetary crisis in 1997-1998 and the limited budget of PAM Jaya, it has become a major factor in the need for clean water in DKI Jakarta. So that, it urges the Central Government to conduct business through lending funds to the World Bank because if it does not seek loan funds and see the financial condition of PAM Jaya, no one will invest in water management. Through managing these funds, to meet the needs of clean water in DKI Jakarta, PAM Jaya is required to implement a cooperation scheme that involves private partners or what is called the Public-Private Partnerships (PPP) scheme in realizing high-quality clean water services for the people of DKI Jakarta.

The government's agenda, in this case, is public-private partnerships in which the public and private sectors share risks and resources to generate added value, as well as for the interests of the two sectors (Indahsari & Raharja, 2020). The signing of the cooperation agreement between PAM Jaya and private partners was conducted on June 6, 1997. While the full operational implementation began on February 1, 1998. The central government in 1998, made the partnership between PAM Jaya and private partners the first example of cooperation in the form of concessions for 25 years, in which the management of clean water from upstream to downstream or from raw water management to distribution and collection to the community is entirely left to private partners. PAM Jaya has a supervisory role in this partnership. The companies partnering with PAM Jaya are PT PAM Lyonnaise Jaya (PT Palyja) and PT Thames PAM Jaya (PT TPJ or better known as PT Aetra).

Figure 1. Concept of Cooperation Agreement between PAM Jaya and Private Partners
(Master Plan)



Source: PT Aetra Air Jakarta (2020)

Based on the Figure 1. The concept of the cooperation agreement among PAM Jaya and PT Aetra and PT Palyja that must be obeyed by all parties, such as:



1. PAM Jaya hands over the management of existing assets (including production and distribution), granting exclusive rights to private partners to manage clean water services
2. Private partners are responsible for operating, maintaining and investing to optimize, add and improve clean water services in their operational areas
3. PAM Jaya pays a water fee for every m³ of water sold and collected to private partners
4. The private partner is obliged to achieve technical targets and service standards, as well as maintain and enhance assets.

Public-private partnerships have become common policy instruments, requiring expertise and clear roles. If local governments use partnerships to address social problems with their partners, democratic accountability will be limited and replaced by expenditure controls and financial accountability (Indahsari & Raharja, 2020). In the implementation of the partnership among PAM Jaya and PT Palyja and PT Aetra also the Cooperation Agreement of 22 October 2001, there are 5 technical target parameters set and must be achieved by private partners as performance indicators, including the number of connections, water production, service coverage, volume water sold and the rate of water loss or Non-Revenue Water (NRW). However, in its implementation, the roles and functions of the two parties have not run optimally. This is proven by the presence of several technical targets that have not been achieved by the two private partners.

The coverage of piped water services in DKI Jakarta in 1998 was 44.5%, then the two private partners plan that within 25 years of development the coverage will be 82%. Then during the 20 years of the collaboration, namely until 2018 it only increased to 59.4%. This shows that over 20 years, the increase in service coverage was only 14.9% and there is still a remaining target to be achieved by 20% by the end of the contract period in 2023. Within 5 years, both private partners must be able to meet the 20% target. The two private partners must be able to increase the coverage of clean water services in their operational areas by 4% annually. Another technical target that has not been achieved is the level of water leakage or Non-Revenue Water (NRW) which is still relatively high. In 2017 the water leakage rate was 48.15% while the predetermined target was 33.75%. The supervision carried out by PAM Jaya has not had an impact so that the performance of private partners in providing clean water services to the community has not been fulfilled. During the work of collaboration, the reciprocity between PAM Jaya and the private partners have caused losses to one of the parties, in which PAM Jaya suffered a very large loss. It is recorded from the results of an audit that has been conducted by the DKI Jakarta Finance and Development Audit Agency (BPKP) that until the end of 2015 PAM Jaya's losses reached 1.4 trillion and for 2016 PAM Jaya's losses reached 1.2 trillion. The loss suffered by PAM Jaya is due to PAM Jaya having to pay a shortfall on water charge in return for management services to the two private partners.

In the Cooperation Agreement between PAM Jaya and private partners using a "dual tariff" system, namely the rate paid by the customer to the manager, and the water charge paid by PAM Jaya to the operator. The amount of tariff paid by customers to operators is adjusted to the applicable customer class and the cubication used, can be seen in the Appendix. Meanwhile, the amount of water charge paid to the operator is adjusted to the total cubication of water sold multiplied by a predetermined water charge rate. The specified water charge rate is 7000 / m³ for all groups, and until now there has been no adjustment to the tariff for the customer class, so the water charge rate for all groups is the same. This caused PAM Jaya to lose money.

