

Management of Drinking Water Supply System: Authority of Regional Government and Legality of Management by Business Entities

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Abstract

Private water resource control generally tends to follow capitalist and liberal market mechanisms which will result in a large consumer burden. If it follows capitalist and liberal market mechanisms, then what happens is profit oriented compared to fulfilling the needs and prosperity of the community or many people. Based on these problems, this study focuses on the Authority of Regional Governments in managing the Drinking Water Supply System. This study is a legal study using a legislative and conceptual approach. The results of this study indicate that Regional Governments have the authority to manage the Drinking Water Supply System. This is none other than because of the form of state control over water as regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia by forming a BUMD or UPTD. In addition, if an area does not yet have drinking water services by a BUMD or UPTD, the implementation of SPAM by the business entity is legally valid. Conversely, if an area already has drinking water services by a BUMD or UPTD, the implementation of SPAM by the business entity is not legally valid.

I. Introduction

Water with the chemical formula H_2O is the essence of life.¹ Water is a substance that cannot be replaced. The vitality of water for human life is the same as oxygen (O_2). Without water, not only humans but all living things on earth cannot survive. Water can be called blue gold which is the most vital human need and at the same time controls the lives of many people.²

From the human rights dimension, the right to water resources is the most fundamental right for human life. Article 28A of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states that everyone has the right to live and the right to defend their life and livelihood.³ Therefore, the state is obliged to guarantee the fulfillment of the rights of every citizen, one of which is the people's right to water to meet the minimum basic daily needs for a healthy and clean life in sufficient quantities, good quality, safe, sustainable, and affordable.

The provisions of Article 18I paragraph (4) of the 1945 Constitution of the Republic of Indonesia emphasize that the protection, advancement, enforcement and fulfillment of human rights are the responsibility of the state, especially the government.⁴ This provision is also related to the meaning of the "state's right to control" over "branches of production that are important to the state and that control the livelihoods of many people" and "earth and water and the natural resources contained therein", which can be carried out in stages.⁵ In the first and most important stage, the state carries out direct management of water resources (*beheersdaad*). In the second stage, the state makes policies (*beleid*) and administration (*bestuursdaad*). While in the third stage, the state only functions to regulate (*regelendaad*) and supervise (*toezichthoudendaad*).⁶

The form of the State's responsibility for guaranteeing the fulfillment and protection of the people's right to water to meet the minimum daily basic needs for a healthy and clean life with sufficient quantity, good quality, safe, sustainable, and affordable is determined by the authority holder of the Drinking Water Supply System (SPAM). The implementation of SPAM itself is carried out to guarantee the people's right to drinking water, access to drinking water services, and the fulfillment of the

¹ Dedi Tampubolon, Yose Rizal dan Saiful Anwar, "Eksperimental Biochar Ampas Tebu Pada Performa Potential Hydrogen Dan Total Dissolved Solid" (2023) 2 ENOTEK : Jurnal Energi dan Inovasi Teknologi.

² "Water is the 'Blue Gold': Upholding Access to Water as a Human Right in Ghana" [2021] Journal of Law, Policy and Globalization.

³ Natania Djesika Wongkar, Donald A Rumokoy dan Lendy Siar, "Pelaksanaan Hak Untuk Hidup Berdasarkan Pasal 28A Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (2023) 11 Lex Administratum.

⁴ Mikho Ardinata, "Tanggung Jawab Negara terhadap Jaminan Kesehatan dalam Perspektif Hak Asasi Manusia (HAM)" (2020) 11 Jurnal HAM.

⁵ Asep Bambang Hermanto, "Politik Hukum Dalam Demokrasi Ekonomi Indonesia" (2018) 4 Jurnal Hukum dan Bisnis (Selisik).

⁶ Anna Triningsih dan Zaka Firma Aditya, "Pembaharuan Penguasaan Hak Atas Tanah dalam Perspektif Konstitusi" (2019) 8 Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional.

basic daily drinking water needs for the community.

