CRITICAL REVIEW OF JAKARTA WATER CONCESSION CONTRACT
# Chapter 1
CRITICAL REVIEW OF JAKARTA WATER CONCESSION CONTRACT

# Chapter 2
ANALYSIS ON BUSINESS ASPECT AND HUMAN RESOURCE COOPERATION AGREEMENT PAM JAYA, PALYJA AND TPJ

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Critical Review of Jakarta Water Concession Contract

Wijanto Hadipuro and Nila Ardhianie

Participation of private party in clean water management in Jakarta seems have to pass through a long and complicated way. The first participation of private party was commenced in June 1991 when the World Bank provided a loan to PAM Jaya, a public enterprise of clean water management in Jakarta, amounting to USD 92 million in order to improve infrastructure sector. The loan which is also supported by a loan from Japanese Economic Cooperation Fund is used to build installation of water management in Pulogadung. The two organizations represent the main sponsors in involving private party into clean water management in Jakarta.

Role of Thames Water Overseas Ltd was seemed in 1993. Thames joins with Sigit Harjojudanto who is a son of the President in charge at the moment, Soeharto. Suez starting its role in clean water supply in Indonesia since 1980s feels to be stolen and then joins with Anthony Salim as a partner.

Jakarta is separated into two areas by Ciliwung River. Western area is managed by a company which now is called as PT PAM Lyonnaise Jaya (Palyja) and eastern area is managed by PT Thames PAM Jaya (TPJ). Form of cooperation between PAM Jaya and its two private partners is a modified concession or it is also named as Operate, Develop and Transfer form. The cooperation is effective since February 1, 1998 and will be terminated its twenty-fifth birthday. As the consequence of Indonesian economical and political crisis in 1998, the agreement is amended and the new one is stated to be effective on October 22, 2001 without any change stated on the agreement’s term period.

Involvement of the private partners into clean water management in Jakarta is full of collusion, corruption and nepotism practices. Sense of economic interest by utilizing political power is very strong in involving the two private partners of PAM Jaya.

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1 Wijanto Hadipuro: Founder of Amrta Institute for Water Literacy and Lecture at Soegijapranata Catholic University Semarang
Nila Ardhianie: Director Amrta Institute for Water Literacy
3 See article Erik Swyngedouw, Privatizing H2O, particularly on corruption prejudice for the case of TPJ. Whereas statement on cronyism may be seen on Chapter 5 book The Water Barons. The first involvement of two multinational companies in water sector of Ondeo/Suez and Thames Water involving Anthony Salim and Sigit Harjojudanto. Both are crony and son of RI President at the era of Soeharto.
prior to the agreement is implemented and in the share selling to private partners when the cooperation is going on.

In his presentation and explanation, Achmad Lanti described about the role of President Soeharto in involving process of private partners into clean water management in Jakarta. The involving of private partners as well, is started by an advice of RI president dated on June 12, 1995 for Minister of Public Work Affairs who was charged by Moochtar. The advice shall have positive or neutral results but in fact it was ended by the involving of Sigit Harjojudanto, a son of Soeharto, through PT Kekarpola Thames Airindo (KATI) joining with Thames Water Overseas Ltd. in which Thames gives 20% the company shares to Sigit; and Anthony Salim, a son of Sudono Salim, Soeharto’s crony through PT Garuda Dipta Semesta (GDS) joining with Suez Lyonnaise des Eaux.

In performing of the two foreign private partners involvement, the share ownership was assigned several times. When the Cooperation Agreement (CA) was signed on July 6 Juli, 1997 KATI shares amounting to 20% is owned by Kekarpola Airindo and the other 80% is owned by Thames Water Overseas Ltd. Whereas 60% of GDS shares is owned by PT Elang Sakti Prabawa and 40% is owned by Suez Lyonnaise des Eaux.

On July 17, 1998 GDS was renamed into PT PAM Lyonnaise Jaya (Palyja) with 100% shares owned by Suez Lyonnaise des Eaux. KATI then was renamed into PT Thames PAM Jaya (TPJ) with share composition of 5% owned by PT Kekarpola Airindo and 95% owned by PT Thames Water Overseas Ltd. which then was renamed into RWE Thames Water.

On October 22, 2001 when the CA was signed, Article 7 states that the Second Party for Palyja is Ondeo Services (previously known as Suez Lyonnaise des Eaux) and PT Bangun Tjipta Sarana. The Second Party for TPJ is Thames Water Overseas Ltd. and PT Tera Meta Phora.

The involving of private partners into clean water management in Jakarta shows that clean water management has become an arena to exploit economic profit through the influence of political power. It is very interesting to observe the manner of private parties entering into Jakarta and how the shares of local partners could be assigned from a company to the other ones, and how

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5 See the book titled The Water Barons page. 73.

6 See Letter of Governor Number 1108/072 to Chief of DPRD of DKI Jakarta dated on April 13, 2000, Regarding: Result of renegotiation on cooperation between PAAM Jaya and the private partner.
at the end the foreign private partners could sell the shares in large amount to other company.

Economic interest gained by private partners expressed on several articles and mechanisms in the CA. One of them is mechanism of payment. Mechanism of payment for private partner is in form of water charge. As a note that water charge has no relationship with the tariff charged to the costumers. Articles 28. 1 the CA was amended and restated on October 22, 2001 (hereinafter referred to as CA) point e states that the first water charge which is effective on April 1, 2001 is Rp. 2,400,- and it would be revised for every six months according with the formula written on the Attachment 5 of the CA. The payment made through the water charge and its escalation formula provides profit security for private partners during the cooperation period. How it could be happened to be further discussed at the following section.

The increasing of water charge un-balanced with tariff improvement results shortfall for PAM Jaya. The consequence is a formula of automatic tariff adjustment made within every six months which was agreed on July 2004 for the period ended in 2007. Since the cooperation is performed tariff increasing has been happened on July 24, 1998, March 29, April 4, 2003, December 31, 2003, January 2005, July 1, 2005 and December 30, 2005.

Revenue obtained from water tariff is divided pursuant to provision set on Article 28. Revenue for PAM Jaya is monthly cost of PAM Jaya, payment of loan to Financial Affairs Department, expense for Regulator Body and payment for Region Original Income to DKI Jakarta Provincial Government which values are on Attachment 6 of the CA. Nevertheless the revenue of PAM Jaya does not mean a profit for PAM Jaya because if all revenue obtained from the tariff is not sufficient for payment of water charge to private partner, PAM Jaya have to be responsible on the loss in a form of shortfall.

Regulator Body was established on September 19, 2001. Its position is uncommon, due to its function and authority is regulated on the CA particularly on Article 51.1. The existence of Regulator Body is mandated on the article of the CA, even more Article 51.1 states that:

The Parties agree that regulator body (Supervisory Body) to be established by Governor of DKI Jakarta shall have function and authority as regulated on the Letter of Decree of Governor of DKI Jakarta Province written on Attachment 20....