LITERATURE REVIEW

In this study, the authors will focus on Public-Private Partnership (PPP) in providing clean water in DKI Jakarta with companies involved are PAM Jaya as the party in charge and supervisor in the implementation of the partnership, PT Palyja and PT Aetra as operators in providing clean water. In conducting this research, the authors recognize that private and public partnerships are a complex governance process. Several studies are considered relevant to assist in adding the concept of partnership in other research perspectives. And to find out the recent research that will be conducted, so that there is no duplication with the research that has been done by previous researchers. Therefore, the authors include several previous studies.

The first research was about "Evaluation of Drinking Water Services in DKI Jakarta in the Context of Private Roles in PAM Jaya (Case Study: Services in East Jakarta at Category IIIA)" by Immanuel Ginting (2005) from the University of Indonesia. This research was urged by the large need for clean water in Jakarta to meet the needs of the community, demanding the availability of optimal urban public services, especially in the field of drinking water. However, the existence of PAM Jaya as an institution for providing drinking water services in DKI Jakarta had not been able to accommodate the needs of the community, therefore to accelerate development and improve service performance, PAM Jaya collaborated with the private sector, or in other words, undertakes privatization. In subsequent developments, it turned out that after privatization, public complaints about water services were still heard even though privatization should have provided changes and improvements in service conditions. This study used quantitative methods and the variables analyzed, such as continuity, pressure, quality, and quantity of water as well as tariffs and customer service on customer satisfaction.

The results of this study indicated that the implementation of privatization has not resulted in a change in the quality of service to customers. Also, the aim of privatization to bring public services more efficiently and effectively explained that drinking water services in the East Jakarta area were not yet relevant to the objectives of privatization.

The similarity of this study with the author's research is from the locus, namely the supply of clean water in DKI Jakarta. Meanwhile, the difference between this research and the author's research is the focus of the research and the research methods used. The focus of this research is the evaluation of clean water supply and the research method used is quantitative research methods. Meanwhile, the author's research focus is on a public-private partnership in providing clean water and uses qualitative research methods.

The second research is about the "Privatization of Water Resources in the Regional Drinking Water Company of DKI Jakarta (PAM Jaya) (Study of the Supreme Court Decision Number 31 K/ Pdt/2017)" by Berlyyana Harinto Wati (2018) from Syarif Hidayatullah State Islamic University Jakarta. This study aimed to analyze the implementation of the privatization of water resources at the DKI Jakarta Regional Drinking Water Company which was still occurring after the Supreme Court decision Number 31 K/ Pdt/2017 in the case of privatization done by private parties in PAM Jaya. The privatization in water management in DKI Jakarta had an impact on society, especially the lower classes. There were several communities formed in the Citizen Lawsuit who experienced losses due to privatization. This research used qualitative methods and juridical normative approaches.



The results of this study indicated the legality of the presence of privatization in DKI Jakarta due to a policy from the World Bank as well as funds to the Government of Indonesia so that President Soeharto issued a Presidential Directive which appointed two private companies in the management of water utilization in DKI Jakarta. Also, the results of the research explained that privatization in DKI Jakarta after the Supreme Court ruling which ordered to stop water privatization in DKI Jakarta. Also, PAM Jaya and the private sector objected to the Supreme Court's decision due to the reconstruction of the PKS.

The similarity of this study with the author's research is from the research locus, namely the supply of clean water in DKI Jakarta. The difference is the focus of the research. The focus of this research was the implementation of the privatization of water resources at the DKI Jakarta Regional Drinking Water Company which is still happening after the Supreme Court decision Number 31 K/Pdt/2017 in the privatization case conducted by the private sector in PAM Jaya. While the focus of the author's research is the Public-Private Partnership in the supply of clean water.

