



**koalisi rakyat untuk hak atas air**  
*people's coalition for the rights to water*

Jl. Mampang Prapatan VIII Komplek Bappenas Blok R.13, Jakarta Selatan -12790

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## **Contribution to the Public Consultation on the issue of human rights obligations in the context of private sector participation in the provision of water and sanitation services**

March 26, 2010

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Independent Expert on the issue of human rights obligations related  
to access to safe drinking water and sanitation

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Dear Ms. de Albuquerque,

Thank you for the opportunity with regard to your mandate as Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. We hope this letter will not be too late.

The People's Coalition for The Rights to Water (KRUHA) was established in 2002 as the response of the civil society groups in Indonesia to the World Bank's loan in water resource sector which called as Water Resources Sector Structural Adjustment Loan (WATSAL) which was approved by government of Indonesia in 1999, is worth USD300 million and aimed to restructure the water resource sector policy in Indonesia. Furthermore, government of Indonesia released Law No. 7 in 2004 concerning water resources which promote privatization and commercialization in water sector.

KRUHA is working with 120 organizations across Indonesia To promote community-based water resources management through water resources advocacy and strengthen public control and access to clean water.

With this opportunity, we like to contribute to the public consultation based on our experiences.

Drinking water provision in Indonesia was inherited from the colonial era. When most of the city piped water supply system were managed and operated by the municipal water service as public entity. At the beginning 1970s, the central government began to launch a series of five-year development plan that ended in 1999. Starting from the first five-year development plan called Pelita, the central government began receiving massive financial assistance in the form of loans or grants from the multilateral financing institutions as well as donor countries for the development of the sector.

The central government role was very dominant in providing equity through the construction of treatment plants and distribution network and management assistance to the municipalities. For a small city with population of less than 50,000 people, the management and operation of the water supply system were to be carried out by interim water works body called BPAM (Badan Pengelola Air Minum). After the BPAM reaches cost recovery level, its status could be elevated into PDAM (Water Works Enterprise or Company, owned by the local government). All PDAMs then could have the capacity to borrow money from the bank or central government in the form of two-step loan as the water works enterprises is viewed to be bankable.

The private sector involvement in the provision of drinking water service in Indonesia began in the 1990s when the central government faced budgetary constraints due to economic crisis. The first PSP project was North Serang in 1993 with BOO scheme, followed by concession contract in Batam Island by PT Aditia Tirta Batam (ABT) in 1996. In 1998, similar scheme was followed by the City of Jakarta by entering into 25-year concession agreement through direct appointment with two private foreign firms, namely PT Palyja of France and PT Aetra formerly PT TPJ of UK.

Although the legal basis of private sector cooperation was in place since 1990s, the legal framework to regulate private sector involvement in clean water supply provision is viewed to be inadequate. At that time, the existing law to regulate private sector participation was Law on Foreign Investment (Law No. 1/1967 jo. Law No. 11/1970) which states that economic activities affecting the life of the majority of people including the provision of drinking water are not allowed to be operated or managed by the private sector including foreign investment. Another related law on this is the Government Regulation (PP) No. 20/1994 on the Ownership of Share in a company for foreign investment.

Because of the pressing need for fresh capital and to promote investment climate, in 2000 a more clearer regulation on private sector participation to addressing clean water supply provision was issued through Presidential Decree (Keppres) No. 96 Year 2000<sup>2</sup> on Closed Business Field and Open Business Field. The Decree stipulates that foreign investor could own 95% of the share of the company engaged in the sector development. In its development, the decree was later revised into Presidential Decree No.116/2000.

In 2004, the government enacted Law No. 7 year 2004 on Water Resources, which was one of the water resources law reform in Indonesia. Under this law the participation of the private sector in the water sector development is affirmed.

There are now four concession projects in Indonesia, each respectively managed by the following firms: PT Palyja, PT Aetra, PT Adhya Tirta Batam and PT Aetra Air Tangerang. PT Aetra Air Tangerang obtained the concession contract for serving the five kecamatans not serviced yet by the PDAM PDAM Kabupaten Tangerang only in end 2008.

The table below provides a summary of the four concession contracts in Indonesia.

