

Research on the Potential Impact of the Termination of Concession Agreement on Labour Rights of Workers in the Water Sector in Jakarta



List of Abbreviations	3
1. Background	4
1.1. Why is this research necessary?	4
1.2. Objective	5
1.3. Methodology	5
1.4. Scope	5
2. The Evolution of Water Management in Jakarta: Past and Present	7
2.1. Water Management in Pre-Privatization in Jakarta	7
2.2. Privatization of Water Management in Jakarta	8
2.2.1. Background of Privatization of Water Services in Jakarta	8
2.2.3. The Problems of Privatization of Water Services in Jakarta	10
3. Towards the Expiration of the Agreement on Privatization of Water Services in Jakarta: Impact and Potential Problems in Labor Issues	16
3.1. Remunicipalization in Global Discourse	16
3.2. The End of the Agreement on Privatization of Water Services in Jakarta: A New Era of Public Services?	17
3.3. Impact of Ending Privatization of Jakarta Water Services for Water Sector Workers in Jakarta	20
3.4. Potential Employment Problems in the Transition Period and Post-Termination of the Privatization Agreement	22
4. Closing	25
4.1 Conclusion	25
4.2 Recommendations	26

List of Abbreviations

ATR	Air Tak Berekening (Non-revenue water/NRW)
BUMD	Badan Usaha Milik Daerah (Regional Owned Enterprise)
Cs	<i>cum suis</i> meaning “and friends”
Dkk	Dan Kawan-kawan (And Friends)
IMF	<i>International Monetary Fund</i>
KMMSAJ	Koalisi Masyarakat Menolak Swastanisasi Air Jakarta (Community Coalition Against Jakarta’s Water Privatization)
Palyja	PT PAM Lyonnaise Jaya
PAM Jaya	Perusahaan Umum Daerah Air Minum Jaya (Regional Public Water Company Jaya)
SP-PAM Jaya	Serikat Pekerja PAM Jaya (PAM Jaya Labor Union)
TPJ	PT Thames PAM Jakarta
PAM	Perusahaan Air Minum (Drinking Water Company)
PT	Perseroan Terbatas (Limited Company)
VOC	<i>Vereenigde Oostindische Compagnie</i>

1. Background

1.1. Why is this research necessary?

Until the mid-1990s, water management in Jakarta was fully managed by the Regional Owned Enterprise (BUMD) PT PAM Jaya. On the advice of the World Bank, in 1995 the President of the Republic of Indonesia, Suharto, ordered the privatization of Jakarta's water management and appointed two private companies, PT PAM Lyonnaise Jaya (Palyja) and PT Thames PAM Jakarta (TPJ), to run the operations. The privatization agreement was signed on July 6, 1997 and is effective from February 1, 1998 for a period of 25 years.

Privatization of Jakarta's water management was expected to solve two main issues: firstly, to overcome the problem of citizens' access to public services in the water sector; secondly, to overcome the leakage of state revenue. That is why, in the written water privatization agreement it is stated that by the end of 2022, the target area for Jakarta's water sector services should cover 98% and ATR (non-billed water) should drop to 20%. The agreement also regulates the division of the Jakarta water sector service area into two: PT Palyja for the western part of Jakarta and PT TPJ, which later changed to PT Aetra Air Jakarta, for the eastern part of Jakarta.

Towards February 1, 2023, the remunicipalization process to return Jakarta's water management to the DKI Jakarta regional government began to be carried out. Remunicipalization refers to the process of returning privatized public goods/services to public management. In the case of water services in Jakarta, remunicipalization can be interpreted as de-privatization by terminating the cooperation contract which causes subcontracting/outsourcing of water services and distribution. With the expiration of the cooperation contract, it is assumed that water services and distribution in Jakarta will return to the control, ownership, and management of the public (in this case the local government-owned company or BUMD, PT PAM Jaya).

A number of questions arise regarding the impact of remunicipalization for Jakarta water service workers: How does the unification of the employer entity, which is now returned to the DKI Jakarta local government, impact the status and working conditions of workers who have been working for different corporate entities? How do changes in labor law policies and regulations affect the remunicipalization process? How should existing trade unions act to represent the aspirations and interests of workers who will be affected by the remunicipalization process? These questions will be the main focus of discussion in this research.

Public Service International (PSI), the international trade union for the public service sector, has initiated and supported this research in order to ensure the protection and fulfillment of the rights of water sector workers affected by the imminent remunicipalization process.

1.2. Objective

This research was conducted based on the PSI's main objective to fight for equal quality of public services by advocating for the human rights of its workers. This research aims to:

- a. to describe the socio-political context behind the current situation of Indonesia's labor policy;
- b. to identify potential problems in fulfilling and protecting workers' and trade unions' rights as a result of the remunicipalization process of drinking water companies in Jakarta;
- c. to provide recommendations for PSI to take preparatory steps to advocate for workers' rights and trade unions in the remunicipalization of water services in Jakarta.

1.3. Methodology

This research uses several methods:

- a. literature research on various laws and regulations, collective labor agreements, and other documents available publicly and confidentially;
- b. *one-to-one* in-depth interview (semi-structured interview) with a number being informal, especially with those who are workers and union activists in the three water service companies in Jakarta. The term informants, not respondents, is used here because they are directly/indirectly involved in the dynamics of labor relations in the water service sector in Jakarta. The selection of most of the informants is based on their relationship with PSI, however, the rest of the individuals were interviewed because the researchers had known them from conducting advocacy work on the issue of water privatization. Taking into account the limited restrictions due to Covid-19, interviews were conducted both offline and online (virtual media);
- c. *Focus Group Discussion* was held on October 5, 2022, involving representatives from trade unions and non-governmental organizations involved in labor advocacy, especially the remunicipalization of water services in Jakarta.

This research is also supported by ongoing internal coordination and discussions with PSI representatives in Indonesia in the form of regular coordination between August and October 2022.

1.4. Scope

This research only focuses on mapping the real and potential risks and impacts of the remunicipalization of water services in Jakarta for its workers. Furthermore, several recommendations will be formulated to prevent or mitigate risks that occurred and may occur in the remunicipalization process.

Remunicipalization is
unavoidable but the risks are
definitely preventable.

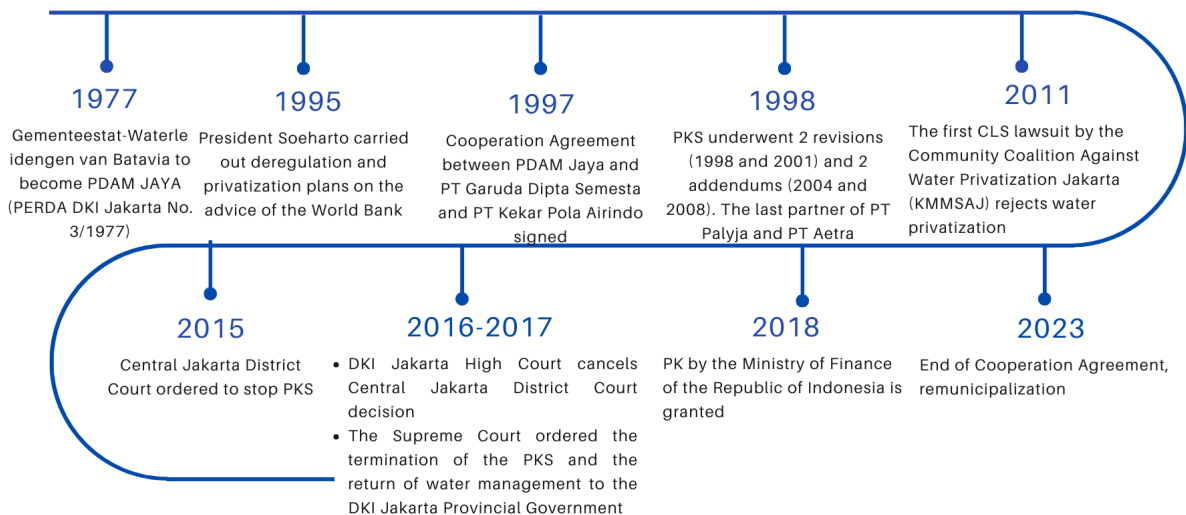
- Labor Union -

The focus of impacts and risks underlined in this study is limited to the labor sector. This does not mean that the impacts and risks of the remunicipalization of water services are exclusively on workers. On the other hand, the impact of remunicipalization is very broad, including economic, social and legal issues. However, because the most real impact at this time is labor, so to get a very in-depth discussion, the focus of this research is on labor issues.

