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THE IMPLICATIONS OF INTERAGENCY PARTNERSHIP IN THE PROVISION OF WATER SERVICES IN JAKARTA

HEVI KURNIA HARDINI

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Water scarcity is becoming an important issue around the world, besides its vital function to sustain human life. Therefore, many water management perspectives and programs are being developed internationally. The Indonesian government privatised water management in 2004 as part of its loan requirement with the World Bank and the International Monetary Fund (Zaman, 2003). ‘These loans led the establishment of the Law No 7 Year 2004 about Water Recourse which provides legal justification for privatization’ (Kurniasih, 2008, p.2). Unfortunately, the law implemented merely stipulates general provisions and it does not provide for an integrated model of privatisation.

In conjunction with the government’s program of decentralisation, water privatisation in Indonesia is directly managed by local governments. As a consequence, the scheme of water privatization is implemented applying a number of different models. As a result, the interagency partnership in the provision of water services does not reflect the concept of whole government. It seems that the national government does not have comprehensive vision in promoting better water management to the people. Moreover, the models of interagency partnership are often driven by the foreign donors.

This paper will argue that the national government needs to set up a clear and integrated concept of water privatisation through imposing comprehensive policies which work across portfolio and boundaries. Thus, the national government is able to involve local communities as well as advocate on behalf of local governments where conflict occurs in the interagency partnership agreement with the private agents or multinational water companies. By analysing the case of interagency partnership in the provision of water services in Jakarta, I will develop some of these themes in more detail. The first regards the overlapping authority between the regulators (the regional government), the supervisory body and the PDAM Jakarta in monitoring the concession contract. The overlap occurs because the regulations that associated with water provisions and decentralisation are not integrated. Secondly, there are no laws and government regulations which determine the models of privatisation contracts between the regional governments and the private parties. Thirdly, conflict of interests between the ‘shareholder’s value’ and the ‘stakeholder’s value’ is embodied at a practical sphere. This conflict could be avoided if the contract with interagency partnership refers to the Aarhus convention, which involves all stakeholders in achieving sustainable development and integrating government accountability and environmental protection. Finally, the lack of integrated policy has an effect on increases asymmetries of power between water stakeholders (government, users, and civil societies) and multinational corporations (MNCs).

Introduction

Water scarcity is becoming an important issue around the world, besides its vital function to sustain human life¹. Therefore, many water management perspectives and programs are being developed internationally. The Indonesian government privatised water management in 2004 as part of its loan requirement with the World Bank and the International Monetary Fund (Zaman, 2003). 'These loans led the establishment of the Law No 7 Year 2004 about Water Recourse which provides legal justification for privatization' (Kurniasih, 2008, p.2). Unfortunately, the law implemented merely stipulates general provisions and it does not provide for an integrated model of privatisation.

In conjunction with the government's program of decentralisation, water privatisation in Indonesia is directly managed by local governments. As a consequence, the scheme of water privatization is implemented applying a number of different models. As a result, the interagency partnership in the provision of water services does not reflect the concept of whole government. It seems that the national government does not have comprehensive vision in promoting better water management to the people. Moreover, the models of interagency partnership are often driven by the foreign donors.

¹ 'According to the UN, 1.3 billion people in the world have not enough access to clean water...there are 31 countries all over the world that is stated to experience water deficit...Indonesian water quality is at a quite worrying rank, that is 110 from 122 listed countries'. (Hadad, N in Jubileesouth 2003, p. 2,3)

In this paper, I will argue that the national government needs to set up a clear and integrated concept of water privatisation through imposing comprehensive policies which work across portfolio and boundaries. Thus, the national government is able to involve local communities as well as advocate on behalf of local governments where conflict occurs in the interagency partnership agreement with the private agents or multinational water companies. By analysing the case of interagency partnership in the provision of water services in Jakarta, I will develop some of these themes in more detail.

