

Indonesia Infrastructure Alert

A district court annuls PPP water concessions in Jakarta – now under appeal

In March 2015, the Central Jakarta District Court (the “**Court**”) issued a decision which, if implemented, would annul the concession agreements between Jakarta’s public water utility company, PAM Jaya, and two private companies.

The companies, PT PAM Lyonnaise Jaya (“**Palyja**”) and PT Aetra Air Jakarta (“**Aetra**”), provide clean water services to western and eastern areas of Jakarta, respectively. Their concession agreements with PAM Jaya – called Cooperation Agreements – were signed 17 years ago and still have eight years until expiry of their 25-year terms.

The parties

The case was filed in 2012 by individuals affiliated with the “Coalition of People Rejecting the Privatisation of Water in Jakarta” (“**KMMSAJ**”), a coalition reportedly formed by various community organisations. They named as defendants PAM Jaya (with Palyja and Aetra acting as co-defendants), as well as the President and Vice-President of Indonesia, the Minister of Public Works, the Minister of Finance, the Governor of Jakarta and the Jakarta House of Representatives.

PAM Jaya is owned by the regional government of Jakarta and was established in 1977. Palyja is a joint venture between the French company Suez Environment and PT Astratel Nusantara, which is part of the Indonesian conglomerate Astra International. Aetra is owned by PT Recapital Advisors, an Indonesian private equity firm, and PT Glendale Partners, an Indonesian infrastructure project management company.

The decision

The written decision of the Court is not currently available, but various reports have emerged based on the verdict read by the presiding judge at the hearing.

The Court reportedly found that the concession agreements were invalid because they had been entered into by PAM Jaya under undue influence by former President Suharto, rather than based on PAM Jaya’s own business decision.

Reportedly, the Court further found that the concession arrangements had caused significant losses to PAM Jaya, and concluded that the arrangements were inconsistent with PAM Jaya’s role and duty as a regional public water company under applicable regulations. The Court also stated that the

defendants had violated Jakarta residents’ human right to water.

Palyja and Aetra have both filed appeals to the High Court. Under Indonesian procedural rules, the concession agreements are preserved pending resolution of the appeal.

Broader context

The Jakarta water concessions have been controversial since their inception in 1997, near the end of Suharto’s “New Order” regime, and have been the subject of public criticism over the years. The concessions were renegotiated in 2001. In 2012, PAM Jaya announced that further amendments favourable to its position had been agreed with Aetra (but it seems that no similar amendments were agreed with Palyja).

The Court’s decision comes less than five weeks after a ruling of the Indonesian Constitutional Court that annulled the 2004 Law on Water Resources in its entirety. In that ruling, the Constitutional Court found that the law violated the constitutional requirement that water be under the control of the State and be used for the benefit of the people. It reinstated the 1974 Water Law, which is ambiguous regarding the role of the private sector in water services, among other areas. The Government is now reportedly drafting replacement regulations as a matter of urgency.

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April 2015

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