The period of this research is 3 months starting from the end of August 2022 to October 2022. Therefore, the research results and recommendations built in this study are based on the availability of data and information within the aforementioned time frame.

2. The Evolution of Water Management in Jakarta: Past and Present

The Process of Drinking Water Services in Prov. DKI Jakarta



2.1. Water Management in Pre-Privatization in Jakarta

The development of the water service sector and the presence of the company in Jakarta started during the Dutch colonial era. The need for a water service that is systematic and under public control has been an issue for the residents of Batavia, the European colony where the VOC, the Dutch colonial company, was based since the mid-17th century. In 1918, the government of the city of Batavia established the public company Gemeenstaat Waterleiding Bedrijf van Batavia which was responsible for providing clean water for the residents of Batavia. Through this company, the government of the city of Batavia built thousands of kilometers of infrastructure to transport water from Ciomas, Bogor to Batavia. It is known that traces of infrastructure left over from the Dutch colonial era became the forerunner of Jakarta's water services used today.

When Indonesia became independent in 1945, Batavia changed its name to Jakarta and the process of nationalizing a number of Dutch East Indies companies also began. The water service managed by *Waterleiding Bedrijf* was then taken over by the Jakarta City Public Works Department. In 1968, the DKI Jakarta Regional Water Company (PDAM DKI Jaya) was established and became a legal entity as a public company owned by the DKI Jakarta regional government based on the Decree of the Governor of DKI Jakarta No. 1b3221/1968 dated December 10, 1968. Since then, water services in Jakarta have been carried out separately from the Jakarta City Public Works Department.

In 1977, PDAM DKI Jaya was legalized as a Regional Owned Enterprise (BUMD) of the DKI Jakarta Provincial Government, based on the DKI Jakarta Regional Regulation No. 3/1977 and the Decree of the Minister of Home Affairs of the Republic of Indonesia No. PEM/10/53/13350 dated November 2, 1977. Based on the above-mentioned DKI Jakarta Regional Regulation, the main task of PDAM DKI Jaya is to provide clean water for the Jakarta area.

2.2. Privatization of Water Management in Jakarta

2.2.1. Background of Privatization of Water Services in Jakarta

The economic crisis began to hit Indonesia in the late 1990s and this forced the Indonesian government to accept a number of recommendations from the World Bank and IMF, in the form of a structural adjustment program, in order to obtain financial assistance. One of the World Bank's recommendations was the privatization of a number of public service sectors, including water and electricity services.

The process of privatization in the water service sector began in the Jakarta area. The existing literature is not sufficient to provide a complete explanation of why the process of privatizing the water service sector began in Jakarta, but the most reasonable assumption is that the infrastructure of the water service sector in Jakarta is the most advanced and allows for intervention, making it easier for private companies not to start from scratch. The decision process to privatize water services in Jakarta was carried out in a relatively short time. It is suspected that this also happened due to an intervention in the political decision of the ruler at that time.¹

In the context of the time and pressure of Indonesia's political economy at that time, the privatization of the water service sector was considered an alternative solution. In the dominance of economic liberalization, a number of reasons were put forward to justify the process of privatizing water services in Jakarta as follows:

1. **Privatization will improve PAM Jaya's performance:** Privatization can solve the problem of PAM Jaya's service performance which is considered to be burdened by various public mandates.
2. **Privatization as a solution to financial problems:** Private intervention that is not burdened by limited public mandates is expected to be able to overcome financial problems within PAM Jaya by flexibly increasing water price rates. With privatization, the burden of raising price rates can be delegated to private companies.
3. **Privatization can guarantee the improvement of water quality and services in Jakarta:** Free competition applied in the privatization system,

¹A number of studies also indicate the intervention of power politics and nepotism of the Suharto family, the former President of the Republic of Indonesia, in the process of privatizing Jakarta's water. One of them is Braadbaart, Okke (2007), "Privatizing Water: the Jakarta Concession and the Limits of Contract," in Boomgaard, Peter (ed.). *A World of Water: Rain, Rivers and Seas in Southeast Asian Histories*. pp. 297-320.

water quality and services are expected to increase so that the right to clean water becomes better.

2.2.2 Water Service Privatization Agreement in Jakarta

In February 1998, PAM Jaya signed a cooperation agreement in the form of a *public-private partnership* with a term of 25 years with two foreign drinking water companies, namely PT. PAM Lyonnaise Jaya Palyja (a French water company, Odeco Suez Lyonnaise des Eaux, being the largest shareholder) and PT Aetra Air Jakarta (owned by Acuatico Ltd, based in Singapore) - after previously switching from PT. Thames PAM Jaya (Thames Water Overseas Ltd from the UK is the largest shareholder). The cooperation agreement was entitled Cooperation Agreement for Clean Water and Drinking Water Services in DKI Jakarta Province. This agreement was then renegotiated, to accommodate the changing political and economic situation after the 1998 reformation, which became an amendment to the cooperation agreement and was signed in October 2001.

Based on the applicable cooperation agreement, the working area is divided into two: PT Palyja is responsible for water services for the western part of the DKI Jakarta area, while PT Thames PAM Jaya, later transferred to PT Aetra Air Jakarta, for the eastern part of DKI.

The purpose of privatizing water services in Jakarta is stated in clause 2.2 of the cooperation agreement. There are about 14 points of intent and purpose of privatization in the clause. In short, it can be concluded that privatization is intended to help PAM Jaya improve its production, distribution, management, and technological capabilities for drinking water and clean water services. Privatization is also intended to involve the private sector in efforts to improve the quantity, quality, and continuity of clean water and drinking water supply in the DKI Jakarta province.

The contract also states that the entire Jakarta water service system is provided to the two partner private companies, including those relating to clean water supply, infrastructure maintenance, distribution system, recording and billing, as well as control and maintenance of PAM Jaya office buildings. The contract worth 231 million USD also targets that in the first 5 years of the contract, the two contractors must have served at least 70% of the population and reduce the leakage rate of unpaid water services (commonly called ATR - non-billed water) to 20%. The contract also stipulates that PAM Jaya's role is as a supervisor or controller of service activities carried out by Palyja and TPJ with the right to submit proposals for the arrangement of water tariffs to the government.

Labor Issues in Privatization

The privatization of water services in Jakarta has caused a shift in the working status of most PAM Jaya workers. Based on clause 32 of the cooperation agreement there are three schemes offered to PAM Jaya workers:

1. Resign oneself from PAM Jaya and change one's status to become the employee of the partner private company (in the cooperation agreement called *Direct Employees*);

2. Work full time as a worker in a partner private company, but still maintaining the employee identification number that was previously issued by PAM Jaya (in the cooperation agreement it is called *Direct Employees with Identification Number*);
3. Resign from PAM Jaya and not joining any of the partner private company.²

For PAM Jaya workers who agreed to take schemes 1 and 2, the work transition process was marked by PAM Jaya issuing a decree for each worker stating the transition of work status from PAM Jaya to a partner private company. After the transition of work status occurs, all workers become the responsibility of the partner private company, which will act as the employer with all obligations in accordance with the applicable labor regulations.

Thus, during the validity period of the cooperation agreement, there are two working statuses that apply to the partner private company:

1. PAM Jaya workers who are *seconded* to partner private companies. Based on clause 32.13 of the cooperation agreement, it is known that a number of PAM Jaya workers who are *seconded* will sign a *secondment agreement*.
2. *Direct workers* from partner private companies; PAM Jaya workers who resigned then work as partner private company's employees. Direct workers also are those who were directly recruited by partner private companies according to clause 32.7 of the cooperation agreement.

Employee Protection Panel

Also interesting to note is clause 33 of the cooperation agreement which mentions the establishment of an “**Employee Protection Panel**” which functions to help resolve labor issues. Based on the cooperation agreement, the Employee Protection Panel is in the form of a tripartite plus panel with members representing elements of the government (from the Ministry of Manpower), employers (representatives from PAM Jaya and private partner companies), and workers/labor unions. A number of informants interviewed for the purposes of this research admitted that they did not understand the existence and performance of the Panel.