The implementation of SPAM includes SPAM development and SPAM Management.⁷ The scope of SPAM management includes operations and maintenance, repairs, human resource development, and institutional development. The programs/activities in each scope of SPAM management can be described in the table below:

No	Scope	Programs/Activities
1	Operation and Maintenance	In the scope of operation and maintenance, it includes routine programs and activities to run, observe, stop and maintain SPAM facilities and infrastructure to ensure that SPAM functions optimally. The subject of the implementation of operation and maintenance is carried out by work units for pipeline networks and individuals for SPAM not Pipeline Networks. Operation and maintenance carried out by the work unit as referred to are carried out by considering the quality of service and cost efficiency. While Operation and Maintenance carried out by individuals are carried out by considering aspects of security, safety and sustainability.
2	Repair	Repairs are made to technical components whose performance has decreased so that they can function normally again. Repairs include periodic/intermittent programs and activities carried out on some of the technical components of the SPAM facilities and infrastructure built or all of the technical components of the SPAM facilities and infrastructure built. Repairs result in the temporary cessation of Drinking Water services to the community by the SPAM organizer. The temporary cessation as referred to cannot be carried out on all Drinking Water services to the community. In the event that repairs result in the cessation of Drinking Water services, the SPAM organizer must first provide notification to the community.
3	Human Resource Development	Human resource development is carried out through a human resource performance improvement program to prepare competent human resources in the field of SPAM

⁷ Iwan Julisman, Aleksander Purba dan Dikpride Despa, "Rencana Induk Pengembangan Sistem Penyediaan Air Minum" (2023) 4 Jurnal Profesi Insinyur Universitas Lampung.

		Implementation. Human resource development is carried out by SPAM organizers by paying attention to the stages of human resource management.
4	Institutional Development	Institutional development is carried out based on the principles of good institutional governance. Institutional development is carried out by the Regional Government, and/or SPAM organizers in accordance with their authority.

From a legal dimension, laws and regulations place the authority and responsibility for the implementation of SPAM on the Central Government and/or Regional Governments in accordance with their authority in order to fulfill a healthy, clean, and productive life in accordance with the provisions of laws and regulations. However, laws and regulations also provide permission for Community groups or Business Entities to organize SPAM. This is because laws and regulations basically do not close private participation in organizing production branches that control the livelihoods of many people, especially water resources. However, such private participation must not eliminate the meaning of water control by the state. Private participation can be carried out within the framework of cooperation and in stages of implementation that do not hinder the state from realizing people's welfare (social justice).

Private water resource control generally tends to follow the capitalist and liberal market mechanisms that will lead to a large consumer burden. Therefore, privatization⁸ in the control and management of SPAM must be avoided, because it tends to only consider the aspect of business profit (profit oriented) compared to fulfilling the needs of life and prosperity of the community or many people.

Private businesses that manage drinking water will always be profit-oriented, because it is an inseparable characteristic that as a form of business it must strive (produce) optimum profits for shareholders. Service to the community or public service is not its orientation. It can even be stated as contradictory to its basic character, so it cannot be expected that private business entities will devote themselves to public services that are social in nature.⁹

In the city of Surabaya, there are still Business Entities engaged in housing and residential areas (housing developers) that organize SPAM in areas or regions that are actually covered by BUMD services in casu the Regional Drinking Water Company (PDAM) Surya Sembada. In fact, according to the provisions of Article Government

⁸ Privatization according to the definition of Black's Law Dictionary is: "the act or process of converting a business or industry from governmental ownership or control to private enterprise". KBBI defines privatization as "the process, method, act of becoming private property (from state property); privatization: the process of transferring the production of goods and services from the government sector to the private sector." While what is meant by privatizing is "transferring from government (state) property to private property". Hanry Campbell Black, *Black's Law Dictionary* (West Publishing, Co 2009).

⁹ Samsul Wahidin, *Hukum Sumber Daya Air* (Pustaka Pelajar 2016).

Regulation Number 122 of 2015 concerning the Drinking Water Supply System, Business Entities can organize SPAM to meet their own needs in areas that have not been covered by Drinking Water services by BUMN, BUMD, UPT, and UPTD. If referring to the provisions of Article 46 and Article 52, if there are areas or regions that have not been covered by BUMD services, then the Regional Government must first form a UPTD. If after the Regional Government forms a UPTD, there are still areas or regions that have not been covered by BUMD and UPTD services, then the Business Entity can organize SPAM to serve its own needs.

In relation to this, this research is important to be conducted to determine the location of responsibility or authority for SPAM management and the legitimacy of SPAM management carried out by Business Entities.

2. Research Method

This research is a normative legal research using a statutory approach, a conceptual approach, and a case approach.¹⁰ The legal materials used are primary and secondary legal materials. Primary legal materials and secondary legal materials that have been collected are then identified, classified, and systematized according to their sources and hierarchies. After that, the legal materials are reviewed and analyzed using legal reasoning with deductive methods to solve the legal issues studied based on legal theories and principles put forward by experts. The analysis used is normative/prescriptive analysis to obtain answers to the legal issues in this study.