Theoretical debates on water management

There are several theoretical debates about water management which inspire policy formulation about water management. *Firstly*, market environmentalism which combines promoting economic growth, efficiency and environmental conservation by 'establishing private property rights, employing markets as allocation mechanisms and incorporating environmental externalities through pricing'. This perspective believes that 'environmental goods will be more efficiently allocated if treated as economic goods' (Bakker 2007, p 432). *Secondly*, neo-liberalisation of nature which advocates the important roles of states to 'administer environmental degradation and resource appropriation from local communities or that environmental improvements can occur in the context of state re-regulation which accompanies privatisation' (Scott, 1998; Angel 2000; Bakker 2005 in Bakker 2007, p. 432). In case of water management, this view offers some types of reform as mentioned below:

Table 1. Neo-liberalisation of Nature Reforms

Category ²	Target of Reforms	Type of reform	Example
Resource Management Institutions (RMI)	Property rights	Privatisation	England and Wales
	Regulatory frameworks	De regulation	
RM Organisations (RMO)	Asset management	Private sector 'partnership'	French
	Organisational structure	Corporatisation	Amsterdam and The Netherlands
RM Governance (RMG)	Resource allocation	Marketisation	Chile
	Performance incentives/ Sanctions	Commercialisation	South Africa
	User participation	Devolution/ Decentralisation	Indonesia

(Summarised from Bakker2007, p. 435)

Thirdly, anti-privatisation campaigns and the “human right to water”, in contrast from the previous views. This theory strongly supports that water is the basic right for all, which means that every human should get free and equal access to the water (Bakker, 2007). Lastly, alter-globalisation and the commons, this view tries to accommodate neo-liberalisation and anti-privatisation principles by emphasising the ‘rights talk’ in which local communities are involved

² ‘**Resource management institutions** are the laws, policies, rules, norms and customs by which resources are governed. **Resource management organisations** are the collective social entities that govern resource use. **Resource management governance** is the process by which we construct and administer the exploitation of resources’ (Bakker2007, P. 434)

in managing water sector (Bakker 2007). Several distinct alternatives emphasise local community empowerment as mentioned below:

Table. 2 Alter-globalisation Reform

Category	Target of reform	Alter-globalisation alternatives
RMI	Property right	Mutualisation (re-collectivisation) Communal water rights in village (India)
	Regulatory frameworks	Re-regulation by consumer-controlled NGOs in England
RMO	Asset management	Public-public partnerships in Latvia and Lithuania Water cooperatives in Finland
	Organisational structure	Low-cost, community owned infrastructure in Pakistan
RMG	Resource allocation	Sharing of irrigation water based on customary law in Bolivia
	Performance incentives/sanctions	Customer corporation
	User participation	Community watershed boards in Canada Participatory budgeting in Brazil

Bakker 2007, p. 445

Regulatory conditions of the water sector in Indonesia

The Indonesian government applies a number of the theories described, namely: the right to water and the right to exploit water. It seems that there is a dichotomy between them. The first provision, stipulates that people have right to sustain their life (article 28 of the 1945

Constitution), therefore the water usage for daily basic needs of individuals and irrigation systems can be released without a permit (article 8 (1) the Law no7/2004 about Water Resource). These laws support anti-privatisation campaigns and the “human right to water” views.

The second provision regulates that the state controls and administer all of basic natural resources including water for the prosperity of people (article 33 of the 1945 Constitution). Thus, individuals and private companies may exploit water on the condition that they obtain a permit from the national or local governments (article 9 (1) the Law no7/2004 about Water Resource). Moreover, ‘the national and local governments obligate to develop a drinking water provision systems’ which in practice occurred through state owned enterprise or regional owned enterprise (SOE). Private parties may join to perform those functions in case of the state or regional owned companies are not able to perform (article 40 (3) the Law no7/2004 regarding Water Resource and article 37 (2) the Government Regulation no 16 year 2005 regarding Drinking Water Supply System Development). These regulations definitely adopt neo-liberalisation of nature perspective.

However, when the implementation of water privatisation comes together with decentralisation scheme, several problems, rise to the surface. The problem is that the decentralisation law and water provision laws are not integrated, and so many water privatisation schemes are being implemented differently³ without the active support/control of

³ ‘Smaller privatisation projects have taken place in Medan and Semarang, following a 25 year Build Operate Transfer (BOT) model. The Semarang projects only concerns a water treatment facility’ Al afghani 2007, p.156.