2.2.3. The Problems of Privatization of Water Services in Jakarta

In the first few months of implementing the privatization agreement, a number of problems emerged. One of the most prominent is the clause on the *rebasing* (renewal) of the achievement target every five years. Based on the clause of the agreement amendment, private partner companies are given the opportunity to make changes to

² The cooperation agreement does not clearly distinguish between the first and second schemes. In clause 32.2, editorially there is no clear difference in the definition between 'Direct Employees' and 'Direct Employees with Identification Number'. It is not quite clear why some workers feel the need to retain the identification numbers they obtained while working with PAM Jaya, when they now work for private company partners. Almost no explanation was obtained from the informants except that the identification number was retained for purely sentimental reasons.

their achievement targets every five years. This is believed by a number of parties to be prone to problems, including corruption, because in several *rebasing* processes it was discovered that PAM Jaya agreed to a number of targets and performance reductions. On the other hand, a number of targets set in the cooperation agreement are considered too ambitious and ignore national and global financial conditions (eg. the clause that imposes responsibility for the gap between public purchasing power and tariffs required by the private sector to PAM Jaya).

Another problem that also arose at the beginning of the cooperation agreement was regarding the regulation of labor transfer. Cooperation agreements are considered unclear in several respects. For example, the issue of arrangements (including compensation and working conditions) for the majority of PAM Jaya workers was transferred to the two private partner companies. The cooperation agreement is also considered not to provide negotiation space for workers who are transferred to their work status if there are a number of issues that arise later. A number of questions arose after the cooperation agreement was signed. The PAM Jaya Workers' Union also held a number of protests demanding accommodation of the interests and rights of affected workers in the implementation of water privatization.

Five years after the cooperation contract took place, a number of parties considered it necessary to review whether the water service privatization project in Jakarta could help realize the efficiency and effectiveness of water services for the Jakarta public. A number of analyzes have actually shown pessimism about the success of the cooperation contract. The process of privatizing Jakarta's water services is considered not to meet the procedures and preconditions needed for the success of a privatization project, namely utilizing the market to overcome the limitations of economic efficiency in the public service sector. The cooperation contract for the privatization of Jakarta's water services did not go through an open bidding process (rather an appointment full of nepotism and corruption) and was not preceded by a systematic *due-diligence* process to determine reasonable targets.³

A study conducted by the Amrta Institute for Water also noted a number of financing problems. One of the main problems noted is the issue of disparity in financing mechanisms. In the first five years of the privatization of water services in Jakarta, it was noted that the *water tariff* charged to consumers increased tenfold to become the most expensive in the Southeast Asian region and caused no significant increase in the coverage of new consumers in Jakarta.⁴ Thus, it is questionable whether the privatization of water services is effective enough to expand water service facilities for Jakarta residents who come from economically disadvantaged groups.

Other studies also show the tendency of the failure of the economic goal of privatization to increase profits for the state. As is known, one of the assumptions that are often used as a reason for privatization is that state/public-owned companies have limited budgetary resources (mostly from taxes). As a result, state-owned/public companies are often unable to follow market movements, especially in the capital

³ *Ibid.*

⁴ Ardhanie, N and Irfan Zamzami (2010). *No Pro-Poor Agenda in Jakarta Water Privatization*. Semarang: Amrta Institute.

market, and find it difficult to develop.⁵ The Jakarta water service cooperation agreement is however considered to have a tendency to fail to meet the economic objectives of water privatization. This mainly refers to the clause in the cooperation agreement that allows for periodic increases in water charge claims to PAM Jaya due to fluctuations in the USD. The periodic increase in the cost of water that is claimed by PAM Jaya cannot be immediately followed by an increase in the water tariff charged to consumers. Thus, periodic increases in water costs that are not always accompanied by increases in water tariffs will actually burden PAM Jaya. This is expected to lead to an aggressive accumulation of PAM Jaya's debt at the end of the cooperation contract.⁶

Apart from economic problems, there are also concerns that the privatization of water services in Jakarta will not help improve service quality. For example, the media reported that there was a decline in the quality of water supplied to consumers. It was reported that in the mid-1999-2001, around 8.5% of the water distributed by PAM in Jakarta and its surroundings was not suitable for drinking water because it did not meet the standards and physical and chemical qualities.⁷ This study also shows that there is no significant change in water quality when compared to the situation before privatization occurred.

Statistical data confirms some of the concerns mentioned above. As of the end of December 2013, PAM Jaya recorded more than 53,000 complaints related to water services. Of the incoming complaints, 74% relate to complaints of dead tap water. PAM Jaya also noted that there is still a high level of water leakage, around 42% (from the target of 38%). The new service coverage is around 60% (from the 66% target) and the water pressure (water supply entering the customer) is also below 50% (from the 100% target).⁸

Lawsuit Demands End of Privatization of Water Services in Jakarta

A number of issues, particularly concerning dissatisfaction with the quality of privatized water services, led to the formation of the Community Coalition Against the Privatization of Jakarta Water (KMMSAJ) in 2012. This is a coalition of civil society organizations consisting of several non-governmental organizations consisting of 9 organizations in total. In the same year, KMMSAJ filed a citizen lawsuit against water management by the private sector to the Central Jakarta District Court. The lawsuit was aimed at the Indonesian government (the President and a number of relevant ministers and the regional government of DKI Jakarta), PAM Jaya, and the two private partner companies (PT Aetra Air Jakarta and PT PAM Lyonnaise Jaya).

⁵ Vickers, John and George Yarrow (1988). *Privatization; An Economic Analysis*. Cambridge: MIT Press. See also World Bank (1995). *Bureaucrats in Business: the Economics and Politics of Government Ownership*. Washington DC: World Bank.

⁶ Zamzami, Irfan (2011), "Jakarta Water Privatization Today: Dried Water Tap, or Change", Amrta Institute for Water Literacy, ... (accessed 23 September 2022).

⁷ Mariani, R, et al (2004). "Kualitas Fisik dan Kimia Air PAM di Jakarta, Bogor, Tangerang, Bekasi 1999-2001," *Media Litbang Kesehatan Vol. XIV No. 3*, pp. 14-19.

⁸ "2013, 40 Ribu Warga Jakarta Keluhkan Air Mati", <https://m.ipnn.com/news/hampir-40-ribu-warga-jakarta-keluhkan-air-mati>

The lawsuit was filed by a number of residents of DKI Jakarta who felt aggrieved by the privatization of water services in Jakarta. The main points of the lawsuit are as follows: first, the plaintiffs consider that the privatization of water services in Jakarta is a violation of the 1945 Constitution which requires the state to be responsible for ensuring that public services are well received by every citizen. The plaintiffs consider that the privatization of water causes the residents' rights to water to not be fulfilled. Second, the plaintiffs considered that the process of privatizing water services resulted in allegations of corruption that caused state losses due to private water management.

This lawsuit was registered and examined at the Central Jakarta District Court and lasted up to 6 years until it could be decided at the Judicial Review level at the Supreme Court of the Republic of Indonesia. At the District Court level, in 2015, the lawsuit was granted and the court stated that the government and PAM Jaya and private partner companies had made negligence in fulfilling and protecting citizens' human rights to the provision of clean water. The court also ordered the cancellation of the cooperation agreement, the stop of the privatization of water, and the return of management of water in Jakarta to the regional government of DKI Jakarta.

In 2016, the DKI Jakarta High Court overturned the decision of the Central Jakarta District Court. On the cassation filed by the plaintiffs in 2017, the Supreme Court of the Republic of Indonesia granted the appeal and upheld the decision of the Central Jakarta District Court regarding the cancellation of the privatization of water services in Jakarta.

In 2017, the Minister of Finance of the Republic of Indonesia, one of the defendants, filed a judicial review request with two main reasons for the formal procedure: the inclusion of a partner private company in the list of defendants, and the *legal standing* of the plaintiffs. In November 2018, the Supreme Court granted the request for judicial review and overturned the decision of the Supreme Court of the Republic of Indonesia.

A Number of Labor Cases After the Privatization of the Water Service Sector in Jakarta

As explained above, the privatization of water services in Jakarta caused most of PAM Jaya's workers to be transferred to the two partner private companies in the cooperation agreement. In addition to the regulation of the scheme for the transfer of workers from PAM Jaya to partner private companies and the affirmation of remuneration patterns and opportunities to receive training for the needs of technology transfer, the cooperation agreement does not explain in detail the rights and obligations of partner private companies related to labor rights. The cooperation agreement assumes that the regulation of labor relations is considered clear by referring to the labor regulations enforced in Indonesia.