3. Results and Discussion

Regional Government Authority in Managing Drinking Water Supply Systems (SPAM)

The state guarantees the people's right to water to meet the minimum basic daily needs for a healthy and clean life in sufficient quantities, good quality, safe, sustainable, and affordable.¹¹ In addition to the people's right to water which is guaranteed by the state, the state prioritizes the people's right to water for basic daily needs, people's agriculture and the use of water resources for business needs to meet basic daily needs through the Drinking Water Supply System (SPAM).

On the basis of state control over water resources, the Regional Government is given the task and authority to regulate and manage water resources. The tasks given to the Regency/City Regional Government include meeting the minimum daily basic needs for Water for the community in the regency/city area and developing and managing the Drinking Water Supply System in the regency/city area.

In line with the tasks as referred to above, Law Number 17 of 2019 grants authority to the Regency/City Regional Government, among others, to determine

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana 2021).

¹¹ Ronny Winarno, "Menjamin Hak Rakyat Atas Air Sebagai Parameter Hukum Kinerja Pasangan Terpilih Pilkada Serentak di Tengah Pandemi Covid-19" (2023) 5 Yurijaya : Jurnal Ilmiah Hukum.

Water Resources Management policies in their areas based on national Water Resources policies and provincial Water Resources Management policies by taking into account the interests of surrounding regencies/cities and determining district/city policies and strategies in the implementation of the Drinking Water Supply System (SPAM). In the event that the Regency/City Regional Government does not carry out some of the tasks and authorities as referred to above, so that it can endanger the public interest and/or disrupt public services, the Provincial Regional Government is obliged to take over the tasks and authorities of the Regency/City Regional Government in managing water resources.

The legislation that specifically regulates the drinking water supply system is Government Regulation Number 122 of 2015 concerning the Drinking Water Supply System (Government Regulation Number 122 of 2015). The establishment of this Government Regulation is based on the consideration that in order to fulfill the State's responsibility in ensuring the fulfillment of the people's right to drinking water and access to drinking water. In the provisions of Article 2 of Government Regulation Number 122 of 2015, it is emphasized that the implementation of SPAM is to provide Drinking Water services to the community to fulfill the people's right to Drinking Water. While the objectives of implementing SPAM are to:

- a. provide drinking water services to fulfill the people's right to Drinking Water;
- b. realize quality Drinking Water management and services at affordable prices;
- c. achieve balanced interests between customers and BUMN, BUMD, UPT, UPTD, Community Groups, and Business Entities; and
- d. achieve effective and efficient Drinking Water implementation to expand the scope of Drinking Water services.

The implementation of SPAM is the responsibility of the Regional Government in order to fulfill a healthy, clean and productive life in accordance with the provisions of laws and regulations.

In order to carry out the responsibility of organizing SPAM, the Regency/City Regional Government forms a BUMD. However, in the case of SPAM implementation outside the reach of BUMD services, the Regency/City Regional Government can form a UPT or UPTD and can cooperate in order to ensure the efficiency and effectiveness of SPAM Implementation. The authority and responsibility of the Regency/City Government in the Implementation of SPAM include:

- a. prepare and determine the Regency/City SPAM Implementation Policy and Strategy;
- b. prepare and determine the Regency/City SPAM Master Plan;
- c. implement SPAM Implementation in its area;
- d. establish BUMD and/or UPTD;
- e. record reports submitted by Community Groups;
- f. grant permits to Business Entities to implement SPAM;
- g. provide guidance and supervision to village governments and Community

- Groups in its area in implementing SPAM;
- h. monitor and evaluate the implementation of SPAM in its area;
 - i. submit reports on the results of monitoring and evaluation of SPAM Implementation to the provincial government;
 - j. ensure the availability of Raw Water for SPAM Implementation in its area; and
 - k. cooperate with the Central Government and other Regional Governments.

The implementation of SPAM in the Regency/City area carried out by BUMD is carried out through the following activities:

- a. development of SPAM and SPAM Management;
- b. monitoring and evaluation of the Drinking Water services implemented;
- c. preparation of standard operating procedures for SPAM Development and SPAM Management;
- d. preparation of SPAM Development and SPAM Management reports in a transparent and accountable manner;
- e. submission of SPAM Development and SPAM Management reports to the Central Government and/or Regional Governments in accordance with their authority; and
- f. improvement of human resources in accordance with SPAM Development and SPAM Management competency standards.

