

After Court Rulings: Civil Society's Struggle against Relentless Water Privatization



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On 24 March 2015, Central Jakarta District Court annulled the contract agreement between Jakarta public water utility PAM Jaya and two private operators. The contract has been the basis of water services privatization in Jakarta since 1997. The court ruling is taken on a citizen lawsuit filed by civil society coalition in 2012. The court ordered the government to return the water services to public management.

Months earlier, in 18 February, the Constitutional Court annulled Law No. 7/2004 on Water Resources. The Water Resources Law was petitioned by several civil society organizations and individuals because it opened water resources to privatization and commercialization. The Constitutional Court reinforced the constitution's mandate. The water should be controlled and utilized by the state for fulfilling the people's right to water.

However, despite these momentums, water privatization is not easily ended. Both decisions have been addressed aggressively by the private sector. As the result, the regulation that is due to replace the annulled Water Law, which was going to restrict foreign private entities from participating in water sector, has been relaxed.¹

The same case happens in the privatization of water services in Jakarta. Soon after Central Jakarta District Court issued its decision, the private water operators stated that they seek to appeal to High Court. This has effectively deterred the city administration from taking over water services, as the contract agreements that give private operators an exclusive right to deliver water services is still effective.

Private water operators had reportedly lobbied the central government, namely Ministry of Finance and Ministry of Public Works, which are among defendants in the citizen lawsuit.² The central government, including President, Vice President, and Ministry of Finance, currently seek to challenge the court ruling. Ministry of Public Works has been confirmed withdrawing the submission for appeal.

Civil society coalition KMMSAJ, which is the plaintiff in the citizen lawsuit, regrets the central government's move, calling it an indication of the government's allegiance to private firms instead of its own people (*Kompas*, 13 April 2015). Arif Maulana, one of attorneys to the plaintiff, said that the court's ruling is in accordance with the constitution and private operators will benefit the government's appeal.

Coordinating Minister of Economy, Sofyan Djalil, negatively responded the court ruling. Sofyan said that the court ruling has caused legal uncertainties and will affect other government's important projects (*Kompas*, 16 April 2015). According to Sofyan, the legalities of contract agreements should be guaranteed. Should a problem arise, contracts should be renegotiated instead. This is the main reason why central government is lodging an appeal to High Court.

Other defendants including Governor of Jakarta and public water utility PAM Jaya do not make an appeal. PAM Jaya stated that it was ordered by the Governor to not to appeal. Consequently, it makes a total of five defendants making an appeal, namely President, Vice President, Minister of Finance, Palyja and Aetra.

Besides legal actions, private water operators have also been committing soft approaches in a bid to protect their business. Private operators offer innovations in water management. In 12 May, Aetra invited the governor to introduce a sludge management machine as part of the operator's Rp196 billion investments in 2015.³

Days later, in 19 May, Palyja took turn to invite the governor to introduce a new technology for collecting raw water with so-called Moving Bed Bio-film Reactor (MBBR), claimed to be the newest technology used in Asia.⁴ President Director of Palyja said that the technology would increase the service coverage area to 95%.

In a recent development, in 30 June, the Governor appointed a new president director for PAM Jaya. The new director was previously a director in PT Jakpro, a company that was once designed to take over one of the private water operators' shares. Jakpro is a state-owned enterprise but planned to keep water operator profit-oriented as in privatized system.⁵

NOTES

¹ Amianti, Grace D, "Govt relaxes water rules to allow private ownership", *The Jakarta Post*, June 30 2015, <http://www.thejakartapost.com/news/2015/06/30/govt-relaxes-water-rules-allow-private-ownership.html>

² Sulistiowati, Tri, "Palyja dan Aetra Lobi Pemerintah Pusat", *Kontan*, May 25 2015, <http://nasional.kontan.co.id/news/palyja-dan-aetra-lobi-pemerintah-pusat>

³ Aziza, Kurnia Sari, "Ahok Resmikan Gedung Teknologi Pengolahan Lumpur Aetra", *Kompas*, May 12 2015, <http://megapolitan.kompas.com/read/2015/05/12/11434121/Ahok.Resmikan.Gedung.Teknologi.Pengolahan.Lumpur.Aetra>

⁴ Sukarno, Puput Ady, "Ahok Resmikan Instalasi Pengambilan Air Baku Palyja", *Bisnis Indonesia*, May 19 2015, <http://jakarta.bisnis.com/read/20150519/77/434677/pasokan-air-minum-ahok-resmikan-instalasi-pengambilan-air-baku-palyja>

⁵ Elyda, Corry, "Jakpro to keep Palyja profit-oriented firm", *The Jakarta Post*, April 19 2014, <http://www.thejakartapost.com/news/2014/04/19/jakpro-keep-palyja-profit-oriented-firm.html>