Description	PT. Palyja	PT. Aetra Jakarta	PT. ATB	PT. Aetra Tangerang
<b>Period</b>	1998-2023 (25 yr)	1998-2023 (25 yr)	1995-2020 (25 yr)	2008-2033 (25 yr)
<b>Owner</b>	Suez Environnement (51 %)	Acuatico (95%) Alberta (5%)	Cascal BV (50%) Bangun Cipta Kontraktor	Acuatico Capitallinc



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	Astratel (30 %) Citigroup (19 %)		(50%)	
<b>Population</b>	4.414.993	4.352.566	850.000	5 sub-districts
<b>Customers</b>	371.987	395.253	136.065	72.000
<b>Service Coverage</b>	59 %	66 %	86 %	Not operation yet
<b>NRW</b>	47 %	53 %	26 %	-----
<b>Investment (IDR)</b>	1 T (2006)	1 T (2006)	270 M (2007)	520 M (2007)
<b>IRR</b>	22 %	22 %	26.5 %	16 %
<b>Average Tariff (IDR)</b>	7.100	6.100	4.431	3.500 (initial)
<b>Regulator</b>	Regulatory Body	Regulatory Body	Batam Authority	--

### Jakarta Water Concession

The public-private partnership scheme in Jakarta was introduced in 1994 through a World Bank loan tied with the medium term investment plan for the improvement of clean water service in Jakarta. The consultants who conducted the study was later assigned to assist the PDAM DKI Jakarta in the negotiation with two water companies, Lyonnaise des Eaux (France) and Thames Water International (United Kingdom) that have expressed their interest in Jakarta's water business. The two companies later joined to establish a joint venture with two local firms. After a protracted debate and process, the cooperation agreement was signed in June 1997 between PDAM DKI Jakarta (as First Party) and its two private partners (as Second Party). The agreement was made effective in February 1998 and later was amended in 2001 because of economic crisis that affected the foreign exchange rate.

At present the holder of the concession in West part of Jakarta is PT Palyja with 51% shares owned by Suez Environnement. PT Astratel Nusantara owns 30% while Citigroup Financial Products Inc. has 19% of the shares. For the concession in Eastern Jakarta, PT Aetra Air Jakarta is 95% owned by Acuatico Pte. Ltd. (registered in Singapore) and the remaining 5% by PT Alberta Utilities

The Jakarta concession all this time is often viewed from two sides that are mutually difficult to reconcile. From the view of concession holder, the Jakarta project provides good profit and revenue. This is proven by the total revenue and profit of PT Palyja that continually increases annually. Since 2004 – 2008, the net revenue continually increased from Rp 560 billion in 2004 to Rp 920 billion in 2008. The net profit also shows a similar trend. In 2004 the net profit was Rp 114 billion, and it reached Rp 138 billion in 2008. Not surprisingly, water tariffs also escalated during this time. From



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Rp 4.450 in 2004, water charges hiked up to Rp 7.020 last year. In the newest concession, the water charge per cubic meter of water in 2007 was Rp 5.541. This increased to Rp 5.67 in 2008.

The concession contract also gives the right to the holder to receive an internal rate of return (IRR) of 22% along with the power to collect several types of fees like the fee for using the expertise in human resource development, finance, legal, technical and management. Another example is the "Know how license agreement" by Suez that gives it the right to collect a fee (4% of revenue up to 2004, 2.5% for the period 2004-2012) for the utilization of "technical expertise".

Meanwhile, the customers are bleeding from high tariffs due to these various concession holder rights. According to the Regulatory Body, the Jakarta water tariff is one of the highest in Southeast Asia outside Singapore and Hong Kong. Since 2004 an Automatic Tariff Adjustment was applied every six months. Based on this mechanism, the private operator has the right to propose tariff increase once every six months to the Regulatory Body for submission and approval by the Governor. During the water service undertaking by the private partner there have been nine tariff hikes and the last was last December 2008. Because it was difficult to increase the tariff, the water operators unilaterally implemented customer category adjustment that further hiked up the water bills. The implementation of this customer category adjustment drew huge protest from the public including legal summon from the Consumer Foundation Institute.

The high tariff is the only resource to pay the interests from various loans made by the private partners. PT Aetra Air Jakarta has loans from a number of banks and debt obligations totaling Rp 601 billion. The revenue from debt obligation in actual was used by the company to repay its loan to Citibank (AS\$ 69.5million). The interests of debt obligation must continually be repaid by the company up to 2015.