BUMD applies the principles of good corporate governance in the implementation of SPAM. BUMD has the following rights and obligations:

Hak	Kewajiban
a. receive payment for service fees in accordance with the tariff; b. determine and impose fines for late payment of bills; c. obtain the quantity of Raw Water continuously in accordance with the provisions stated in the permit that has been held; d. disconnect direct connections to customers who do not fulfill their obligations; and e. sue the community or organization that carries out activities that result in damage to SPAM facilities and infrastructure.	a. guarantee drinking water services that meet the quality, quantity, and continuity requirements in accordance with the established standards; b. operate facilities and provide services to customers who have met the requirements, except in cases of force majeure; c. provide necessary information to all interested parties regarding events or circumstances that are special and have the potential to cause changes to the quality, quantity, and continuity of services; d. provide information in the form of reports regarding the implementation of services;

	e. prepare complaint facilities for customers and the community; and f. participate in efforts to protect and preserve water resources in the context of conserving environmental functions.
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In addition to BUMD, the implementation of SPAM can be carried out by UPT and UPTD. The implementation of SPAM can be carried out by UPT and UPTD to provide drinking water services to communities outside the reach of BUMD services. The implementation of SPAM by UPT/UPTD is carried out through the following activities:

- a. SPAM Development and SPAM Management;
- b. monitoring and evaluation of the Drinking Water services implemented;
- c. preparation of standard operating procedures for SPAM Development and SPAM Management;
- d. preparation of SPAM Development and SPAM Management reports in a transparent and accountable manner;
- e. submission of SPAM Development and SPAM Management reports to the Central Government and/or Regional Governments in accordance with their authority; and
- f. improvement of human resources

In implementing SPAM, UPT and UPTD have the following rights and obligations:

Hak	Kewajiban
f. receive payment for service fees in accordance with the tariff; g. determine and impose fines for late payment of bills; h. obtain the quantity of Raw Water continuously in accordance with the provisions stated in the permit that has been held; i. disconnect direct connections to customers who do not fulfill their obligations; and j. sue the community or organization that carries out	g. guarantee drinking water services that meet the quality, quantity, and continuity requirements in accordance with the established standards; h. operate facilities and provide services to customers who have met the requirements, except in cases of force majeure; i. provide necessary information to all interested parties regarding events or circumstances that are special and have the potential to

activities that result in damage to SPAM facilities and infrastructure.	cause changes to the quality, quantity, and continuity of services; j. provide information in the form of reports regarding the implementation of services; k. prepare complaint facilities for customers and the community; and l. participate in efforts to protect and preserve water resources in the context of conserving environmental functions.
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Article 28A of the 1945 Constitution of the Republic of Indonesia states that everyone has the right to live and the right to defend their life and livelihood. In order to fulfill the right of every citizen to live and to defend their life, the state is obliged to guarantee the fulfillment of the rights of every citizen, one of which is through the provision of basic daily drinking water needs. This is in line with the provisions of Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that branches of production that are important for the state and that control the livelihoods of many people are controlled by the state and the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

In relation to the regulation of Water Resources Management, on February 18, 2015, the Constitutional Court issued Decision Number 85/PUU-XI/2013 on the second judicial review lawsuit against Law Number 7 of 2004 concerning Water Resources. The decision stated, among other things, that Law Number 7 of 2004 concerning Water Resources was declared null and void and had no legal force.

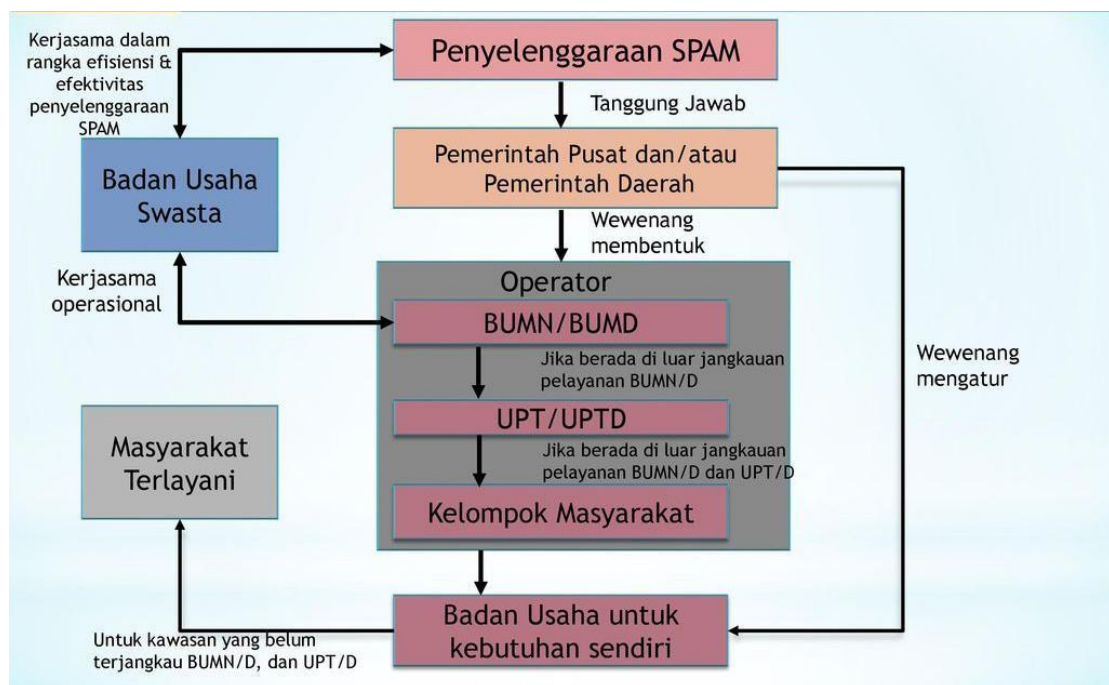
In the legal considerations of the Constitutional Court Decision Number 85/PUU-XI/2013, the Constitutional Court stated that "as a continuation of the state's right to control and because water is something that greatly controls the lives of many people, the main priority given to water management is state-owned enterprises or regional-owned enterprises". Water Resources Management Activities by private business entities can still be carried out with certain and strict requirements. In relation to this, the regulation regarding the Drinking Water Supply System should limit the control of SPAM implementation which is carried out entirely by private business entities.