The next research is about "Public-Private Partnership in Improving Clean Water Resources Services in PDAM Gresik Regency" by Faridah Fatiyah (2016) from Airlangga University. This research was motivated by the water service provided by PDAM Gresik which was still not evenly distributed, so it was necessary to improve and develop pipeline infrastructure, add water pumps to customer service points and expand distribution networks that were evenly distributed to all areas of Gresik Regency. Therefore, to increase water resources in the services of PDAM Tirta Giri Gresik and to overcome budget constraints and the factor of arrears in bill payments, PDAM Tirta Giri Gresik collaborates with private partners using the Public-Private Partnership scheme. The focus of this research is the Public-Private Partnership in increasing the provision of clean water with a clean water supply locus in Gresik Regency. This study used qualitative methods concerning determining factor theory

The success of the Public-Private Partnership scheme proposed by Yusuf, Wallace, and Hackbart (2006), which contains three key factors for the successful application of the Public-Private Partnership model, namely, process factors, partner factors, and structural factors. The results of this study indicated that the Public-Private Partnership implemented by PDAM Gresik has run perfectly and smoothly by running two models of cooperation service contracts in the form of a payment point program in collaboration with BRI Bank, BPD, PT Pos Indonesia. Then the BOT collaboration with PT Dewata Bangun Tirta and the RUOT/ROT collaboration with PT Drupadi Agung Lestari.

The similarity between this study and the author's research is in terms of focus, namely on the Public-Private Partnership in supplying of clean water. Both of the research is different based on the theory used and the research locus. This study uses the theory of critical success factors of the Public-Private Partnership scheme proposed by Yusuf, Wallace, and Hackbart (2006) and takes the research locus in Gresik Regency. Meanwhile, the authors use the utility theory of the Public-Private Partnership proposed by Emanuel S. Savas (2000) with six dimensions, namely, the roles of the different parties, competition, regulation, risks, procurement, and financing, and taking the research locus in DKI Jakarta. Meanwhile, this research discusses the extent to which the public-private partnerships that have been carried out by PAM Jaya and private partners in the provision of clean water for the people of DKI Jakarta use a framework for utilizing

PPP as described by Savas (2002), namely roles and function, competition, regulation, risk, procurement, and financing. The six dimensions of Savas must be fulfilled in implementing a public-private.

RESEARCH METHODS

In this study, the authors used a qualitative research approach. The author used a qualitative research approach because the research conducted would describe and explain PPP in the supply of clean water in DKI Jakarta. In this study, only one variable was used, namely PPP and it was not connected with other variables to test the effect or comparison so that the approach used was a qualitative research approach. In this study the authors used the following data collection techniques:

1. Literature Study, which is the collection of data by books or documents related to research subjects.
2. Field studies, namely research conducted by making direct observations of the object of research. This can be useful for identifying problems. Direct observation was conducted in the following ways: observation and interviews.

The technique used in this research was purposive sampling technique to determine informants. According to (Sugiyono, 2013: 218-219) the technique of determining informants by purposive sampling is a technique of sampling data sources with certain considerations.

Table 1. Research Informants

No	Informant	Quantity	Description
1	PAM Jaya Legal and Administrative Manager	1 Person	Having information related to PPP implementation policy
2	PAM Jaya Program Development Manager	1 Person	Having information related to PPP implementation
3	Jakarta Drinking Water Service Regulatory Agency	1 Person	As a supervisor in the implementation of PPP and having information related to PPP implementation
4	PT Palyja Customer Services Operation Manager	1 Person	Having information related to PPP implementation and as an operator who directly connected to the community
5.	PT Aetra Internal Relation Manager	1 Person	Having information related to PPP implementation and as an operator who directly connected to the community
6.	DKI Jakarta Government (BP BUMD)	1 Person	Having informantion and authority in PPP implementation
7.	DKI Jakarta Regional People's Representative Assembly	1 Person	Having information related to PPP implementation
8.	Jakarta Living Environment Facility	1 Person	Having information related to PPP implementation



9.	People's Coalition for the Right to Water	1 Person	Having information related to PPP implementation
10.	Community from Each Regional of DKI Jakarta	5 People	People who receive clean water supply

Source: Researcher Result Analysis (2020)

Data analysis was conducted to interpret the data obtained in the field. The stages of qualitative data analysis according to Miles & Huberman in Sugiyono are as follows: 1.) Data reduction, namely summarizing, selecting the main things, focusing on important things, looking for themes and patterns, 2.) Presentation of data, in this case, qualitative data namely in the form of narrative text, 3.) Drawing conclusions and verification (Sugiyono, 2009: 246).