But in reality this is not the case. A number of cases of labor disputes occurred in the first four to five years since the cooperation agreement was signed. Several informants explained that one of the problems that emerged at that time was the difference in remuneration (wages and facilities) and the number of pensions given by private partner companies to direct workers and PAM Jaya workers who were *seconded* to

partner private companies. Below note a number of labor dispute cases that occurred and were sued in court.

i. Case of Maisril et al. (4 people) 2014-2016

A lawsuit against PT Aetra Air Jakarta, a private company partner to replace PT TPJ, was filed in the Jakarta Industrial Relations Court in 2014. Maisril et al. were PAM Jaya workers who were *seconded* to PT Aetra Air Jakarta and have worked for a long period of time (between 26 years to 33 years). Maisril et al. filed a lawsuit in relation to the amount of severance pay received. The main point of the lawsuit relates to the withholding of severance pay by PT Aetra Jakarta, a private company partner to replace PT TPJ, which is considered to have been carried out unilaterally without prior notification to a number of workers entering retirement age, including the plaintiffs Maisril et al.

The Jakarta Industrial Relations Court, in 2015 decided to grant the lawsuit and asked PT Aetra Air Jakarta to pay the shortfall in severance payments to the plaintiffs. However, at the classification level, based on article 167 paragraph (3) of the Manpower Law no. 13/2003, the Supreme Court of the Republic of Indonesia in 2016 overturned the court's decision of the first instance and stated that the severance pay cut was valid because PT Aetra Air Jakarta had paid its share in the form of premium payments that were paid regularly through Dapenma Pamsi.

ii. The Case of Ponimin, et al (1,055 people) 2008-2009

Another labor dispute case was filed by Ponimin, cs (1,055 people) in 2008. Ponimin et al are PAM Jaya workers who have been *seconded* to PT Aetra Air Jakarta and PT Palyja Jakarta since February 1998. In 2008, Ponimin et al filed a dispute lawsuit rights at the Jakarta Industrial Relations Court. Lawsuits were filed against PAM Jaya, PT Aetra Air Jakarta and PT Palyja Jakarta relating to discrimination in wages and other benefits (eg. welfare benefits, food allowances, transportation, health, etc.) between *seconded* workers in the two private partner companies and workers who work at the PAM Jaya head office.

For the lawsuit, the Jakarta Industrial Relations Court granted Ponimin et al.'s claim and stated that the different treatment between *seconded* workers *seconded* to private partner companies and PAM Jaya head office workers constituted discriminatory treatment. The decision of the Jakarta Industrial Relations Court then ordered PAM Jaya and the two partner private companies to pay the difference in wages and *seconded* allowances jointly from 2001 to 2007.

Based on the court's decision, PAM Jaya, PT Aetra Air Jakarta and PT Palyja filed an appeal. In November 2009, the Supreme Court granted the appeal and overturned the decision of the Industrial Relations Court at the Central Jakarta District Court. The Supreme Court of the Republic of Indonesia stated that based on the privatization Cooperation Agreement and the *Seconded Employee Agreement*, the wages and remuneration of the *seconded* workers are fully the

responsibility and follow the provisions applicable in the partner private company.

iii. The Case of Dondi Syahtriandi (2011-2015)

Dondi Syahtriandi is a PAM Jaya worker who has been *seconded* to a private partner company PT Palyja since February 1998. Dondi sued PT Palyja Jakarta and PAM Jaya at the Jakarta Industrial Relations Court regarding the termination of payment of wages and a number of other work rights from November 1998 to December 2002 (for almost 4 years).

In October 1998, Dondi received a suspension from PT Palyja Jakarta. The suspension causes the person concerned to not receive wages for approximately 4 years. Dondi submitted a written complaint to the PAM Jaya Internal Supervisory Unit, which in August 1999 issued a written letter of revocation of the suspension. However, the termination of wages and other work rights was only repaid in early 2003.

For the termination of wages and other worker rights, in 2011, Dondi filed a lawsuit with the Jakarta Industrial Relations Court. The basis for Dondi's lawsuit is Article 155 paragraph (3) of the Manpower Law no. 13/2003 which requires employers to continue to pay wages and other work rights during suspension.

In 2012, the Jakarta Industrial Relations Court declared Dondi's lawsuit inadmissible regarding the expiration of the lawsuit (based on article 96 of the Manpower Law No. 13/2003). In 2015, the decision of the court of the first instance was upheld in the cassation and judicial review decisions by the Supreme Court of the Republic of Indonesia.

Based on information from informants, a number of other labor dispute cases that emerged later were relatively related to the issue of different interpretations of the labor relations arrangements for *seconded* workers with PAM Jaya and the private partner company where the person concerned was placed. However, over time, when the number of workers directly recruited by private partner companies became more and more, the disputes became relatively calm. It is understood that in the current situation, the number of *seconded* workers decreases with the retirement age. Since then, the cooperation agreement for water services in Jakarta has been relatively ongoing until today towards the end of 2023.

3. Towards the Expiration of the Agreement on Privatization of Water Services in Jakarta: Impact and Potential Problems in Labor Issues

3.1. Remunicipalization in Global Discourse

In the global public service discourse, remunicipalization has become a prominent trend over the last two decades.⁹ Remunicipalization is a movement to take back the control of public services to the hand of local government (municipality) and/or national government. Until February 2022, there were more than 1,500 cases of remunicipalization that occurred in 56 countries around the world.¹⁰ This trend mainly started in developed countries such as Germany, France, USA, UK and Spain; but in the last 10 years, the remunicipalization movement has also begun to occur in the southern hemisphere such as Argentina, South Africa, and Malaysia. Remunicipalization is especially prominent in the energy, water services, telecommunications, healthcare, education, waste management, and other public services (housing, construction, funeral, etc) sectors. Since the Covid-19 pandemic occurred in early 2020, the attention and pressure for remunicipalization have especially increased in the public service sector.

The failure of privatization is the main reason for the push for remunicipalization, especially with regard to the poor quality of services and the high price that citizens have to pay. However, demands for remunicipalization also arise because of the urge to return public services to public control and ensure democratization of public services, so that *development goals* are not limited to financial profit and can be sustainable.¹¹ In current developments, a number of cases of remunicipalization have also occurred as the government's efforts to ensure the climate change mitigation agenda. Through remunicipalization, renewable energy transformation policies are considered more secure because their implementation is relatively under the control of the government.¹²

Thus, it can be concluded that remunicipalization and returning to the dominance of control and supervision on the public, which in this case is represented by local governments and/or public-owned companies, are expected to prevent the commodification and commercialization of public services, and encourage

⁹ Lobina, E. et al (2014). *Here to Stay: Water Remunicipalisation as a Global Trend*. Accessed from <https://www.tni.org/files/download/heretostay-en.pdf>

¹⁰ Cumbers, A. et al (2022). *Mapping Remunicipalisation: Emergent Trends in the Global De-privatisation Process*. University of Glasgow. Accessed from https://pop-umbrella.s3.amazonaws.com/uploads/b4cf0721-7bbd-411e-95d1-1c9579ce6edc_GLOBAL_MAPPI NG_SUMMARY_APRIL_2022.pdf.

¹¹ *Ibid.* pp 10-12.

¹² Berlo, K et al (2016). "Remunicipalisation as an Instrument for Local Climate Strategies in Germany," in *Renewable Energy Law and Policy Review Vol. 7 No. 2*, pp. 113-121.

improvements in the quality of public services at affordable rates. Remunicipalization is also expected to help realize a number of holistic and sustainable development agendas that do not only focus on economic interests but also human interests and environmental sustainability.