Usually Regulator Body is independent and should have been established prior to the CA is signed. In many states like England and Wales which Regulator Body could be the model for other states, their Regulator Body is even functioned nationally. Hopefully the Regulator Body should compare the performance and tariff charged to the costumers and costumers would not be encumbered with inefficient matters by the private partners. For such case in Jakarta, if Regulator Body is really independent and established prior to the CA made, then we will get a better CA which does not too side with and protect business interests of the private partners.

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7 See Presentation of Nila Ardhianie in several mass medias in Jakarta in November 2006.
CRITICAL REVIEW OF JAKARTA WATER CONCESSION CONTRACT

Table 1

June 12, 1995

- Invitation to 2 International Operators
  a. Thames Water with KPA (June 30, 95)
  b. Lyonnaise des Eaux with GDS (August 21, 95)

Operator's Response

Letter of Decree of DKI Governor No. 1327/95, Dated on October 31, 1995

MINISTER OF PUBLIC WORK

1. The Operators submit FS within 6 months
2. Signing the MOU on October 6, 1995

Min. Of PW

Letter of Decree of PW
Minister No. 249/KP/SP/1995
Dated on July 6, 1995

Formation of Negotiation Team

“Formation of Coordination Team of Crossing”

LDE - GDS
Time Extension – 6 months

TW - KPA
Time Extension – 6 months

“Evaluation”

EVALUATION REPORT
THE TWO FS ARE ACCEPTED
June 4, 1996

NEGOTIATION Between the Operation and Negotiation Team

June 15, 1996 up to June 6, 1997

Letters of Minister of Home Affairs
No. 690/2416/PUOD/ & No. 690/2417/PUOD- To Approve the CA, on August 25, 1997

CA SIGNING

INTEGRIM FS, May 31, 1996

INTEGRIM FS, March 19, 1996

Minister of Public Work on April 6, 1996
ANALYSIS ON BUSINESS ASPECT AND HUMAN RESOURCE

COOPERATION AGREEMENT
PAM JAYA, PALLYJA AND TPJ

Introduction

Legal principles directly relating with the Cooperation Agreement (CA) between PAM Jaya with Pallyja and TPJ is an Instruction of Minister of Home Affairs Number 21 of 1996 concerning Directory for Cooperation between Perusahaan Daerah Air Minum (PDAM) and Private Party. The Instruction of Minister of Home Affairs states that each and every activity of PDAM with Private Party is basically purposed to improve its services covering:

1. Increasing Quantity.
2. Increasing Quality.
3. Increasing continuity.
4. Increasing Efficiency.
5. Increasing Society Prosperity.  

The Cooperation Agreement (as amended and restated on October 22, 2001) on Supply and Improvement of Clean Water in Jakarta states that aims and objectives of the cooperation agreement set out on point 2.2 are as follows:

1. to support economic and social development in the Area of DKI Jakarta Province by means of developing on water infrastructure in the Area of Cooperation pursuant to the provisions herein;
2. reach the range of piping water supply widespread in the Area of Cooperation;
3. reach substantial expansion in distribution networking of Clean Water and Drinking Water;
4. to involve participation of private party in producing and distributing Clean  

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8 Forgive me please if data for the analysis is very limited reminding that Clause 47 of the CA states that the competent authorities keep the secret all of their commercial and technical information. It is strange that there is such a clause in a CA relating with public interest even relating with the need of many people.

9 On November 9, 2005, President issues a Presidential Regulation (PP) Number 67 of 2005 on Cooperation of the State and Private Business Enterprise in Providing Infrastructure. The PP is further progressive compared to the existing regulation including the Instruction of Minister of Home Affairs as well as the regulation for it. Clause 6 point f of the PP states that the cooperation shall mutually result profit and Clause 12 paragraph 2 and Clause 18 states that the system must go through a general auction. Mutual cooperation is not mentioned in the Instruction of Minister of Home Affairs. In the Instruction the cooperation process may be carried out by direct appointment and not having to be with a general auction.
ANALYSIS ON BUSINESS ASPECT AND HUMAN RESOURCE

Water and Drinking Water in Area of DKI Jakarta Province in order to accelerate rapid removal of water supply backlog\(^1\) (according with English translation in the CA) and to continue the improvement of Service Quality to Consumers;

5. to provide a system obliging the costumers to follow a change from underground water supply into piping water supply system for the places where piping water has been available;

6. to improve supply and management of Clean Water and Drinking Water, if its finance and technique is proper, including by means of reforming The Existing Production Facility and The Existing Distribution Facility, and if it is proper, to build New Production Facility and New Distribution Facility to supply Clean Water and Drinking Water in the Area of Cooperation;

7. to improve efficiency in water supply system;

8. to secure quantity, quality and continuity of Supply of Clean Water and Drinking Water and Facility of Production and Distribution in the Area of Cooperation;

9. to comply with Technical Target and Service Standard;

10. to improve Service to Costumers in the Area of Cooperation;

11. to decrease quantity of Water Loss level in the Area of Cooperation in accordance to Technical Target;

12. to improve operational performance, to increase the ability in managing the company and personal performance by trainings, technology transformation and general improvement on skill of the Employees working on the Project and to develop operational and technology system;

13. to increase Ratio of Service Range in the Area of Cooperation by accelerating the availability of new connections to supply Clean Water and Drinking Water to Costumers; and

14. to make a project which is able to finance itself and carry out economically for the Parties.

According with the CA, private partner as the Second Party shall have skill and fund and other resources relating with the plan, construction, management (including to read meter, to prepare bill and to dun) and operation of facilities for production and distribution of Clean Water and Drink Water.

First article of the chapter shall make endeavor to see attainment of the above objective even though with limited data. The second article of the chapter consists of study of business aspect of the CA particularly from the side of Private Partner and the case of PAM Jaya employees assigned to assist the private partners.

\(^1\) Backlog according with AS Hornby Dictionary is an accumulation of work or business (e.g. arrears of unfulfilled orders) not yet attended to.
Table 1 shows that PAM Jaya prior to cooperate with private partner was a PDAM that capable to get profit. In 1990 Its Return on Fixed Assets was 2.43%.

Based on Letter of Decree of Minister of Home Affairs Number 47 of 1999 concerning Guideline for PDAM Performance Assessment, then PDAM Jaya both prior to and after getting partnership with private party, indicates average and bad points. Bad point with lowest score of 1 and good point with highest score is 4 or 5. Service range have score about 3 and 4 (score 3 for service range of 40% - 60%, whereas score 4 is for service range of 60% - 80%). Score of loss level is only 1 (for water loss level > 40%). Whereas score ratio of employee per 1000 costumers is about 1 and 3 (score 1 for ratio > 10 and score 2 for ratio 7 - 9).