RESULTS AND DISCUSSIONS

The economic crisis that hit Indonesia in 1997 had an impact on the Indonesia's macroeconomic conditions. As a result of the economic crisis, the World Bank also offered a program loan to restructure the water resources sector called the Water Resources Sector Structural Adjustment Loan (WATSAL) amounting to USD 300 million. The offer from the World Bank was accepted by the Government of Indonesia. The principles contained in WATSAL must be adopted by the Government of Indonesia regarding water resources. These were the beginning of the involvement of the private sector in clean water management in DKI Jakarta. In this study, the authors used theory to analyze the extent to which the public-private partnership that has been conducted by PAM Jaya with PT Aetra and PT Palyja in supplying clean water to the people of DKI Jakarta. The theory used is the use of public-private partnerships described by Savas (2002), such as: roles and functions, competition, regulation, risk, procurement, and financing.

1. Roles and function

In implementing a public-private partnership, each party must have responsibility for its roles and functions. The division of roles and functions between PAM Jaya and private partners can be seen from the construction of a Cooperation Agreement (PKS) contract. PAM Jaya as the owner of the assets provides a fully operational concession to private partners to manage, distribute, and collect fees from the public/customers. As long as operational responsibility is conducted by a private partner, PAM Jaya is responsible for overseeing the operation. The principle of the agreement used is full cost recovery, meaning that what is issued by the private partner will be returned by a reward or water charge.

Rewards or water charges given to private partners are seen from the average water sold, while the tariff is the price given to the community and there are levels. Water revenue obtained from payments by the community will go into the escrow account. The existence of a tariff value that is smaller than the reward causes an underpayment or is called a shortfall. In this cooperation, the amount collected from the community is smaller than the need to pay compensation to private partners. The entire shortfall of PAM

Jaya to private partners until the end of the contract period will be the responsibility of the DKI Jakarta Provincial Government and in the end, it will burden the central finances.

Table 2. Simulation of Tariff Increase and Rewards Calculation

	Unit	2008	2009	2010	2011	2012	2013	2017	2022
Financial Assumptions									
Rewards	Rp/m ³	6,381	6,545	7,076	7,647	8,261	9,174	12,535	19,085
Rewards go up	%		2,6%	8,1%	8%	8%	11%	8%	8%
Average Rate	Rp/m ³	7,188	8,237	8,848	9,334	10,075	11,068	15,068	22,270
Rate Increase	%		14,5%	4,9%	8,0%	7,9%	9,8%	8,1%	7,6%
Realization of Rates									
Average Rate	Rp/m ³	7,145	7,140	7,259					
Rate Increase		0%	0%	0%	??	??	??	??	??

Source: *Putusan Mahkamah Agung No. 31/K/Pdt/2017 (2020)*

Figure 2. Accumulation of Shortfall Partnership

- As of December 2010, the accumulated amount of shortfall was Rp. 583,67 billion
- Simulation of the conditions of existing cooperation until the end of cooperation in 2022 using assumptions:
 - The rate of increase of 8% every 3 years starting in 2011
 - Water sales cubication targets according to the contract
 - IRR = 22%
 - The final shortfall of cooperation which is the risk of PAM Jaya/ the provincial government in DKI Jakarta is Rp. 18,2 trillion (PALYJA Rp. 10,9 trillion and Aetra Rp. 7,3 trillion)



Source: *Putusan Mahkamah Agung No. 31/K/Pdt/2017 (2020)*



Also, there are technical targets that have been agreed upon by both parties. Based on the Supreme Court Decision Number 31 K/Pdt/2017 on KMMSAJ's law regarding the supply of clean water in DKI Jakarta, the decision states that in implementing this cooperation in the supply of clean water, it has failed to fulfill the community's right to water, especially those who come from unpopular economies. able. Since private partners started managing water in DKI Jakarta from 1998 to 2011, only 62% of the Jakarta area had water services, and 22.60% of the people served by PT Aetra did not get water at all and 14.14% of the people who served by PT Palyja experienced the same thing.

Meanwhile, the entire community must continue to pay every month. Seeing this condition, the community sued for the existence of a public-private partnership in providing clean water in DKI Jakarta, it can be seen in Figure 4.2. The lawsuit was filed on November 22, 2012, by the people who were members of the Community Coalition Against the Privatization of Jakarta Water (KMMSAJ). On March 24, 2015, the Central Jakarta District Court won the KMMSAJ lawsuit, from the result of this decision that the defendant had been negligent in accomplishing the right to water for the people of DKI Jakarta

Broadly speaking, it can be said that the benefits of the roles and functions in the partnership between PAM Jaya and private partners have not been effective. Because there are still roles and functions of each party that has not been carried out properly. Also, related to compensation to private partners it is more detrimental to PAM Jaya. The length of the contract with the cooperation with the concession form is not effective because it does not reflect the public interest.