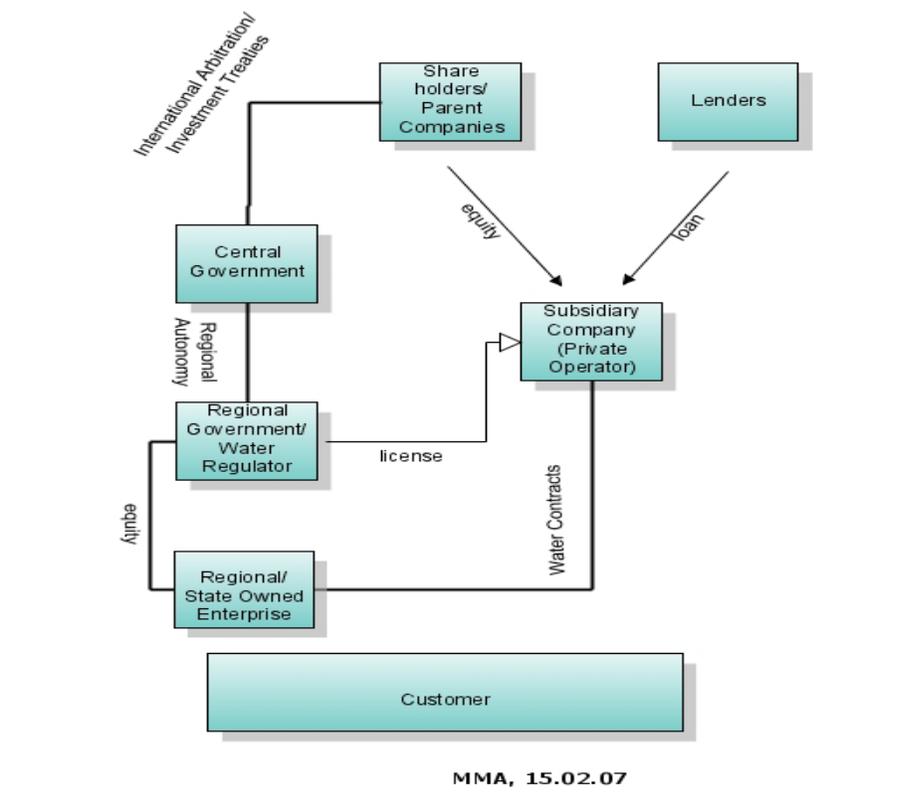
central government and local communities. This places the foreign donors and/or multinational water companies in a position of dominance.

Privatisation model of water sector in Jakarta, Indonesia

In order to get a more detail pictured of the implication of interagency partnership in the provision of water services, the case of Jakarta will be analysed, as it was the first project of water privatisation in Indonesia. Privatisation of water sector in Jakarta uses a concession model in which 'private operators are given responsibility in certain provisions namely: operating and maintaining assets, financing and managing investments and the infrastructure assets are not owned by the private operators' (Al Afghani 2007, p.155).

There are two private companies which are operating in supplying drinking water namely: the Thames Water International (incorporated into local subsidiary Thames PAM Jaya or TPJ) as providers in western area of Jakarta and the Lyonnaise des Eaux (incorporated into local subsidiary PAM Lyonnaise Jaya or Palyja) as providers in eastern area of Jakarta. The *Perusahaan Daerah Air Minum* (PDAM)/ Jakarta Regional SOE then represents the government's interest, through the issuing of permits and setting the contract for 25 years from 1997 to 2022. (Al Afghani 2007).

Picture 1. The institutions in a privatised water undertaking. (Al Afghani 2007, p.154)



The previous picture illustrates the linkages between relevant stakeholders in the concession model. Because of privatisation, people have to pay the operational cost for getting drinking water supply. This payment is then distributed to the private operators based on the volume of processed water sold and to the PDAM for financing its operation and paying its debt to the Ministry of Finance. The cost of water must consider the consumer’s purchasing power; namely the real capacity of Indonesian consumers to pay. Where a gap exists between the amount that

can be paid, and the water suppliers' expenses, the PDAM needs to pay the gap to the private operators.⁴ (Al Afghani 2007).

The implications of interagency partnership in the provision of water services in Jakarta

There are several implications that this system had, in regards to the theory discussed above. The first regards the overlapping authority between the regulators (the regional government), the supervisory body and the PDAM in monitoring the concession contract (Al Afghani 2007). The overlap occurs because the regulations that associated with water provisions and decentralisation are not integrated. Thus, the regional government keeps insisting that it is the only authorised body which is eligible to monitor the concession contract, by their own independent legal authority. This situation leads to conflict between them when they have different interpretations about monitoring results, and is often displayed by the media, through which the parties accuse each other for any short falling in the programs. This conflict in turn will affect the efficiency in which those body are able to work inter departmental. According to the concept of whole government, in achieving a shared goal, the government and public service agencies should be integrated in response to particular issues namely: policy development, program management and service delivery (the Australian Public Service)