Based on Report of 2003 Annual Performance Evaluation made by PAM Jaya there are several interesting matters to be researched. Firstly that production of water must be fulfilled, therefore nothing could be the reason for private partner not to reach the target of other parameter. Secondly, it is wonder that the service range target is down compared with data on Table 1 of the chapter. In 1995 the service range has reached 54%,11 whereas target of Palyja in 2003 is only 51% and TPJ is 64.4%. The same thing is happened for water loss level. Palyja’s Target is 45.52% and TPJ is 41.03%.

Based on the report it is proven that performance of Palyja un-reaching the target is service range (realization is 49.06% of the target 51%) and at performance TPJ is water loss level (realization is 44.37% of the target 41.03%). There are some samples un-meeting with quality standard particularly on chemistry/physically and bacteriological control at facility of production and as bacteriology parameter at facility of distribution for both partners. In case of customer’s complaint, complaint on breaking of main pipe is 4.968 (Palyja) and TPJ which cannot be evaluated. Complaint on no water current is 15.741 for Palyja and 11.891 for TPJ. Complaint on water quality is 1.960 for Palyja and 508 for TPJ. Principle problem faced by the private partners is water pressure at connection point. Both partners cannot reach the target.

Tabel 2 shows ratio on target and realization prior to the CA and until the CA is terminated. Target attached on the table is the target after the CA amended. It is seen that the amended CA results that the target of service range is down drastically. In 2000 target of service range is 63%, while after the CA is amended in 2001 target of service range is only 50%. As well as water loss level, in 2000 target of water lose level is 42% whereas in 2001 it is adjusted into 47%. Target of sold water is also adjusted from 281 million cubic in 2000 becomes 236 million cubic in 2001.

From the table we see that realization of sold water since 2001 is always over the target, but water loss level is always under the target. Whilst service range is a little more / less than the target. Water service does not mean that service to customers better, because service is only measured by number of lines not by quality of service as water pressure and reliability and how long the

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11 Actually inhabitant of Jakarta in 1995 is only 8.8 million people whereas in 2005 it is about 9.9 million.
water flows. The above performance shows that private partners are only run for profit, because the sold water volume means income for private partners, reminding their obtained water charge is counted from the sold water volume multiplied by water charge.

The private partners have also failed to pay their loan to Department of Financial Affairs and the propensity of private party not to pay/admit their penalty charged due to un-reaching the target.

Other problem is propensity of realization on the private party’s operational cost which is always bigger than the cost projected on the CA. One of the reasons is component of cost which is unavailable on the CA as know-how fee. The other wondering thing is charge of loan security that in 2005 amounts to Rp. 1,923,738,581 for Palyja.

At PAM Jaya side the big problem is shortfall until the end of 2003 amounting to Rp. 737.6 billion. The shortfall average per year during the cooperation term amounts to Rp. 123 billion. It is caused by difference between water charge must be paid to the private partners added by PAM Jaya and revenue from tariff. On the other side, in 2005 Palyja has scooped net profit up to Rp. 58,302,878,116 and in 2004 Rp. 114,829,198,480 or in the average it is Rp. 125,238,669,977. It means that actually the shortfall value could be covered by only Palyja’s profit if there is no cooperation with private party. So that PAM Jaya still has potential of profit equal to TPJ’s profit, with performance assumption with or without the CA is the same, which is very reasonable reminding that performance of private partners is at the average compared with other PDAM in Indonesia.

**Study on Business Aspect of the CA**

At this section, study on the CA is made to know whether the CA is matching between business risk of the private partners and their gained profit. And whether there is any unbalancing between protection on the private partner’s business risk and public interest reflected in technical target and service standard.

### Table 1
Performance of PAM Jaya-Palyja-TPJ From Time to Time

<table>
<thead>
<tr>
<th>Indicator of Performance</th>
<th>Unit</th>
<th>1990</th>
<th>1993</th>
<th>1995</th>
<th>2003 Palyja</th>
<th>2003 TPJ</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Range</td>
<td>% total</td>
<td></td>
<td></td>
<td></td>
<td>54</td>
<td>49.06</td>
</tr>
<tr>
<td>Water Loss Level</td>
<td>%</td>
<td>40</td>
<td>53</td>
<td>47</td>
<td>44.93</td>
<td>44.37</td>
</tr>
<tr>
<td>Ratio of employee per 1000 customer</td>
<td>10.58</td>
<td>8.78</td>
<td>8.8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Return on Fixed Assets</td>
<td>%</td>
<td>2.43</td>
<td>4.07</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

CA's objectives are detailed in the technical target and service standard on Attachment 8.2 and 8.3 herein. Article or clause on the CA regulating the two matters namely Clause 20 for Technical Target and Clause 21 for Service Standard.

Unfortunately service standard and technical target reflecting public interest is limited by various terms which no guarantee the attainment. As the example:

1. Clause 20 point a states that technical target may be amended from time to time in line with Financial Projection. It means that if financial realization is deviated against the projection then the technical target may be amended.

2. As well as service standard regulated on Clause 20 point a.

3. Clause 24.1 point iv\textsuperscript{12} states that if annual investment plan, program of annual Operation and Maintenance, annual Financial Projection and annual budget approved by the First Party and/or Regulation Body materially different with Financial Projection set out on Attachment 6, The Parties shall agree with the amendment to the Technical Target and/or Service Standard directly resulted by the action.

In relating with the above point 4, the private partners have tried to play with operational cost by carrying out transaction with unique supplier and the supplier has special relationship with them. One of the evidences is the arising of knowhow cost for Suez Environment having special relationship with Palyja and cost of loan security by the same corporation.

It is very hard to get guarantee that public interest existing on the technical target and service standard will be reached, because there are many clauses enabling to amend the technical target and service standard, such as:

1. In case of arising a problem relating with basic water from PJT II and processed falling water from PDAM Tirta Kerta Raharja Tangerang both in quality and/or quantity then technical target and service standard must be discussed in order to adjust them. The adjustment shall be effective since the date when the first lack happened on quality and quantity (see Clause 11 page 64 of the Palyja CA). Such agreement should be made by private party to supplier not to PAM Jaya.

2. In case of PAM Jaya fails in endeavoring to cover the people’s deep well in which the service has been covered by the private party, then technical standard and service standard may be lowered (see Clause 12 point c).

3. As well as in case of new retribution charged by governmental institution to customers, which may influence customer service demand so that it may result decrease significantly at portion of the private party then technical target and service standard must be adjusted since the retribution is effective (see Clause 26.6).

Financial Projection on Clause 27 takes an important role in relating with interest of the private parties. In fact, revenue of the private partners is based on water charge (not on tariff, for the private partners tariff no increased is not a problem because shortfall is burden of PAM Jaya), but it is wander that operational cost which is controllable for the

\textsuperscript{12} See Clause 1 point on Financial Projection (Page 13 for the CA of).
private partners is proven to be able in influencing technical target and service standard.