2. Competition

At the beginning of the implementation of the public-private partnership in the supply of clean water in DKI Jakarta, there was no competition process between private partners who would cooperate with PAM Jaya. This was because the two private partners who were currently partnering with PAM Jaya were appointed directly by the Central Government at that time. Data on competition was also not available, so it did not support the use of public-private partnerships in the framework of competition.

PAM Jaya has been dealt with two private partners who would cooperate so that PAM Jaya could not choose which private partner is considered proper in cooperation. This private partner who collaborated with PAM Jaya was originally a local company, namely Garuda Dipta Semesta and Kekarpola Airindo. The owner of Kekarpola Airindo is Sigit Harjojudanto, Pak Soeharto's second son, and for the Salim Group's Garuda Dipta Semesta. The two companies that initiated it were then deemed to have their respective expertise and took the international drinking water company. For Kekarpola Airindo took Thames Water, for Garuda Dipta Semesta took Lyonnaise. It can be explained that the owners of these local companies were influential figures in their era.

3. Regulation

Regulation is one of the most important aspects of the implementation of partnerships. Regulation is the basic foundation for the running of a partnership so that contractual agreements can be enforced stably and reliably regarding asset rights, agreements between parties, disputes, and accountability. Moreover, it

can protect the public from services and abuse by private partners.

In the implementation of the partnership between PAM Jaya and private partners, it still does not refer to the current regulations because the nature of the current regulations is progressive and does not apply to collaborations that were already in place before the regulation was born. Many regulations were born because of the cooperation in Jakarta. This PKS will adjust to the regulations but the problem is that the existing regulations do not reach the PKS that occurs in PAM Jaya, as in PP Number 122 of 2015 concerning the Drinking Water Supply System. This Government Regulation states that water management can be cooperated with private parties, but only in certain parts such as its management or maintenance. Even the issuance of Government Regulation Number 122 of 2015 cannot provide benefits for the cooperation between PAM Jaya and private partners. This is because in CHAPTER X regarding the Transitional Provisions of Article 66 paragraph 2 states that:

"The implementation of SPAM which is carried out through a cooperation mechanism between the Regional Government, State-Owned Enterprises / Regional Owned Enterprises and Private Business Entities that have been implemented before the enactment of this Government Regulation is declared to remain in effect until the end of the cooperation agreement."

Apart from that, the overall cancellation of Law Number 7 of 2004 concerning Water Resources, because this Law has provided too much space for the private sector to manage water. It has an impact on the services provided to the community, and this has happened in the collaboration between PAM Jaya and private companies. The Cooperation Agreement Contract (PKS) has also been regulated regarding the rights and obligations of each party, disputes, and responsibilities of each party, but the contract agreement is more burdensome for one of the parties, namely PAM Jaya. The task of PAM Jaya to serve the community, which is currently being handed over to private partners, cannot run effectively. This is proven by the fact that there are still many complaints from the public and there are still many people who have not been served so that the Cooperation Agreement (PKS) contract does not protect the community from better services.

Table 3. Problem PKS Clause and Possible Fixes

Article	About	Fixes
Point C	Technology Development	Description of the technological capabilities that PAM Jaya wants to master
Point D	The second party has expertise and funds	It is necessary to explain the interpretation of clause 7.2.c regarding what is meant by professional management and a detailed description of financial ratios which indicate that the Second Party has funds. This means it is necessary to add a definition of professional management
Definition of the first basic reward	Number Rp 1.641,-	Must be recalculated in accordance with the agreement on IRR