The data also shows that the majority of cases of remunicipalization occurred as a result of the termination of the privatization agreement.¹³ Very few cases of remunicipalization however occur as a result of political referendums or government decisions. This shows that apart from the main motivation for remunicipalization due to the failure of privatization (poor quality and inflated service rates), remunicipalization tends to occur passively and not as a result of active action against privatization. This is understandable because the cancellation of the privatization agreement may require large costs that are difficult for the public to bear, especially if it leads to disputes in the judiciary.¹⁴

3.2. The End of the Agreement on Privatization of Water Services in Jakarta: A New Era of Public Services?

In accordance with the cooperation agreement, the privatization of water services in Jakarta will expire on February 1, 2023. In accordance with clause 44 of the cooperation agreement, the private partner companies will return to PAM Jaya all rights, including property rights and interests, and assets acquired during the privatization process. The transition process is carried out physically with a number of accompanying formal and written letters/documents.

Theoretically, referring to clause 44 above, the end of the cooperation agreement will mark the start of the era of the remunicipalization of water services in Jakarta. The assumption is that water services in Jakarta, which were previously controlled by partner private companies, namely PT PAM Lyonnaise Jaya and PT Aetra Air Jakarta, will be returned to the management of the public company PAM Jaya. In this case, remunicipalization means returning water services in Jakarta back to public control through PAM Jaya.¹⁵

In January 2022, a number of mass media highlighted the issue of terminating the privatization agreement. There are a number of indications of preparatory actions ahead of February 1, 2023. One of them that stands out is the signing of the Memorandum of Understanding for Synergy and Support for the Implementation of Drinking Water Supply Systems in DKI Jakarta Province. The Memorandum of

¹³ *Ibid.*

¹⁴ A number of disputes in privatization agreements that are disputed in international arbitration institutions on the basis of Investor-State Dispute Settlement (ISDS), require a certain energy and capacity from local governments to be able to resolve claims. See Steinfors, L (2017), "The 835 reasons not to sign trade and investment agreements," in Kishimoto, S and Petitjean, O(eds) (2017). *Reclaiming Public Services: How cities and citizens are turning back on privatization*. Amsterdam & Paris: TNI, pp. 49-67.

¹⁵ It is known that as of October 2021, based on DKI Jakarta Regional Regulation No. 4/2021, the Regional Water Company for Greater Jakarta was changed to the Regional Public Company for Water Drinking Jaya. The shares of PAM Jaya are wholly owned by the DKI Jakarta Regional Government.

Understanding was signed by the Minister of Home Affairs, the Minister of Public Works & Public Housing (PUPR), and the Governor of DKI Jakarta on January 3, 2022. The Memorandum of Understanding mandates the Ministry of PUPR's assistance to build infrastructure for three regionalization of drinking water supply systems in Jakarta. It is interesting to note that environmental reasons and the achievement of the *Sustainable Development Goals* are the main backgrounds of the Memorandum of Understanding. Although it is not clearly stated in the Memorandum of Understanding, it seems that PAM Jaya will be actively involved in the implementation process after the termination of the privatization agreement.

Can the termination of the *public-private partnership*, as contained in the cooperation agreement between PAM Jaya and the two private partner companies, be interpreted as the start of the remunicipalization era, in the sense that the control of water services in Jakarta will return to the hands of the public? There seems to be some doubt that as of February 1, 2023 a new era of remunicipalization will occur. Some of the information collected in this study does not show a strong indication of an intention to remunicipalize.

There are a number of indications that show doubts about the realization of remunicipalization. *First*, the weak preparation process for the transfer of control from partner private companies before the end of privatization. Based on clause 44.1(c) of the cooperation agreement, the remunicipalization process should have started 6 (six) months before February 1, 2023. At that time, starting from August 1, 2022, PAM Jaya should have collaborated with partner private companies to carry out the transfer process of assets and property.

An official news source for the DKI Jakarta Regional Government stated that by the end of 2022, PAM Jaya will have formed a transition team related to the preparation for the takeover of water services by PAM Jaya as of February 2023. The news source said the transition team would focus on five clusters (transfer of assets, production and services, human resources, legal aspects of transferring water management, and legal aspects of transferring main sources).¹⁶ However, this research has difficulty getting the latest news (*updates*) about the transition team's work process. It is also unknown whether this transition team also involved representatives from the two private partner companies in its work process. A number of relevant DKI Jakarta government officials who were contacted refused to provide official information and statements.

On the other hand, a number of informants met in the process of this research stated that they did not know whether the termination preparations as mandated by clause 44.1(c) above had been formed. Even if there was information about the preparation process, a number of informants admitted that the information obtained was informal and randomly obtained. Most of the informants admitted that they were not aware of any official communication platforms or media available to obtain progress on the preparation process for the termination of the privatization agreement, either from PAM Jaya, partner private companies, or from the DKI Jakarta regional government.

¹⁶ BPK Pemda DKI Jakarta (2022) "Jaya Drinking Water Company (PAM) in Transition of Clean Water Management in Jakarta." Accessed from <https://jakarta.bpk.go.id/wp-content/uploads/2022/02/Note-Berita-PAM-Jaya.pdf>

A number of union representatives admitted that they received limited information about the transition process from a number of PAM Jaya leaders and partner private companies. However, they also stated that no regular communication was held to ensure updates on the progress of the transition process.

Second, doubts about the start of remunicipalization of Jakarta's water services are also signified because it is known that as of October 2022 PAM Jaya has signed a cooperation agreement with PT Moya Indonesia¹⁷ regarding the Drinking Water Supply System through Optimization of Existing Assets and Provision of New Assets with a *Bundling* Financing Scheme. Unlike the previous one, this cooperation agreement is stated to aim to hand over part of the burden of public services to the private sector. In this case, PT Moya Indonesia will only manage water production which will then be distributed to customers in Jakarta. This study does not specifically discuss the cooperation agreement with PT Moya Indonesia, but it is certainly interesting to analyze further how the new cooperation agreement becomes a new variant of the privatization of water services in Jakarta.

Third, the current national economic policy of the Indonesian national government strongly supports a *friendly investment ecosystem*. Job Creation Law no. 11/2020, widely known as the Omnibus Law, concretely reflects the current government's economic logic: (foreign) investment is needed to create jobs. This law is also motivated by the argument that a number of regulations are considered bureaucratic, overlapping and complicated.¹⁸ Policy decentralization is also considered to reduce the authority and effectiveness of power. These things are considered to cause obstacles to the acceleration and flexibility of foreign investment. That is why the Omnibus Law, through revisions/amendments/amendments of 78 laws, is at a certain point aimed at ensuring the centralization of economic policy to the national government.

The Omnibus Law also made amendments and changes to the Water Resources (SDA) Law No. 17/2019. Amendments to the Water Resources Law are contained in Article 53 of the Job Creation Law. There are 16 articles of the Water Resources Law that have been amended in the Job Creation Law, most of which relate to the authority for water management which is now in the hands of the central government and local governments. The Job Creation Law also allows the transfer of water management to private hands. The Job Creation Act is one of the main references in the DKI Jakarta Regional Regulation No. 4/2021 concerning Changes in the Legal Form of the Regional Drinking Water Company for the Special Capital Region of Jakarta (PAM Jaya) to become the Regional Public Company for Water Drinking Jaya.¹⁹

¹⁷ PT Moya Indonesia is a subsidiary of Moya Asia Holding which is domiciled in Singapore. One of Moya's shareholders is Acuatico Ltd, a Singaporean investment company that also has a dominant stake in PT Aetra Air Jakarta. Several mass media reported that PT Moya Indonesia began to dominate the water service sector in Indonesia, including in Jakarta, Tangerang, Semarang, and the Batam Special Economic Zone.

¹⁸ See: President Joko Widodo's state address/speech, August 16, 2019.

¹⁹ Based on the Regional Government Law no. 23/2014, all Regional Owned Enterprises (BUMD) must be converted into regional public companies or regional company companies. Regional public companies will focus on the function of public services, not easily bankrupt because all assets and shares are owned by the regional government.

3.3. Impact of Ending Privatization of Jakarta Water Services for Water Sector Workers in Jakarta

The termination of the water service privatization agreement in Jakarta certainly has an impact on water sector workers, especially those who are currently working in the two partner private companies, namely PT Aetra Air Jakarta and PT Palyja. Based on this research data, it is known that there are around 680 workers of PT Aetra Air Jakarta, about 25% of whom are PAM Jaya workers who are *seconded*. At PT Palyja, it is known that there are around 1,000 workers, 40% of whom are *seconded* workers from PAM Jaya. Thus, it is estimated that there are around 1,680 workers in the Jakarta water service sector who will be affected by the termination of the privatization agreement as of February 1, 2023.