Based on Schedule 5 water charge will be adjusted automatically based on the following formula:

\[ C_n = \left[ C_0 \times \left( F_n \times G_n + H_n \times O_n \right) \right] + K_{sn} + K_{in} \]

**Notes:**
- **C**: water charge
- **n and o**: period of water charge
- **F**: quality of capital cost allocation
- **H**: quality of operational cost allocation
- **F+H = 1** and for period 2002-2007 F= 25% and H= 75%
- **G**: coefficient of adjustment on the private partner’s capital cost which the 80% is influenced by construction index and the 20% by Consumer Price.
- **O**: coefficient of adjustment on the private partner’s operational cost.
- **Ksn**: compensation for variation on Rupiah exchange value against foreign currency.
- **Kin**: compensation for variation on interest level.

The interesting thing is K component in water charge formula. K Component guarantees that business of the private partners is secured from fluctuation of exchange value and interest level.

Whereas O formula is as follow:

\[ O_n = \frac{a_n}{L_n} \times \frac{L_n}{L_o} + \frac{a_n}{X_n} \times \frac{X_n}{X_o} + \frac{a_n}{E_n} \times \frac{E_n}{E_o} + \frac{a_n}{M_n} \times \frac{M_n}{M_o} + \frac{a_n}{B_n} \times \frac{B_n}{B_o} + \frac{a_n}{N_n} \times \frac{N_n}{N_o} + \frac{a_n}{T_n} \times \frac{T_n}{T_o} \]

**Notes:**
- **L**: index of manpower (more specific thing is annual average cost (basic salary, allowance, pension, insurance, income tax) for the last 12 months of an employee, which is transferred)
- **X**: index of chemical material
- **E**: index of electricity power
- **M**: index of material
- **B**: index of basic water
- **N**: index of purchasing clean water via meter inter areas
- **T**: index of purchasing clean water

At the formula we see that all uncontrollable costs for the private partners are included into water charge escalation, including transferred salary of PAM Jaya’s employees whereas policy is on PAM Jaya side\(^\text{13}\), inflation, fluctuation of exchange value and interest rate. If in an ordinary business, case the endeavor to omit risk of company’s exchange value, the company has to pay a certain aggregate of money in order to carry out hedging, in this case even the private partners may gain more profit than fluctuation of exchange value.

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\(^\text{13}\) Do not wander if there is a complaint stating that salary of the new employee sourced from PAM Jaya does not increase within 6 years of the cooperation. PAM Jaya is in a very dilemamic position because if their salary is increased then water charge will be increased too then it will result an increase on the shortfall. posisi yang dilematis karena jika gaji mereka dinaikkan maka water charge akan naik yang akan berakibat pada kenaikan shortfall.
As well as a change on tariff of tax. If tax assumption is changed then the parties are obliged to adjust the water charge with due observance of each and every loss suffered and profit gained by the private partners (see Clause 38.5 of the CA).

The private partners also assume that if an emergency needing action plan (as an example given by the writer namely dry season in which people need water supply) is happened accordingly all expenses and costs incurred by the private partners shall be admitted as a loan of PAM Jaya to the private partners (see the CA on Clause 36.2). 14

The most wandering thing is that private partners are secured to get profit at 22% through terms of Internal Rate of Return on Clause 27.1 and Schedule 6 of Consolidated Financial Projection.

Endeavor to secure profit of private partners is also seen at cases arising due to termination which will be discussed at the following part. More over profit projection of the private partners must also be paid by PAM Jaya if termination is made prior to the natural termination time of the CA.

Essence of the description is a fact showing an unbalancing between public interest and it is reflected on technical target and service standard which can be changed anytime and the fact of shortfall average namely Rp. 123 Billion per year; with a very strong profit security of the private partners seen from the large number of clauses endeavoring to secure their profit even from uncontrollable and controllable risks as operational cost. High profit high risk is not effective in this case. But high profit no risk is effective in the CA.

Based on the CA it is stated that the private partners are appointed due to have fund. Is that true? In case of Palyja (TPJ has no data), investment on fixed asset amounting to Rp. 644,761,756,833 is financed by loan. All are loan at Calyon Merchant Bank Ltd. and European Investment Bank. At the moment obligation with net value is Rp. 646,235,274,767. It means that all investment is financed by loan. So that it is nonsense that private partners have funding capability. The fund paid by private partners is only paid capital amounting to Rp. 200,630,000,000 which value is actually not so big compared with DKI Jakarta budget amounting to Rp. 17.94 trillion. The paid capital has been covered by accumulated profit of Palyja that until December 31, 2005 has reached an amount of Rp. 211,003,903,490.

14 It has been happened (See the Report on Investigation Result on Deficit/Shortfall, Capex, Opex and Loan of PT PAM Lyonaisse Jaya (Palyja) for Period of February 1, 1998 up to March 31, 2001) made by Supervisory Body on Finance and Development Representative of DKI Jakarta Province I Page 5 on water charge upon non-waterbilled of tanker car.
Termination Trap

In view of the facts showing that the CA seriously protects the private partners from all risks and the realization that actually performance of the private partners is ordinary and that shortfall can actually be covered by only profit gained by Palyja (not by TPJ). Accordingly it is really necessary to examine the possibility of making termination far prior to the cooperation agreement which should be terminated in 2022.

Based on the termination consequences, termination is divided into 5 categories:

1. Termination I: It is happened pursuant to clause 41.2 (force majeure) or 49.3 (becoming non economic due to amendment to rules and legislations).

   **Consequence of the Termination**: The I Party is obliged to pay Basic Price of Termination deducted by money amount of insurance policy + excess amount if any.

2. Termination II: It is happened pursuant to clause 42.1(c) (natural Termination due to the II Party fails to give Implementation Security of asset maintenance) or clause 42.2 (Termination made by the I Party).

   **Consequence of the Termination**: the I Party is obligated to pay Basic Price of Termination deducted by fine and deducted by cost of the I Party’s termination ...........

   Termination made by the I Party if:
   · A miss statement made by the II Party resulting that the CA is illegal.
   · Default of the II Party in a calendar year reaching 70% of the Technical Target.
   · Default of the II Party in making payment to the I Party....... 
   · Default of the II Party in taking over responsibility on the contract in Clause19.3.
   · Share assigning (including all issuance of additional shares, loan security or procurement) other than the things that is pursuant to Clause 7.

3. Termination III: It is happened pursuant to clause 42.5 (Termination made by the II Party)

   **Consequence of the Termination**: The I Party is obliged to pay Basic Price of Termination added by Current Net Value (EBT) amounting to 50% of the remaining years based on the average of 2-year historical profit and projection of the next 2-years.