New asset definitions and the definitions that follow		Added after being approved by the First Party (especially related to quality and economic life so that it can be assured that new assets can guarantee the achievement of good operating procedures)
Indonesian National Arbitrage Agency		There needs to be additional definition of BANI in accordance with notarial deed of TPJ's share transfer
Clause 7.2.a		Added priority to the First Party an option to purchase
Clause 7.2.c	Second Party Professional Management	There are two possible fixes. First, a further definition of the meaning of professional management, and secondly, new shareholders are also permitted for financial speculation
Clause 11.g		The agreement with the supplier is the sole responsibility of the Second Party and will not affect the achievement of agreed technical targets and service standards
Clause 13.2.a	Repair, operation and renewal of assets	Added good operating procedures
Clause 13.2.c	The obligation of the First Party to the asset value	A due diligent had to be carried out by a professional and independent third party at a cost borne by both sides
Clause 20.a	Technical target	Technical targets are absolute obligations that must be fulfilled by the Second Party and are not related to financial projections or agreements between the Second Party and Third Parties (such as for raw water)
Clause 21.a	Service standard	Services standard are absolute obligations that must be fulfilled by the Second Party and are not related to financial projections or agreements between the Second Party and Third Parties (such as for raw water)
Clause 23.2	General Obligations Operation and Maintenance	Point c is added with operating procedures and maintenance that is prevalent in the international community for clean water supply operations
Clause 24	Investment, operation and maintenance program	The second party must provide detailed program so that its feasibility can be reviewed or another alternative that the operational costs are the full responsibility of the second party, of course after there is a change in water charge and the escalation formula. See the tariff setting guidelines and the benefits that arise based on the regulation of the Minister of Home Affairs
Clause 26.4.c	Actual rate projections	The realization of the tariff projection is not related to technical targets and service

		standards, including the agreed investment program
Clause 26.6	Customers retribution	Customers retribution that are indicated so that they save water are not related to the responsibility of the second party to achieve technical targets and service standards
Clause 27	Financial Projection	See note for Clause 24
Clause 28.1.e	Rewards April 1 2001	Must be recalculated
Clause 28.4	Rewards Adjustments	See note for Clause 24
Clause 32	Human Resource	The best solution must be sought for the helped PAM Jaya employee. Single management must also be interpreted in terms of remuneration including foreign workers so that discrimination does not occur
Clause 42.6	Termination Effect	As a result of termination due to the failure of the Second Party, the Base Price for Termination must be adjusted to the penalty if the Second Party fails to run the PKS (for example the First Party only pays 50% of the Net Book Value). There is no obligation of the First Party to pay Net Present Value. Priority for the option to buy shares must be given to the First Party if the Second Party intends to sell its shares
Clause 45.4	Arbitrage	Additional settlement by BANI
Clause 47.1	General terms of confidentiality	All documents are public documents
Clause 51	Regulatory Agency	This clause should only state that the Regulatory Agency is one of the ways to resolve disputes. The Second Party is subject to regulations regarding Regulatory Agency, both regional and national
Schedule 5	Water Charge Escalation Formulation	Must be recalculated and made a fairer formula as there is no need for a K element in the escalation formula
Schedule 8 and 15	Technical targets, service standards, and fines	The amount of the fine must be adjusted

Source: Critical Review of Jakarta Water Concession Contracts, *Koalisi Rakyat untuk Hak atas Air* (KRuHA) (2020)