In the cooperation agreement between PAM Jaya and the two partner private companies, clause 32.12 stipulates the "Re-transfer of Employees" stating that PAM Jaya has the right to re-hire workers of the partner private companies. However, if PAM Jaya does not re-recruit the worker concerned, the private partner company is obliged to employ or terminate the employment relationship with compensation in accordance with applicable legal provisions. If workers are re-recruited by PAM Jaya, the period of service is calculated retroactively and PAM Jaya is responsible for paying pension contributions. Clause 32.12 also stipulates the responsibility of the partner private company to complete its employment relationship with foreign workers when the privatization agreement expires.

A number of informants who are direct workers and *seconded* workers in the two partner private companies admit that they are worried about the termination of the privatization agreement. Some of them are approaching retirement age and will face retirement a few weeks before or after February 1, 2023. The most prominent question is about the mechanism for terminating employment (what is the process, who is responsible for paying pension remuneration, etc.).

The worker informants also informed that in September 2022, the workers received 5-page questionnaires which were distributed to be filled out. There were about 50 questions regarding employee personal data (starting from photo attachments, employee biodata, information on relatives/family, education and work history to achievements) were asked in the questionnaire. Workers were also asked to sign a statement stamped on their agreement to be recruited as PAM Jaya workers in accordance with the work status determined by PAM Jaya (to become permanent workers or contract workers). The statement sheet also asks workers to agree to participate in the PAM Jaya personnel recruitment process (see Annex 1). Questionnaire sheets and stamped statements must be submitted to management no later than October 5, 2022.

A number of informants admitted to wondering about the implications that would be received by signing the stamped statement. There is no solid explanation obtained from the management, either PAM Jaya or the two private partner companies, regarding this matter.

Informants who come from the leadership of the trade unions admitted that there had been several conversations between the representatives of the trade unions and the management representatives of the partner private companies to ask for information about the end of the cooperation agreement. These informants stated that they were informed that the impact of terminating the privatization agreement on workers was the shift of working relations from the partner private company to PAM Jaya. However, the informants admitted that they did not have definite information about whether all workers would be employed at PAM Jaya. It should be underlined that the communication initiative came from the union side, not from PAM Jaya or the private partner company. The absence of an official bipartite platform that can be used as a communication medium for the transition process means that most of the information about the transition process is informal.

Water Service Sector Unions in Jakarta

Based on the data obtained during the research process, there are five labor unions in the water service environment in Jakarta, with the following data:

1. SP PDAM was established in 1998. Initially, the members were all PAM Jaya workers. After the privatization agreement took place, SP PDAM members were scattered not only working at PAM Jaya but also *seconded* workers working in the two partner private companies.

Currently, the SP PDAM members are estimated to be around 500 people. The number is reduced considering that a number of members have entered retirement age.

SP PDAM has been affiliated with the PSI international trade union since the 2000s.

2. The Aetra Employee Union (SEKAR) Aetra was established in 2006. SEKAR Aetra members are direct workers at PT Aetra Air Jakarta. As of September 2002, SEKAR Aetra has around 330 members.
3. SEKAR Palyja, established in 2018. All SEKAR Palyja members are direct workers at PT Palyja. As of September 2022, there are around 180 members of SEKAR Palyja.
4. PUK FSP-KEP SPSI Aetra, n/a date of establishment. All members of PUK FSP-KEP SPSI Aetra are direct workers at PT Aetra Air Jakarta. There is no exact data on the number of members, but it is estimated that there are around 120 people.
5. PUK FSP-KEP SPSI Palyja, it is not known when it was established. The members of the PUK FSP-KEP SPSI Palyja are all direct employees of PT Palyja. There is no data on the number of members, but it is estimated that there are around 200 people.

The termination of the privatization agreement will of course also have an impact on the existence of trade unions, especially trade unions located within the two partner private companies. If a worker's working status changes to PAM Jaya, can the union still exist without members? If the majority of members turn into PAM Jaya workers, how will the unions based in the two partner private companies ensure their existence in order to defend the interests of their members?

Several informants who are the leaders of SEKAR Aetra and SEKAR Palyja claimed to have thought about the questions mentioned above. The leaders said they had anticipated by communicating with each other. These informants also stated that they had explored the possibility of merging the organization into one trade union. Unfortunately, no similar confirmation was obtained from the leaders of the FSP-KEP SPSI union, either at PT Aetra Air Jakarta or at PT Palyja.

3.4. Potential Employment Problems in the Transition Period and Post-Termination of the Privatization Agreement

This study notes a number of potential labor problems in the transition period and after the termination of the privatization agreement as follows:

A. Guarantee of Clarity of Work Status

The termination of the privatization agreement will have a concrete impact on the employment status of the workers working in the two partner private companies. Although clause 32.12 of the cooperation agreement, as described above, does provide a guarantee that workers in the two partner private companies can be recruited by PAM Jaya.

This arrangement is in accordance with Article 61 paragraphs (2) and (3) of the Manpower Law no. 13/2003 as a result of the changes in the Job Creation Law no. 11/2020. In the article, it is explained that in the event of a transfer of the company, the rights of the workers/laborers become the responsibility of the new entrepreneur unless otherwise stipulated in the transfer agreement without prejudice to the rights of the workers. This means that there should be no change in the working status of workers, and the new company should not reduce the working conditions, rights and obligations of workers as previously agreed.

As described above, the informants who came from among the workers claimed to have been asked to fill out a questionnaire sheet and a stamped statement of approval. Two clauses in the statement raise doubts about guaranteeing the continuation of work status at PAM Jaya: firstly, regarding the statement of agreement that workers want to be appointed as permanent workers or contract workers at PAM Jaya. Secondly, regarding the statement of approval to participate in the process of recruiting workers at PAM Jaya. These two things certainly raise a number of questions: if a worker was previously a permanent worker at a partner private company, can he/she change status to become a contract worker when he/she switches to PAM Jaya? If so, would that not

be contrary to clause 32.12 of the cooperation agreement and Article 81 point 16 of the Omnibus Law which amends article 61 paragraph (2) of the Manpower Law no. 13/2003? If workers are required to take part in the reinstatement process, does that mean that there is a possibility that the workers will fail in qualifying for the recruitment process? What are the consequences for workers? A number of questions regarding this matter have not received clear answers, both from the management of PAM Jaya and the two private partner companies.

B. Job Loss Compensation Issue

Given that clause 32.12 of the cooperation agreement implies PAM Jaya's prerogative to recruit and/or not recruit workers after the cooperation agreement ends, the question that arises then is what will happen to workers who are not recruited by PAM Jaya but have already resigned from the partner private company? The legal question that arises then is whether the worker in question has been terminated (PHK) or is considered to have resigned? Who will be responsible for the payment of the compensation; PAM Jaya or a partner private company?

In the labor law applicable in Indonesia, the legal implications relating to compensation for loss of work due to layoffs are different from compensation for resignation. It should also be borne in mind that there have been different legal interpretations since the debate over the enactment of the Job Creation Law no. 11/2020. Some stated that the calculation of the compensation for layoffs or compensation for resignation refers to PP. 35/2021 concerning Employment Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment. However, another interpretation states that in connection with the 2021 Constitutional Court decision which states that the Job Creation Law No.11/2020 is conditionally unconstitutional, this Law and all its implementing regulations are in the status quo until 2024. Thus, the calculation of the amount of severance pay and compensation must be done by referring to articles 156 and 157 of the Manpower Law no. 13/2003.

On the other hand, the privatization cooperation agreement does not provide detailed answers to the legal questions above. It is reasonable to suspect that the above legal questions are part of the responsibility of the transition team. A number of informants from the trade unions admitted that they had no information on this matter. Informants who are employees of PT Palyja informed the circulation of Internal Memo No: 058/RD-FA-ART/RR/XII/2021 signed by the President Director of PT Palyja. The memo dated December 29, 2021, refers to the calculation of the amount of compensation for layoffs/pensions/resignations in PP No. 35/2021. This internal memo was once considered a reference for the amount of compensation for the termination of the cooperation. However, the Internal Memo No: 022/RD-FA-RT/RR/IV/2022 published in April 2022 denied the perception that the amount of compensation in the previous internal memo was for the purpose of terminating the privatization agreement.