   Termination is made by the II Party if:
   · Default of the II Party in receiving payment.
   · Action to private the I Party which makes the II Party losing out.
   · The I Party is liquidated.
   · A miss statement of the I Party resuting that the CA is ilegal.
   · Unreached resolution of deviation on devided income.

4. Termination IV: It is happened pursuant to clause 43 (option to purchase of the I Party after 10 years the CA has been running or in 2007).

   **Consequence of the Termination**: Basic Price of the Termination added by Current Net Value of profit projection from 100% of the CA’s remaining years.

5. Termination V: It is happened pursuant to clause 42.1 (a) (when the period is terminated).
Some terminologies in termination:


2. Current Net Value: value (Rp) at the moment when the calculation is made from projection of annual profit of the II Party in the next time. Before tax with discount factor 15%.

3. Basic Price of Termination: Net Book Value added by cost arising due to termination.

Data of Net Book Value may be excerpted from Ballance Sheets of the Private Party. Per December 31, 2005, for Palyja the Net Book Value of Fixed Asset amounts to Rp. 644,761,756,833 of the total asset amounting to Rp. 1,232,835,146,823. and certantly added by PAM Jaya’s receivable due to shortfall amounting to Rp. 264,462,005,436.

Projection of profit may be obtained from Schedule 6 on Consolidated Financial Projection (Total Second Parties Projected Revenue Shares) deducted by Operational Cost in agreed Operational Expenditure.

As Palyja’s profit report before tax in 2005 amounts to Rp. 84,459,714,445 and Rp. 166,017,625,509 in year 2004. In the average it amounts to Rp. 125,238,669,977. (+/- Rp. 125 Billion)

The following table shows alteration of termination and its consequence.

### Table 3
Component of Cost for Termination

<table>
<thead>
<tr>
<th></th>
<th>Termination I 2006</th>
<th>Termination II 2006</th>
<th>Termination III 2006</th>
<th>Termination IV 2007</th>
<th>Termination V 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Determined Factors</td>
<td>Force Majeure</td>
<td>Default of the II Party</td>
<td>The II Party</td>
<td>Option of the I Party to buy back share</td>
<td>CA Natural termination</td>
</tr>
<tr>
<td>Out of pocket cost</td>
<td>Termination HD</td>
<td>Termination HD</td>
<td>Termination HD + EBT for 50% of the CA remaining period (=8 years)</td>
<td>Termination HD + EBT for 100% of the CA remaining period (=15 years)</td>
<td>Zero</td>
</tr>
</tbody>
</table>

Notes: the above figures are without taking into account time value of money which in the CA it shall be adjusted to discount factor amounting to 15%.

*) the calculation is only for Palyja.
From the side of pocket cost, Termination V is the cheapest cost, because there is no termination cost. But we have to remember that potential of shortfall will be more and larger because water charge will always raises whilst tariff increases uncertainly (particularly after period of Automatic Tariff Adjustment is ended, we have to remember that there is many political interests and social resistance). Shortfall in the future is assumed to be covered by profit of one of the private party (if the CA is terminated then profit of the private party becomes profit of PAM Jaya), because average of shortfall in a year is almost the same as the average of Palyja’s profit amounting to Rp. 125 billion. If profit of TPJ is the same with profit of Palyja, accordingly opportunity cost for Termination V is Rp. 125 billion multiplied with 16 years of the CA remaining years or equal to Rp. 2 trillion. We have to remember that since semester II in 2003 the tariff average is larger than water charge, so that if the condition is continued the potential of profit will be larger and as the consequence is that opportunity cost letting the CA naturally ended in 2022 will be larger.

The next cheapest cost of termination is Termination I and Termination II. PAM Jaya only pays the Basic Price of Termination and it is still deducted by cost or policy income. Termination I is possible to be happened if there is a force majeure resulting various impacts as described on Clause 41.1 namely war, public riot, natural disaster, worker strike, radiation, nationalization, lack of material, lack of electricity power, press- ing and supersonic sound, and condition of weather. In Termination I the most possible event is force majeure of worker strike or nationalization, such as through the Laws of the Regional-Owned Enterprise that is arranged and states that PDAM must be nationalized because it is related to the need of large people. Termination II is possible to be happened if the II Party for TPJ cannot reach 70% of the technical target and if the share assignment is not appropriate to the procedure as it is which legal consequence is run after. The above cost is still deducted by opportunity cost shortfall which is happened at the Termination until ending of the CA. Cost for Termination I and II in gross is the cost of out of pocket deducted by opportunity cost. Cost of out of pocket is value of Basic Price of Termination which value is equal to net value of the asset added by loan of PAM Jaya or amounting to Rp. 644,761,756,833 added by
ANALYSIS ON BUSINESS ASPECT AND HUMAN RESOURCE

Rp. 264,462,005,436. total of out of pocket cost is about Rp. 910 billion. Such amount must be deducted by opportunity cost which value is equal to value of opportunity cost of Termination 5 amounting to Rp. 2 trillion. So if we take Termination I or II then there will be profit amounting to Rp. 1.09 trillion.

If the profit average before tax (EBT) of Palyja in 2004 and 2005 may be assumed as standard of profit projection of the two parties in the future, then in every year the private partners will get profit amounting to Rp. 250 billion.

Cost of out of pocket of Termination III consists of Basic Price of Termination added by Current Net Value for 8 years (remaining period of the CA) deducted by opportunity cost. Basic Price of Termination amounting to Rp. 910 billion added by profit per year of the private partners amounting to Rp. 250 billion multiplied by 8 years and deducted by opportunity cost which value is equal with opportunity cost of Termination 5 amounting to Rp. 2 trillion. Cost of Termination III amounts to Rp. 910 billion.

Cost of Termination IV (option of PAM Jaya to buy back the share) is the most expensive due to beside the cost of Termination V it shall be added by investment value in 2006 net and the aggregate of Current Net Value is not for the 50% period of the CA but for the 100% of CA remaining period or equal to 15 years. The opportunity cost is for 15 years. Termination IV is the most expensive. Once trapped in involving private party then share assignment prior to the CA’s termination will be the most expensive cost.

Termination, Is it Possible?

Share assignment of TPJ in 2006-2007 actually constitutes an important moment if the Government of DKI Jakarta through PAM Jaya intends to terminate the CA. Unfortunately the Governor and formed Composite Team exactly seek various reasons to set straight the share assignment both by legal opinion of Amir Syamsudin & Partners Legal Consultant that tries to reconstrue Article 7.2.c (the article contains multi elucidations. What a pity the legal opinion states that the shareholders has no relationship with the private partners’ professionalism) and by setting straight the share assignment which is strengthened by the first party (PAM Jaya) trough a notary deed on 12 prerequisite having no legal power. Including into the setting straight is the moment when PAM Jaya and the Composite Team ask service of a Singaporean legal consultant to investigate the new private partner. It is obligation of the new private partner to prove its reliability but not the first party trying seriously to do it. If PAM Jaya is hesitate whether on the new share holder’s hand TPJ management won’t be handled by professional management having skill in business of water management and whether the new shareholder has sufficient fund to, then actually PAM Jaya may not issue approval and Termination II has been happened for the case of TPJ.