4. Risk

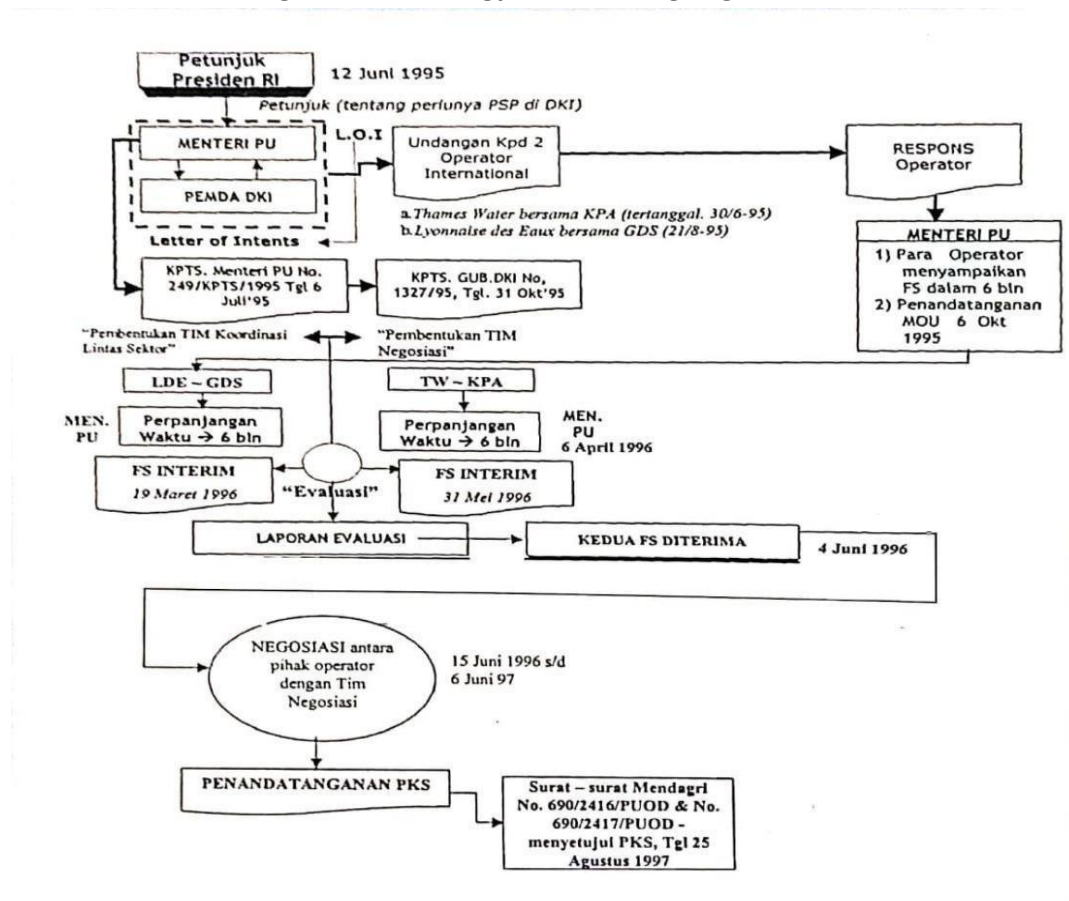
The sharing of risk in the partnership between PAM Jaya and private partners includes risks to the partnership operation, such as late in finding leakage points, inadequate service coverage due to network expansion, so that it has an impact on technical targets that are not achieved by private partners. PAM Jaya

has to pay more to distribute water to areas that do not get clean water services. This risk should be the responsibility of the private partner, and this has been stated in the cooperation agreement (PKS) contract. Also, over time, the risk of paying debts to the World Bank has been paid off.

5. Procurement

At the beginning of the partnership between PAM Jaya and private partners, there was no procurement process to select private partners that match PAM Jaya's expectations and needs. This is because these private partners are selected through direct appointment by the Central Government and make PAM Jaya unable to screen private partners who will cooperate with PAM Jaya. This does not support the use of public-private partnerships in the procurement framework.

Figure 3. Chronology of the PKS Signing Process



Source: Exposure Material of *Badan Regulator Pelayanan Air Minum* DKI Jakarta (2020)

Based on Figure 3, this is following the results of the Supreme Court Decision Number 31 K / Pdt / 2017 that the involvement of the private sector began with President Soeharto's instructions on June 12, 1995, to the Minister of Public Works, who at that time was held by Ir. Radinal Mochtar. The instructions given by President Soeharto were:

- a) The need for proper handling of clean water supply for DKI Jakarta and its environment for the benefit of the wider community

- b) Handling to include 2 (two) private companies with handling limit settings is Ciliwung River in the west and east, where each company is assigned the task of providing clean water each of approximately 20 m³ / second (Directory of Mahkamah Agung Decision 2017, p. 19)

On October 6, 1995, the Minister of Public Works sent a letter Number Un. 01 11- MN/363 regarding the Clean Water Supply Project for the City of Jakarta and its Areas. The letter was addressed to the Governor of DKI Jakarta. The substance of the letter is the notification of approval for the determination of the business entity that handles clean water supply projects, namely:

- a) PT Kekarpola Airindo, the business area east of Ciliwung
- b) PT Garuda Dipta Semesta, a business area west of Ciliwung.

PT Kekarpola Airindo is a company appointed by PT Kekarpola Plastisindo to manage the project. This is based on Letter Number 042/Ext-KP/FT/X/95 dated October 4, 1995, regarding Notification of Project Transfer from PT Kekarpola Plastisindo to PT Kekarpola Airindo. Meanwhile, PT Garuda Dipta Semesta is a company from the Salim Group that will handle water supply projects. This is based on the Salim Group Letter Number 093- AS/IK/SG/IX/95 dated September 26, 1995.