Thus, legal debates surrounding the aforementioned questions have the potential to occur in determining the amount of compensation for job losses in the transition period and after the termination of the cooperation agreement.

C. Fate of Seconded Workers

On the other hand, most *seconded* workers experience doubts for their future. Clause 32.13 of the cooperation agreement reads, “The parties agree that the Secondment Agreement shall automatically terminate when the transfer of employment status is complete.”

Based on the above clause, the secondment agreement ends automatically when the cooperation agreement ends. However, there is no further explanation on how the process of transitioning work status for seconded workers; are they automatically re-assigned to their original position at PAM Jaya, or are they in a new assignment position? How is the transition process carried out? How would the transition be processed? Such questions have not been well answered.

D. Deficit of Human Resources and its Impact to Water Service Performance

Based on Central Statistical Bureau (BPS) data in 2021, there are around 910,000 water customers in Jakarta²⁰, while Jakarta water sector workers in 2020 are only about 2,200 personnel²¹. With an assumption that numbers of water customers grow around 7% to 9% per year, then the ratio of Jakarta water sector workers to their customers is 1:410. It means that every Jakarta water sector worker is responsible to serve 410 customers (bear in mind that customers mean those who come from households, companies, etc).

Human resources deficit seems would be a potentially significant issue considering that currently there are significant numbers of Jakarta water sector workers who are facing retirement age. This issue has to be seriously considered as an important topic of discussion in the transition team.

If the privatization ending process is not smoothly done, the issue of human resources deficit would trigger significant disruption to the performance and quality of water service in Jakarta, which might end into a legal dispute.

workers in the water sector compared to clean water customers. Based on BPS Statistics 2020 data, the number of water customers in Jakarta is 896,782 while the number of employees of water companies in Jakarta is 2 226. This data shows that the ratio between the number of workers and the number of clean water customers is not suitable for fulfilling Jakarta's water services.

²⁰ For accuracy of data of Jakarta water customers, please visit <https://jakarta.bps.go.id/indicator/7/194/1/jumlah-pelanggan-perusahaan-air-minum-pam-menurut-jenis-pelanggan-di-provinsi-dki-jakarta.html>

²¹ <https://www.bps.go.id/indicator/7/325/1/jumlah-pegawai-perusahaan-air-bersih.html>

4. Closing

4.1 Conclusion

The agreement on the privatization of water services in Jakarta which has been in place since 1998 will soon expire on February 1, 2023. Since the beginning, this privatization agreement has raised a number of questions. There are a number of doubts that privatization is the answer to a number of public service problems in the water sector; starting from quality, effectiveness, and efficiency. This is understandable because from the beginning the agreement on the privatization of water services in Jakarta was dominated by the control of the political interests of global capitalism due to the multi-dimensional crisis that hit Indonesia in the late 1990s. A number of criticisms and lawsuits also accompany the journey of this privatization project, especially regarding the weak quality of service to consumers and the high tariffs set.

There are some doubts whether the termination of the agreement on the privatization of water services in Jakarta as of 1 February 2023 will result in remunicipalization; the return of control of water management and services to the public via local governments. A number of facts actually show a tendency for a new style of privatization to occur, in the form of *unbundling* the water service supply chain in Jakarta. A series of memorandums of the agreement has been signed by representatives of a number of ministries with the governor of DKI Jakarta. In October 2022, a new cooperation agreement was also signed for water production management. A number of large private companies, including one of the partner private companies in the previous privatization agreement, entered the tender for the privatization of water services in Jakarta and its surroundings.

There are a number of question marks regarding the transition process for terminating the privatization agreement. It is claimed that a transition team has been formed in accordance with the clauses of the 1998/2001 privatization cooperation agreement. However, there is no valid information regarding the composition of the transition team. If you expect a smooth transition process, then the problem of communication and the availability of communication media between institutions and related stakeholders needs to be seriously addressed. The informants met stated that responsive action from the government was needed to ensure that the transition team was valid, representative, and worked transparently.

There are a number of potential labor issues in the transition period and towards the end of the privatization agreement on 1 February 2023. If not handled properly, there is a possibility that a number of legal disputes will surface. The situation of uncertainty can disrupt the productivity and performance of water services in Jakarta which in the end certainly violates the rights of citizens to quality public services.

Although the existence of trade unions in the water service sector in Jakarta is acknowledged, trade unions are relatively not included in the transition process. Even if there is some communication with the management, it seems that the initiative actually came from the union side. In the context of social dialogue, situations like this actually hinder the possibilities of solving challenges in *win-win situations*.

4.2 Recommendations

Based on the foregoing, a number of recommendations for trade unions can be put forward as follows:

1. Legal Assistance for Promotion and Protection of Workers' Rights

This research has covered a number of potential labour issues approaching the end of the water service privatisation in Jakarta. Bearing in mind the current context and situation, the availability of legal assistance during the termination process is crucial as part of protecting the labour rights. The involvement of non-governmental organizations including legal aids has in the past proved to help the workers to protect and enforce their rights in the water sectors. However, such legal assistance was not available since several years ago. Hence, adequate legal assistance is urgently needed at this point.

2. Transition Team as Media for Social Dialogue and Instrument for Engaging Trade Union

This study argues the importance of negotiation and involvement of all parties in the transition process towards the termination of the water service privatization agreement in Jakarta. Trade unions should be involved in the transition team so that there is a social dialogue in which all stakeholder (PAM Jaya, the two private business partners, government and trade unions) can be involved to ensure a smooth transition process in which various interests are well accommodated.

If the social dialogue can be accepted as an alternative strategy to help smooth the transition process, trade unions should take an initiative to propose becoming a part of the transition team. This construction is legally allowed. Article 33 of the cooperation agreement regarding the Employee Protection Panel opens an opportunity to use it as a platform for proposing labour demand. Hence, duplicating the composition of the Employee Protection Panel into a transition team may be considered.

3. Consolidating and Strengthening the Capacity of Trade Union

This study shows that workers do not have a strong bargaining position individually; therefore the struggle to protect workers' rights must be carried out collectively through the existence of trade unions.

Although it is understood that currently the consolidation of labor unions in the water sector in Jakarta is still weak, considering that there is more than one union, the existence of organizational modalities should be appreciated. However, it must be acknowledged that a number of water sector unions in Jakarta are weak in capacity to do this. For that a facilitator might be needed so all existing trade unions can sit down together and seek consolidation. Without consolidation, fragmentation and differences among trade unions will always be to the detriment of the workers themselves.

Trade union strengthening through a series of discussions and education is needed to improve the capacity and self-image of trade unions to be ready to negotiate and/or conduct social dialogue with the business community and government. On the other hand, it is necessary to take a special approach and increase knowledge of the other parties, especially the business community and related government representatives, to

recognize the existence and involve trade unions in the existing social dialogue process.

4. International Support

The protection of water sector workers as an affected group from the process of terminating the water service privatization agreement in Jakarta requires international support, especially in advocacy and campaigning. Workers' rights protection must be interpreted not only to protect the rights of individual workers. The welfare of workers in the public service sector is correlated with guaranteeing the performance and quality of public services. Efforts to promote and protect and enforce workers' rights should be pursued by trade unions.

Pull encouragement is needed. Public Service International, the international trade union for the public service sector, has the competence and authority to do this. This is mainly to build the capacity and militancy of trade unions. It takes hard work and humility to accept suggestions if improvement is sought.

International support can be provided to emphasize the benefits and importance to remunicipalize water services. Human rights impact assessment of water services in Jakarta can be helpful as with the results of the assessment, the government and business actors can be encouraged to take steps to prevent/mitigate/anticipate human rights violations for affected groups, especially related workers.

5. Expanding the Network

Networking with other trade unions, non-governmental organizations, as well as donor agencies is essential. This has actually been done by SP-PDAM Jaya in the form of a coalition with a number of other institutions in KMMSAJ. It is worth considering rebuilding the network.

Integrated advocacy cooperation requires close cooperation with each other to exchange ideas, learn from the industry and/or state experiences about privatization and the struggle for remunicipalization of public services. The formulation of a joint strategy to conduct a joint campaign with mutually agreed key messages also needs to be considered.

6. Advocating Remunicipalization of Water Services: A Study in the Perspective of Public Services

This study finds that the current process of terminating the water service privatization agreement in Jakarta does not necessarily end with remunicipalization. There is a tendency for a new style of privatization in the water sector, but this certainly needs further research.