⁴ The water charge is adjusted every six months, it is based on consumer price index, currency exchange values (due to foreign debt) as well as other indicators such as the level of workers' salaries and the price of purchasing unprocessed water from other regions and tariff structure assessment is conducted every five years. Additionally, the private operators must obtain investment funds through borrowing' (Al afghani 2007, 156)

Secondly, there are no laws and government regulations which determine the models of privatisation contracts between the regional governments and the private parties (Al Afghani 2006). Therefore many regional governments have different models of privatisation contracts. The mere existence of such differences would ideally be accommodated for within an integrated policy; which might provide for a number of alternative structures. The advantage would then be that, the national government can then still advocate on behalf of the local governments in the case of conflict with external actors. According to McIntyre-mills & De vries 2011 collaborative decision making is required 'across local and state government, universities, non-governmental organizations, business and the community' to avoid disintegrated policy.

Thirdly, conflict of interests between the 'shareholder's value' and the 'stakeholder's value' is embodied at a practical sphere. This conflict could be avoided if the contract with interagency partnership refers to the Aarhus convention⁵, which involves all stakeholders in achieving sustainable development and integrating government accountability and environmental protection, (www.unece.org). Therefore, before the contract is signed up, the different interest between shareholders and stakeholder could be compromised to minimise the potential for dispute after the agreement. Moreover, if the contract involves all stakeholders from various backgrounds and the local communities, the agreement can provide a wider benefit for all parties, as well as empowering the local community.

⁵ connecting the concern of environmental and human rights, Acknowledging the owe obligation to the next generation and focusing on interaction between the public and public authorities in a democratic context

Finally, the lack of integrated policy has an effect on increases asymmetries of power between water stakeholders (government, users, and civil societies) and multinational corporations (MNCs). This problem could be overcome by intensifying inter-organisational networks internationally. According to Florini 2003, this is very useful to connect states and other stakeholders to deal with particular issues internationally. It means that issues are scaled up to create cooperation globally cooperate 'in ways that benefit everyone or at least leave no one worse off'.

Solutions and Conclusion

All regulations about water management must be synergised with the spirit of 1945 constitution as the fundamental law: that all vital sectors are 'controlled by the state' for promoting public welfare. Implementing the concept of whole government opens the possibility to work across portfolio boundaries in providing public services. One possible example of this could be the creating of a standard model contract of a Water Provision Agreement. The three protection mechanisms — national regulations, contract and transnational — must be synergised.

Interagency partnership in the provision of water services in Jakarta has not yet implemented the concept of whole government. One reason for this is because the water policies are still largely directed by foreign donors. (The World Bank, ADB ect.). The regulations about water provisions still regulate in a disjointed fashion and they do not promote the various levels of government to work across portfolios and boundaries.

REFERENCES

Al Afghani, MM 2006, Constitutional Court's review and the future of water law in Indonesia, *Law, Environmental and Development Journal*, Vol. 2, No 1, pp. 1-18

Al Afghani, MM 2007, Safeguarding water contracts in Indonesia, *Law, Environmental and Development Journal*, Vol. 3, No 2, pp. 148-163

Australian Public Service Commission 2004, *Connecting government: whole of government responses to Australia's priority challenges*, viewed, 10 March 2011, <<http://www.apsc.gov.au/mac/connectinggovernment.htm> >

Bakker K 2007, The "commons" versus the "commodity": alter-globalisation, Anti-privatisation and the human right to water in the global south, *Antipode*, vol. 39, no. 3. pp.430-458

Florini, A 2003, *The coming democracy: new rules for running a new world*, Island Press, Washington DC

Jubileesouth 2003, *Water resource policy in Indonesia: open doors for privatisation*, viewed 20 March 2011, <http://www.jubileesouth.org/news/EpZZZZFyyAFYXArDht.shtml>

Kurniasih, H 2008, 'Water not for all: the consequence of water privatisation in Jakarta, Indonesia', *Proceeding of the 17th Biennial Conference of the Asian Studies Association of Australia*, University of Melbourne, Melbourne, pp. 1-19

Mcintyre-mills, J & De vries, D 2011, *Identity, Democracy and Sustainability: Facing Up To Convergent Social, Economic and Environmental Challenges*, Emergent Publications, USA

United Nations Economic Commission for Europe, *Introducing the Aarhus Convention*, viewed 13 April 2009, <http://www.unece.org/env/pp/>

Zaman, M 2003, *Restructuring of the water sector in Indonesia: an institutional and legislative challenge*, The World Bank Information Centre, viewed 15 March 2011 <www.worldbank.org>