Termination I is due to force majeure if the case of employment and its consequence is opened to all employees of PAM Jaya who are assigned to assist and then they refuse this condition, it is potentially happened. The followings are complete details on employment problem of PAM Jaya, who are assigned to assist the private partners.
Problem of Status of PAM JAYA’s Employees Assigned to assist Private Partners

One of problems faced by both the private partners and employees of PAM Jaya is the status of PAM Jaya’s employee assigned to assist the private parties. A Letter of Governor Number 1108/072 on result of cooperation negotiation between PDAM Jaya and the private partners to Chief of DPRD of DKI Jakarta Province dated on April 13, 2000 point 5 describing the problem and the resolution which is (exactly) taken by the Governor.

Based on the CA dated July 6, 1997, all operational employees of PDAM Jaya are automatically assigned to assist the private partners with status as employee of PDAM Jaya. We don’t know whether based on whose evaluation and when the evaluation is made, point 5 of the Letter of Governor states that ‘In the field implementation there is often happened an un-equivalence in treating between employees of PDAM Jaya, assigned to assist the private partners and direct local employees of the private parties, due to a dualism treating upon the management system of employee and management’.

The new Cooperation Agreement has changed the system of employee management into single management. The private partners agree to receive all employees with status of permanent without prejudice the employee’s rights on employment, income, career opportunity and the employees are asked to choose one of the three options:

1. Become direct privat partners’ employee.  
2. To be Fully assisted by the private partners but still hold NPP.  
3. Voluntarily resigns from the position with separation pay.

The option is reconfirmed through Instruction of Governor of DKI Jakarta Province No. 94 of 2000 dated May 5, 2000 on Implementation of Single Management for employees of PAM Jaya who are assisted through Employee Assignation with theree options.

The amended and restated CA dated on October 22, 2001 at Article 36 on Human Resources detailly determines the status of employee. Article 36 on 32.2 and 32.3 distinctively states that direct employee both with and without Identity Number is stated to be resigned as the employee of the First Party (PAM Jaya) and at the same time he/she is obliged to be re-employed by the Second Party. The difference between them is that direct employee is entitled to receive appreciation money from PAM Jaya as well as the private partner. Whereas the direct employee with identity number receives appreciation money from PAM Jaya without appreciation money from private partner. Pursuant to 32.6 PAM Jaya shall issue a letter of decision for the employee choosing one of the three options and shall give minutes of the employee surrendering and receiving and the private party shall sign the work agreement with the direct employee and direct employee with identity number.

Article 32.12 regulates on Employee Removing when the CA is terminated. Point a states that if PAM Jaya won’t employ a part of the private party’s employees then the private partner is entitled to continue employing or discharging and giving separation fee.

Status of PAM Jaya’s employees who are assigned to assist the private partners, in spite of there is an instruction of Governor and a regulation in the CA, until the report is
made (January 29, 2007) is still uncertain. PAM Jaya’s employee who are assigned to assist the private partners still assume that they are employees of PAM Jaya, whereas based on an instruction of Governor and the CA it is clear that they are not employees of PAM Jaya anymore. The floating status is assumed to be done in order to avoid the next fluctuation if the status assignment is distinctively and transparently stated to them.

Change of the PAM Jaya employees’ status clearly has larger and further implication for the employees. As employee of PAM Jaya, they obey a Letter of Decree of Minister of Home Affairs Number 34 of 2000 on Guideline of Employment for Regional Enterprise of Drinking Water/Perusahaan Daerah Air Minum (PDAM), and as employee of private partner they have to obey to regulation of Department of Manpower.

Some of the implication is that pursuant to Letter of Decree of Minister of Home Affairs on Article 6 it is practically impossible that an employee of PDAM is discharged. An employee is approved to resign or be discharged if:

1. Passes away.
2. Proposes to resign upon his will.
3. His/Her duty period is ended due to have reached maximal age for the job namely 56 years old.
4. He/She do not comply with provision set out on Article 3 points c, d, g, h and i.
5. He/She has made PDAM losing out.

Article 3, point:

a. He/She has never been sentenced in jail based on Judgment of a Court having a permanent legal power.
b. He/She has never involved into any movement inconsistent with Pancasila and UUD 1945 and the State as well as the Government.
g. Having good conduct which is proven by a Certificate issued by local Police Department.
h. Having healthy body which is proven by a Certificate issued by a Physician.
i. At the same time may not be the employee of other Company or as a Civil Servant of the State.

An employee of PAM Jaya clearly does not apply a working discharge only due to the CA is terminated. Whilst as an employee of private partner such work discharge constitutes a common condition. And the CA regulates the possibility of laying off after the CA is terminated.

Besides laying off, based on aforesaid Letter of Decree of Minister of Home Affairs, employee of PDAM shall also get various allowances as production service given if at the closing of fiscal year, PDAM gains profit. (Article 9) and award both due to
working period and working achievement or pension period (Article 10). The provision is uncertain if the employee’s status is assigned into an employee of the private partner. Moreover after the report is made there is no Collective Labor Agreement for the employee working in for the privat partner.

The status of PDAM’s employees in general is not Civil Servant. Pursuant to Article 1 of Letter of Decree of Minister of Home Affairs at point d states that “Employee is PDAM’s Employee who are appointed by and discharged by Board of Directors”. If there is an employee he/she has to be and assisted employee. But even though they are not Civil Servant, status of PDAM employees based on Letter of Decree of Minister of Home Affairs, is not the same as employees’ status of PDAM’s private partner. Directory Data of Perpamsi of 2006 stating that 0 total of Civil Servant in DPD DKI Jakarta is possible to be happened, even it has to be checked whether there is Civil Servant who is assigned to be employee of the private partner.

The above description shows that involving private party in managing PDAM as model in Jakarta, modified concession or Operate, Develop and Transfer has arisen complicated problem on the employees who previously are the employee of PDAM both for the private partner and for the employee of PDAM.

In the case happened in Jakarta The private partner has a sophisticate thought about the status of employee. Salary of the PAM Jaya’s employees who are assigned to assist or whose status is assigned into employee of the private partner has been inserted into component of water charge calculation with escalation formula. But the private partner does not estimate that status of PAM Jaya employment makes them uneasy to organize their employees because employees of PAM Jaya as if obey to the two bosses and of course they prefer feel as employee of PAM Jaya and obey to the boss, if the boss is exists and still in function and if it is not in function they won’t fully obey to the private partners.

Development of employee status constitutes a deceit to the employees and public and it may lose out the public due to their unoptimal performance.