After that, for the preparation of a Cooperation Agreement (PKS) contract, the Governor of DKI Jakarta issued a Governor's Decree Number 1327 of 1995 concerning the Establishment of a Negotiation Team for the DKI Jakarta Government for Partnership Cooperation between PAM Jaya and Private Companies (Negotiation Team). Following up on this decision, a Negotiation Team was formed and chaired by Ir. H. Prawoto Danoemihardjo by issuing Decree Number 010/TN/XI/1995 concerning the Establishment of a Task Force for Partnership Cooperation between PAM Jaya and the private sector dated November 16, 1995. The Cooperation Agreement between PAM Jaya and private partners was subsequently signed on June 6, 1997. And on August 27, 1997, the Minister of Home Affairs, Moh. Yogie S.M issued Letter Number 690/2416 / PUOD regarding the Principle Approval of Cooperation between PDAM DKI Jakarta (PAM Jaya) and PT Kekarpola Airindo and Thames Water Overseas Ltd. for the Provision and Improvement of Clean Water Services in DKI Jakarta.

The journey of the involvement of the two private partners, share ownership has changed hands several times. When the cooperation agreement was signed on June 6, 1997, KATI's shares were 20% owned by Kekarpola Airindo and 80% by Thames Water Overseas Ltd. As for GDS, 60% of shares are owned by PT Elang Sakti Prabawa and 40% by Suez Lyonnaise des Eaux. On July 17, 1998, GDS became PT PAM Lyonnaise Jaya (Palyja) with 100% shares owned by Suez Lyonnaise des Eaux. KATI later became PT Thames PAM Jaya (TPJ) which is now better known as PT Aetra, with a 5% share composition owned by PT Kekarpola Airindo and 95% by PT Thames Water Overseas Ltd.

6. Financing

The partnership between PAM Jaya and private partners the financing used is financing by the government. This is because the assets used belong to PAM Jaya, and PAM Jaya is purely a regional company owned by the DKI Jakarta Provincial Government whose financing uses the APBD. In the beginning, before this partnership took place, PAM Jaya received financial assistance from the World Bank through the Ministry of



Finance to develop water management in DKI Jakarta.

The financial flow in this partnership is made through a joint account (Escrow Account) which is joint account to accommodate all water subscription bill payments from customers which consists of components that must be paid. The Escrow Account consists of:

First Party Primary Requirement (FPPR), which consists of:

- a. 1. PAM Jaya overhead: PAM Jaya operational costs
2. MOF (Ministry of Finance) loan to the Ministry of Finance
3. PAD: the amount with the approval of DPRD
- b. Regulatory Body
- c. Rewards/Water Charge consisting of Opex (Operational Expenditure) and Capex (Capital Expenditure)

CONCLUSIONS

Based on the results of the research and discussion that the author has previously described, it can be described that the implementation of public-private partnerships in supplying clean water in DKI Jakarta is not effective. The implementation of this partnership did not work effectively because the use of public-private partnerships was not fulfilled, which included the role and functions of PAM Jaya and private partners in the use of public-private partnerships that were not conducted properly, and related to compensation to private partners it was more detrimental to PAM Jaya. The competition process and the procurement process at the beginning of the partnership implementation were not carried out, this was because the two private partners currently partnering with PAM Jaya were appointed directly by the Central Government at that time.

The implementation of the public-private partnership between PAM Jaya and private partners does not refer to the current regulations. The sharing of risk in the partnership between PAM Jaya and the private partners includes risks to the partnership operation, such as delays in finding leakage points, inadequate service coverage due to network expansion, so that it has an impact on technical targets that are not achieved by the private partners. This condition makes PAM Jaya have to pay more to distribute water to areas that do not get clean water services. The financing of this partnership uses government financing. Before the collaboration with private partners, PAM Jaya had received financial assistance to improve and develop water management from the World Bank.

The need to regulate fair provisions related to the issue of contract termination/termination of the Cooperation Agreement Contract (PKS), considering that the current provisions are very one-sided and only apply to private partners and the consequences of the costs to be paid are borne by PAM Jaya. Where the basic cost of termination is calculated based on net book value, and all money owed to private partners. We recommend that after this Cooperation Agreement (PKS) contract ends if you are going to cooperate again, you must follow the applicable regulations and be more careful in choosing private parties and not reusing the cooperation with a concession form. Because if the business in selling water is profitable, then this profit will be an advantage for the region and the community can more freely control the services provided.

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