PT. Palyja also has debt obligations that must be repaid by 2012. Like PT Aetra, the revenue from debt obligation was also used by PT Palyja to repay its loan to European Investment Bank and Calyon Merchant Bank Asia. On March 18, 2008, the company again received a loan from the Asian Development Bank worth Rp 45 billion.

Another problematic issue regarding the Jakarta concession is the unmet targets. On the target of reduction of "unaccounted for water", since 2003-2007, PT Palyja never reached the planned target. PT TPJ/Aetra reached the target in 2003-4 but has failed ever since. On service coverage, PT Palyja managed to achieve the target in 2003 but not for the subsequent years. Meanwhile PT TPJ/Aetra achieved service coverage targets only in 2003 and 2004.

### **Batam Water Supply Concession**

The Batam water supply system was managed by the Batam Authority Body or Batam Authority since 1978 through operation of water reservoirs including its water catchment and water treatment plant to distribution network.<sup>7</sup> In 1995, the Batam Authority Body began to collaborate with the PT Adhya Tirta Batam or ATB in managing the water supply in the Island of Batam. The Batam Authority is responsible for the management of water catchment areas and raw water sources, supervision of the operation of water supply provision and giving approval of annual business plan and tariff adjustment. Meanwhile the ATB is responsible for the development of water service during its concession period, improve production capacity, use of appropriate technology, pay rental fee to the government because of renting government asset and reduce level of waste losses.



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In the early phase of concession agreement PT ATB was owned by three different companies, namely Biwater International Ltd, Bangun Cipta Kontraktor and PT Syabata Consulting. Biwater and Bangun Cipta, each owned 45% of company shares and the remaining 10% was owned by PT Syabata. In 2001, PT Syabata sold its shares to Biwater which at the same time was acquired by Cascal BV.

After half of the concession period was passed, PT ATB has managed to improve its production capacity almost fourfold, that is from 588 liter/second to become 2,335 liter/second. In addition, the number of customer has also increased, where at present the service coverage has reached 86% with water connection totaling 136,065 units. The level of non revenue for water is also viewed as one of the lowest in Indonesia, i.e. 26% in 2007.

From all concession agreements existing in Indonesia, the Batam concession has the highest internal rate of return (IRR) at 26.5%. As a business venture with relatively low risk because it is a business monopoly and supported fully by the government in the form of tariff guarantee, this level of IRR is definitely questionable. More so in its cost structure, ATB also included high cost fees - management fee at 22%, legal and professional fees at 6% and directors and commissioner fees at 7%

In October 2008, the Commission for Business Competition or KPPU established that PT ATB violated Article Pasal 17 of Law No. 5 Year 1999 on Prohibition of Monopoly Practice and Unhealthy Business Competition. The decision was based on the action of PT ATB in refusing to carry out new connection causing losses to the prospective consumers. Hence, KPPU penalized PT ATB to pay a fine of Rp 2 billion that must be paid to the State Treasury. In addition KPPU also recommended Batam Authority to immediately resolve the amendment of the concession agreement by taking into account the principles of fair and balanced business competition among business entities and general interest.

Prior to the overall revamp of the water sector of Indonesia, management of Indonesia's water resources was governed by Law No.11/1974 on Irrigation. Other related regulations on water resource and management also existed but were not properly coordinated. In spite of the absence of a cohesive policy on water resource, the prohibition against foreign investment in drinking water delivery and private sector involvement in community drinking water supply had been clear. This however was rendered irrelevant under the dictatorial regime of Soeharto. Privatization of water supply in various key urban areas proceeded in the early 1990s upon his discretion and to serve his vested interests.

Amidst the changing context of the times (decentralization and other political changes, economic realities, environmental considerations, etc.), the need to review and harmonize existing laws and regulations into a comprehensive water resource policy became a pressing concern. In 1998, the WB offered a program loan to Indonesia to restructure the water sector. Under the auspices of the National Development Agency (Bappenas) and the Ministry of Settlements and Regional Infrastructure, Task Force for Reform of Water Resources Sector Policy or WATSAL Task Force was formed in November 2, 1998 composed of government staff and NGOs to craft a common policy matrix with the WB staff.