**Conclusion and Recomendation**

CA between PAM Jaya and private partners need to be considered to be terminated as soon as possible in view of the private partners’ performance that is not different with and even turns down if it is compared with the condition prior to the CA, it is the fact that the private partners have clearly no fund, no security on the public interest to be fulfilled and surplus on the private parties’ profit.
WHAT SHOULD WE DO WITH THE COMPLICATED CA?

The above description shows that there are many problems in the CA that have been amended and restated on October 22, 2001. There are 3 alterations to be taken:

1. PAM Jaya shall take termination on the CA with its various alternatives.
2. To amend the CA in order to make it balance between interests of public and the private partners.
3. To let the CA naturally terminated.

This part particularly will try to explain necessary revision if the CA will be still continued and its consequences if the CA is not revised and naturally terminated in 2022.

Revision on the CA

The smoother step is by continuing the CA but the CA have to be revised. Chance to revise the CA for TPJ is rather opened through a notary deed made for the share assigning. It is a pity that the Composite Team does not in duty or intentionally does not on duty to prepare in details the necessary revision on the CA. The moment to utilize a good bargaining position at the moment the TPJ share assignment but it is not well utilized.

One of the revision principles of the CA is an endeavor to balance the public and private interests. The endeavor to balance them is by pressing the achievement on technical target and service standard or by decreasing protection on economic interest to gain financial profit (IRR) with small risk for the private partners or combination between them.

Revision to the CA mentioned below is a part of the necessary revisions to be carried out. Deeper study on various aspects and knowledge should be made completely in order to get a balance CA. One of the important thing on the CA Jakarta, distinguishing it with other CA as Atlanta CA in which the First Party distinctively and explicitly give a job so that the First Party shall be dominant. It does not happen in Jakarta CA.

In related to the technical target, the important thing is total of connections. Addition of total new connections has to be addressed to those who really need or in order to prevent environmental degradation caused by excessive absorption of soil water. If priority is for anyone who needs then the marginal and poor groups shall be priority, if the destroyer is prioritized then service to industry should be prioritized. Both have very different implication. The need for quality industry is not the same high with the need of domestic drinking water. For poor and marginal group beside claim of quality is higher and the tariff is cheaper.

The priority determination is very important because it directly results to the shortfall and to prevent addition of undirected connection. We have to remember that the private partners will have tendency to add connections where water pressure can fulfill pressure service standard on the customer connection.
Other balance is that relating with penalty. As the example: penalty on a default to fulfill target of leakage. Formula in Attachment 15 for water loss level is Rp. 50 million (target of leakage deducted by realization) 100, it means that for different of target is 1% or 1/100 and penalty is Rp. 50 million multiplied by 1 and multiplied by 100 or amounting to Rp. 5 billion. If the target is well arranged and implemented actually the penalty is sufficient. The problem is that whether the target is arranged and implemented well or otherwise. Penalty for a new connection is Rp. 10,000 per connection. For the example: addition for every end year (See point 8.2.2 Indicative Technical Target, Attachment 8):

The first to the second is 30,000connections (281,607 deducted by 251,607). If it does not fulfill the target at all then total of penalty is Rp. 300 million. The total is not material. But the total of penalty shows that PAM Jaya does not prioritize to add its total connection. The second to the third is equal to the above connections. The third to the fourth is only 15,000 connections, and The fourth to the fifth is 35,000 connections.

Total of the penalty does not support the private partners to prioritize the addition on the connection because additional target is small and the penalty is not significant.

Technical implementation of Penalty should be paid attention is anything relating with service standard. In case of water pressure, if three times consecutively the pressure on the customer’s point does not comply with the standard then the private party shall be charged by penalty amounting to Rp. 7 million per point of customer. Unfortunatelley there is no explanation of who will measure and how about the frequency. Certainly person who precisely knows whether the pressure is stable or not is the customer not officer of PAM.

From the above sample we conclude that there are three main problems relating with fine and penalty: it is necessary to enforce the fine implementation for the fine appropriate to the priority of target achievement as for water loss level, the fine is too small for technical target or certain service standard as total of connection and technical implementation of monitoring. It is necessary to be revised in the next CA (if there is a next CA).

Total of the fine properly multiplied by total of the private partner’s profit. If on the average profit is Rp. 125 billion then the fine shall be suit particularly for the priority things. It means that if IRR is 22% then total fine shall be largerer accordingly if the private partners do not do anything to reach the target it shall be certained that the private party will suffer from loss, does not still gain profit as it does.

IRR shall be examined for its nature. Value of 22% is clearly excess for business with minimal risk as the CA. Level of IRR is a little above the interest rate of free risk as deposit or the state promisory notes is a proper level for the private partners. As a tariff comparation determined on Regulation of Minister of Home Affairs No. 2 of 1998 on Guideline for Stipulation of Drinking Water Tariff at PDAM and Instruction of Minister of Home Affairs No. 8 of 1998 on Guideline for Implementation of Stipulation on Drinking Water Tariff at PDAM, the highest tariff is level of full cost of Return on Total Assets determined at 10%. It is with note that majority of consumers is not at level of full cost. It is important to study whether
IRR of the private partners could be made in appropriate to the Regulation of Minister of Home Affairs mentioned above.

In order to avoid financial speculation as in case of share assignment. It is useful that imrant financial ratios as Debt to Equity Ratio shall be attached on the CA and the Attachment shall not be treated as it is done by Palyja which with capital of Rp. 200 billion it gains profit for 8 year operation, amounting to more than the capital and all investment of its fixed assets is still financed by loan.

Operational Expenditure and Capital Expenditure have important role. Therefore they are should be arranged accurately to detail what point should be inserted and when it should be carried out and what standard will be applied. Signal of salary for expatriate employee, know how fee, and cost of loan security should not be happened if operational expenditure is well arranged and the implementation is enforced. As well as the security amounting to USD 15 million written on the notary deed of TPJ share assignment shall not be necessary if the implementation of capital expenditure is well arranged and enforced. Fines for operational expenditure and capital expenditure are properly and directly related to deduction of escalation percentage of water charge or other incentive-based compensation.

Operational expenditure and capital expenditure will only be well monitored if only there is a transparency. What a pity that the transparency determined on Clause 35 on Administration has never been implemented.

The other matter to be changed is escalation formula on water charge and off courses its initial water. It is not fair if all risks are inserted into escalation formula on water charge, as change on currency and interest rate. Moreover at this time Palyja loan is in rupiah obligation, not in USD or other currency.

Other necessary change is clause on termination. It is proper that mistake of the private partners shall be applied when termination is implemented. It may be percentation of discount on Basic Price of Termination in order that private partner will not terminate the CA in whatever way. Important note is also investment feasibility. PAM Jaya shall really carry out audit whether investment value is really the same as it is reported by the private partner. Share sale of the private partner should give a pre-emptive change to PAM Jaya to buy, not with protection of Clause 43 indicating that the private partner unwishes PAM Jaya to buy back its shares.