Lessons from a number of other countries show that the failure of a privatization project has been the main driver of the remunicipalization trend. A number of strong studies show that the failure of privatization not only harms citizens, but also tends to cause violations of the rights of workers and trade unions.

Essentially, the remunicipalization of public services focuses on the public interest, the main consumer of community services organized by local governments. However,

a number of studies have also shown that remunicipalization does not only benefit the public, but also supports the welfare of public service sector workers and their families.

The water service sector in Indonesia seems to be at a crossroads. A number of existing public service privatization projects, including the case of water services in Jakarta, show a red score. However, it seems that strategic alternatives, including remunicipalization, have not received special attention. That's why it will be very useful if there are further studies conducted on remunicipalization.

Further studies on remunicipalization must, of course, be carried out from the perspective of upholding human rights. For this reason, trade unions have great authority to be involved in their studies and advocacy. Therefore, the attitude of trade unions needs to focus on the need for clear, non-multi-interpreted, law-based public service policies that prioritize the human rights of affected communities, including workers and trade unions, and involve all stakeholders. *The future is public!*

Bibliography

A. Books and Articles:

- Vickers, John and George Yarrow. 1988. *"Privatization; An Economic Analysis"*. Cambridge: MIT Press
- Mariani, R, et al. 2004. *"Kualitas Fisik dan Kimia Air PAM di Jakarta, Bogor, Tangerang, Bekasi 1999-2001,"* Media Litbang Kesehatan Vol. XIV No. 3, pp. 14-19.
- Triastuti, Retno. 2006. *"Analisis Ekonomi Pengelolaan Sumber Daya Air PDAM DKI Jakarta Setelah Adanya Konsesi"*. Fakultas Ekonomi dan Manajemen, Institut Pertanian Bogor.
- Okke. 2007. *"Privatizing Water: The Jakarta Concession and the Limits of Contract"* dalam Boomgaard, Peter (ed.). *A World of Water: Rain, Rivers and Seas in Southeast Asian Histories*. pp. 297-320.
- Hadipuro, Wijayanto. 2007. *"Dampak Privatisasi Air Bersih Perkotaan bagi Masyarakat Kaitannya dengan UU Sumber Daya Air"*
- Ardhianie, N and Irfan Zamzami. 2010. *"No Pro-Poor Agenda in Jakarta Water Privatization"*. Semarang: Amrta Institute.
- Zamzami, Irfan. 2011, *"Jakarta Water Privatization Today: Dried Water Tap, or Change"*, Amrta Institute for Water Literacy, https://www.tni.org/files/dried_water_eng_for_web_1.pdf
- Lobina, E. et al. 2014. *"Here to Stay: Water Remunicipalisation as a Global Trend"*. Diakses dari <https://www.tni.org/files/download/heretostay-en.pdf>
- Kementerian Pekerjaan Umum dan Perumahan Rakyat. 2015. *"Pengembangan Air Minum Indonesia dari Masa ke Masa 1800an - 2009"*
- Berlo, K et al. 2016. *"Remunicipalisation as an Instrument for Local Climate Strategies in Germany,"* in Renewable Energy Law and Policy Review Vol. 7 No. 2, pp. 113-121.
- Steinfert, L. 2017, *"The 835 reasons not to sign trade and investment agreements,"* in Kishimoto, S and Petitjean, O (eds) (2017). *Reclaiming Public Services: How cities and citizens are turning back privatization*. Amsterdam & Paris: TNI, pp. 49-67.
- Wati, Berlyyana Harinto. 2018. *"Privatisasi Sumber Daya Air pada Perusahaan Daerah Air Minum DKI Jakarta (PAM Jaya)"*. Fakultas Syariah dan Hukum, Universitas Islam Negeri Syarif Hidayatullah Jakarta.

- Rismansyah, Mohammad Robi dkk. 2020. “*Remunipalisasi Pengelolaan Air Bersih Oleh Pemerintah Provinsi DKI Jakarta Sebagai Upaya Perlindungan Keuangan Daerah Dan Pemenuhan Hak Atas Air Bagi Warga Jakarta*”.
- PAM Jaya, 2021. “Laporan Tahunan 2021”, diakses dari http://ppid.pamjaya.co.id/frontendppid/laporan_pemprov/2
- Cumbers, A. et al. 2022. “*Mapping Remunicipalisation: Emergent Trends in the Global De-privatisation Process*”. University of Glasgow. Diakses dari https://pop-umbrella.s3.amazonaws.com/uploads/b4cf0721-7bbd-411e-95d1-1c9579ce6edc_GLOBAL_MAPPING_SUMMARY_APRIL_2022.pdf.
- Ika, Wilma. “Catatan Berita UJDIH BPK Perwakilan Provinsi DKI Jakarta”, diakses dari <https://jakarta.bpk.go.id/wp-content/uploads/2022/02/Catatan-Berita-PAM-Jaya.pdf>

B. News Media Outlets:

- PAM Jaya. “Sejarah PAM Jaya”, <https://pamjaya.co.id/tentangkami>
- Aetra. “Profil Perusahaan”, https://www.aetra.co.id/profil_perusahaan
- Palyja. “Sejarah Palyja”, <https://palyja.co.id/id/sejarah-palyja/>
- 2013. “40 Ribu Warga Jakarta Keluhkan Air Mati”, <https://m.jpnn.com/news/hampir-40-ribu-warga-jakarta-keluhkan-air-mati>
- Agung. 2018. “Gerakan Mengembalikan Air Sebagai Barang Publik”, <https://ugm.ac.id/id/berita/15842-gerakan-mengembalikan-air-sebagai-barang-publik#:~:text=Remunicipalisation%20atau%20remunipalisasi%20merupakan%20gerakan,dan%20demokratis%2C%E2%80%9D%20terang%20Marwa>
- LBH Jakarta. 2021. “Pentingnya Remunipalisasi dan Dampaknya Terhadap Hak Buruh”, <https://bantuanhukum.or.id/pentingnya-remunipalisasi-dan-dampaknya-terhadap-hak-buruh/>
- “PAM Jaya Ambil Alih Pelayanan Air Bersih Jakarta Per 1 Februari 2023”, <https://www.kompas.id/baca/metro/2022/02/01/pam-jaya-ambil-alih-pelayanan-air-bersih-jakarta-per-1-februari-2023>
- SPSI. 2022. “SPSI Minta Peralihan Operator Air Bersih PAM Jaya Tak Tambah Pengangguran”, <https://spkep-spsi.org/2022/07/21/spsi-minta-peralihan-operator-air-bersih-pam-jaya-tak-tambah-pengangguran/>

- “Tandatangani MoU dengan PT Moya Indonesia, PAM JAYA Targetkan 100 Persen Cakupan Layanan pada 2030”,
<https://terasjakarta.poskota.co.id/2022/10/15/tandatangani-mou-dengan-pt-moya-indonesia-pam-jaya-targetkan-100-persen-cakupan-layanan-pada-2030>

Appendix 1: Agreement Statement Form to Join PAM Jaya

**BUKAT PERNYATAAN PERSETUJUAN
BERGABUNG DI PAM JAYA**

Saya yang bertanda tangan dibawah ini:

Nama	:	
NIP	:	
Jabatan	:	
Asal Perusahaan	:	PALYJA / AETRA (lingkari jawaban anda)
Tempat/Tanggal Lahir	:	

Bersama ini saya menyetujui untuk bekerja di PAM JAYA dengan seluruh ketentuan yang telah diatur oleh PAM JAYA meliputi:

1. Bersedia menjadi karyawan PKWT/PKWT dengan status kepegawaian yang ditentukan oleh PAM JAYA;
2. Bersedia ditempatkan sesuai dengan kebutuhan perusahaan dengan mempertimbangkan pengalaman dan kompetensi yang dimiliki;
3. Bersedia menerima hak dan menjalankan kewajiban sesuai ketentuan yang berlaku di PAM JAYA;
4. Bersedia mengikuti proses penerimaan pegawai yang diadakan oleh PAM JAYA dan tetap menjalankan tugas sesuai dengan fungsi dan tanggung jawabnya di Mitra sampai dengan Masa Transisi berakhir;
5. Bersedia memberikan data pribadi saya pada perusahaan Mitra untuk diserahkan kepada PAM JAYA.