In March 1999 WATSAL Task Force, together with relevant Directorate Generals and Government Coordinating Team/Water Resources Management Coordinating Team, submitted to the WB the Letter of Sector Policy, which included the WATSAL policy matrix and implementation plan. With the completion of these requirements, a US\$ 300 million Water Resources Sector Structural Adjustment (WATSAL) loan from the World Bank was immediately approved within the same year.



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It is not surprising then that the outcome of the Indonesian water sector reform program designed by government adhered to the World Bank's neoliberal globalization paradigm. Under this paradigm, management of water resource and provisioning of clean water were to follow the Public-Private Partnership (PPP) and the Private Sector Participation (PSP) concepts, with water now officially treated as an economic good.

## **Impacts**

The Water privatization experience in Indonesia provides a vivid illustration of how privatization failed to be the best and only solution to the multi-faceted problems of water service and delivery. It is not only a story of unfulfilled promises but also of how the Indonesians were disregarded in favor of private profit and vested interests.

## **Unfulfilled Promises**

### **A. On Efficiency, Expansion & Investments**

The privatization of PAM Jaya reeks of unfulfilled promises. Even the ADB reported in 2003 that "the private operator concessions in Jakarta have not been too successful in investments and efficiency improvements." To illustrate:

- Suez investment remains below target, at a \$200 million shortfall in 2003
- Suez claimed it had increased connections to 50%, but still short of the 70% target.
- In 1997 PAM Jaya's account for water leakage was 45%; on March 2006, the leakage was 53% for PALYJA and 55% for RWE-Thames.
- Water services in Jakarta's rich middle-class and industrial areas improved. However, most poor communities remain without piped water due to unaffordable connection charges, informal tenure arrangements, and lack of incentives for PAM Jaya or the companies to service these areas.

### **B. Performance of PDAMs**

the 2005 Department of Public Works data reveals that there has been no obvious evidence on the ability of privatization or private sector participation (PSP) in increasing the performance of PDAM. Only the PDAMs in Kota Medan and the regency of Sidoarjo are in healthy condition.

### **C. Consumers**

Water service and quality in Jakarta remains a problem under the privatized set-up. Consumers still have to boil their water while frequent water interruptions continue to occur leaving them without water for days. In Slum Area the water had stop running since 2003. Nevertheless, companies have already raised water tariffs six times; the first was in February 1998. Currently, the two companies are no longer required to conduct consultations with the Parliament or the governor as they have been given authority for automatic tariff increase every six month.



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#### **D.Labour Issues**

New problems were also created, such as the labor dispute concerning the welfare of water workers who were transferred or seconded to the private concessionaires. These workers received discriminatory treatment due to unclear employment status. The attendant issues resulting from this unclear arrangement include: (1) seconded workers received significantly lower salaries (about 2.5 – 5 times) compared to the workers of PDAM; (2) meal and transportation allowances did not increase since privatization and were deemed no longer responsive to current prices; (3) failure of companies to remit retirement allowances to the appointed retirement fund.

The dispute led to various protest actions and workers' strikes, and hundreds were fired. Those who were allowed to return to work were no longer allowed to go on field since it was feared that they would influence other workers to fight for their welfare

#### **E.Water Utilities remain in Debt Problem**

PAM Jaya's debt situation continues to worsen. The devaluation of the rupiah resulting from the 1997 Asian Financial Crisis spelled great losses for PAM Jaya as payments for the two concessionaires were dollar-denominated. As of 2005, this debt was reported to stand at Rp. 2.6 trillion.

A growing concern has been felt regarding Indonesia's two biggest bottled water companies, **Danonne** (a French company) and **Coca-Cola Bottlers Corporation**, as the new water law does not clearly provide for protection against commodification and even allows export of Indonesia's water resources.

#### **Some Important Note:**

1. Pursuing full cost recovery cannot deny the social implication of pricing in water services. The full cost recovery principle is not applicable to improve water service system in developing countries.
2. PPPs do not supplement public spending, they absorb it.
3. The right to water and sanitation depends on public control and funding of water infrastructure.
4. Government must apply a binding standard on private corporations. State have the primary obligation to uphold human rights, Private companies should also held accountable under human rights treaties, laws and standards.