Role of Regulator Body must be revised in the next time. And off course not in the CA. ideal role of the Regulator Body is as it which is implemented in England with its Ofwat, how to make profit of the private partners is proper and not burdened by inefficiency for management.
The heavy homework is anything relating with employee status, how the CA can secure the employees assigned to assist are still motivated and can be managed by private partners. Qualification for professional management of private partner if it is complied perhaps will decrease such problem.

There are still many other necessary changes in order not to use legal opinion of law office for each article on the CA as Clause 7.2.c.

The following table covers the articles on the CA and the possibility to revise that part of them have been described above.

### Complicated Articles in the CA and Their Possible Revision

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<thead>
<tr>
<th>Article</th>
<th>Concerning</th>
<th>Revision</th>
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</thead>
<tbody>
<tr>
<td>Point C</td>
<td>Improvement on technology ability</td>
<td>Description on technology ability intended to be mastered by PAM Jaya</td>
</tr>
<tr>
<td>Point D</td>
<td>The Second Party has skill and fund</td>
<td>Need a description on interpretation of Article 7.2.c concerning the meaning of professional management and description in detail about financial ratio showing that the Second Party has fund. It means to add definition about professional management.</td>
</tr>
<tr>
<td>Definition of the First Basic Payment</td>
<td>Digit Rp. 1.641</td>
<td>Need to re-counted pursuant to the agreement on IRR.</td>
</tr>
<tr>
<td>Definition of New Asset and definition of the follower</td>
<td></td>
<td>Added after being agreed by the First Party (particularly relating with quantity and economic age in order to be able being convinced that the new asset can secure the achievement of well operation system)</td>
</tr>
<tr>
<td>Indonesian National Arbitrage Body</td>
<td></td>
<td>Need to add definition of BANI pursuant to notary deed on TPJ share assignment</td>
</tr>
<tr>
<td>Article 7.2.a</td>
<td></td>
<td>Added by priority on giving options to the First Party to buy.</td>
</tr>
<tr>
<td>Article 7.2.c</td>
<td>On the Second Party’s professional management</td>
<td>There are two possibilities of revision. The first is further explanation on the meaning of professional management and the second is whether the new shareholder is also approved to follow financial speculation arena.</td>
</tr>
<tr>
<td>Article 11.g</td>
<td></td>
<td>Agreement with supplier constitutes a full responsibility of the Second Party and shall not influence achievement of the agreed technical target and service standard.</td>
</tr>
<tr>
<td>Article 13.2.a</td>
<td>Improvement, preparation and renewing the asset</td>
<td>Added by obeying on a well operational system.</td>
</tr>
<tr>
<td>Article 13.2.c</td>
<td>Obligation of the First Party against asset value</td>
<td>Added by information stating that a due diligent must be made by a professional and independent Third Party on the both parties accounts.</td>
</tr>
</tbody>
</table>

**Continue the CA**

In such condition described above, it is a deceit or public cheating if the CA is still continued. It is our collective role to make important the pressure in order to revise the private partners involvement into clean water sector in Jakarta.

If the CA is continued there will be many victims as employees of PAM Jaya assigned to assist, costumers and poor people which have not been serviced. The CA will only be profit for the private partners.
<table>
<thead>
<tr>
<th>Article</th>
<th>Concerning</th>
<th>Revision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 20.a</td>
<td>Technical target</td>
<td>Technical target shall be an absolute obligation must be fulfilled by the Second Party and shall not be related to financial projection or agreement of the Second Party and the Third Party (as for original water, for example)</td>
</tr>
<tr>
<td>Article 21.a</td>
<td>Service Standard</td>
<td>Service standard constitutes an absolute obligation must be fulfilled by the Second Party and shall not be related to financial projection or agreement of the Second Party and the Third Party (as original water, for example)</td>
</tr>
<tr>
<td>Article 23.2</td>
<td>General Obligation on operating and maintenance</td>
<td>Point c is added by system of operation and maintenance which is commonly used internationally in operating clean water supply.</td>
</tr>
<tr>
<td>Article 24</td>
<td>Investment program, operation and maintenance</td>
<td>The Second Party shall prepare details of the program in order to be reviewed the feasibility or other alterations confirming that operation cost is a full responsibility of the second party certainly after a change on the water charge and escalation formula. See the guideline for stipulating the tariff and profit arising based on regulation of Minister of Home Affairs.</td>
</tr>
<tr>
<td>Article 26.4.c</td>
<td>Realization of tariff projection</td>
<td>Realization of tariff projection is not related to the technical target and service standard including the agreed investment program.</td>
</tr>
<tr>
<td>Article 26.6</td>
<td>Retribution on the customer</td>
<td>Retribution on customer purposed in order that the customers using water efficiently shall not be related to the second party’s responsibility in reaching technical target and service standard.</td>
</tr>
<tr>
<td>Article 27</td>
<td>financial projection</td>
<td>See the note of Article 24</td>
</tr>
<tr>
<td>Article 28.1.e</td>
<td>Repayment of April 1, 2001</td>
<td>Must be re-counted</td>
</tr>
<tr>
<td>Article 28.4</td>
<td>Repayment Adjustment</td>
<td>See the note of Article 24</td>
</tr>
<tr>
<td>Article 32</td>
<td>Human Resources</td>
<td>Must be looked for the best resolution on the problem of PAM Jaya employee who are assigned to assist. Single management must also be implemented in case of remuneration including for foreign workers in order to prevent discrimination.</td>
</tr>
<tr>
<td>Article 42.6</td>
<td>Consequences of Termination</td>
<td>Consequence of termination of the Second Party’s default, then the Base Price of Termination must be adjusted to the penalty if the Second Party fails to implement the CA (as the First Party only pay 50% of the Net Book Value). There is no obligation of the First Party to pay the Current Net Value. Priority of option to buy the share must be given to the First Party if the Second Party intends to sell the shares.</td>
</tr>
<tr>
<td>Article 45.4</td>
<td>Arbitrage</td>
<td>Addition of resolution by BANI</td>
</tr>
<tr>
<td>Article 47.1</td>
<td>Confidential general provision</td>
<td>All documents constitutes public documents.</td>
</tr>
<tr>
<td>Article 51</td>
<td>Regulator Body</td>
<td>The Article should only contain that the regional body includes one of the ways to resolve dispute. The Second Party is obey to regulation of the both regional and national Regulation Body.</td>
</tr>
<tr>
<td>Schedule 5</td>
<td>Escalation Formula of Water Charge</td>
<td>Must be re-counted and made a fairer formula as to be unnecessary K element in escalation formula.</td>
</tr>
<tr>
<td>Schedule 8 and 15</td>
<td>Technical Target, Service Standard and Fine</td>
<td>Value of fine must be adjusted.</td>
</tr>
</tbody>
</table>