In the General Explanation of Government Regulation Number 122 of 2015, it is firmly stated that the implementation of SPAM by the private sector must be strictly limited and the implementation of SPAM is prioritized for BUMN and BUMD

as SPAM organizers. The following is the General Explanation of PP Number 122 of 2015:

“... Water Resources Business Activities by private business entities can still be carried out with certain and strict requirements. In relation to this, the regulation regarding the Drinking Water Supply System should limit the control of SPAM implementation which is carried out entirely by private business entities. Thus, in order for this Government Regulation to be in line with the Constitutional Court Decision as mentioned above, it is stipulated that SPAM Implementation is prioritized for BUMN and BUMD as SPAM organizers. In the event that there are areas or regions that are not covered by SPAM services by BUMN and BUMD, then the implementation of SPAM Implementation remains the responsibility of the Central Government or Regional Government by forming a UPT or UPTD to serve areas or regions that are not covered by BUMN and BUMD services. If in a region there is no SPAM Implementation either by BUMN and BUMD or UPT or UPTD, SPAM Implementation can be implemented to meet their own needs by Community Groups and Business Entities to Meet Their Own Needs.”

Based on the General Explanation of Government Regulation Number 122 of 2015 and in line with the provisions stipulated in the body (articles) of Government Regulation Number 122 of 2015, the responsibility for violations of SPAM is hierarchical (priority order) as in the image below:



The implementation of the responsibility of the Regional Government is carried out through the establishment of a BUMD as the organizer of SPAM. If there is a region or area that cannot be reached by BUMD services, then the Regional

Government will form a UPTD. If after forming the UPTD, there is still a region or area that cannot be reached by BUMD and UPTD services, then the implementation of SPAM can be carried out by community groups or by Business Entities. The implementation of SPAM by community groups or by Business Entities is limited only to meeting the basic needs of daily drinking water and does not serve the general public. The regulation of the responsibility and authority for the implementation of SPAM which is hierarchical (priority order) is a manifestation of the state's responsibility in fulfilling the rights of every citizen to Water in order to meet the minimum basic daily needs for a healthy and clean life with sufficient quantities, good quality, safe, sustainable, and affordable.

Legislation in casu Law Number 17 of 2019 and Government Regulation Number 122 of 2015 places the authority and responsibility for the Implementation of SPAM on the Central Government and/or Regional Government in accordance with their authority in order to fulfill a healthy, clean, and productive life in accordance with the provisions of the legislation. However, the legislation also provides permission for Community groups or Business Entities to organize SPAM. This is because, the legislation basically does not close private participation in organizing branches of production that control the livelihoods of many people, especially water resources. However, such private participation must not eliminate the meaning of water control by the state. Private participation can be carried out within the framework of cooperation and in stages of implementation that do not hinder the state from realizing people's welfare (social justice).

Private water resource control generally tends to follow the capitalist and liberal market mechanisms that will lead to a large consumer burden. Therefore, privatization in the control and management of SPAM must be avoided, because it tends to only consider the aspect of business profit (profit oriented) compared to fulfilling the needs of life and prosperity of the community or many people.

Private businesses that manage drinking water will always be profit-oriented, because it is an inseparable characteristic that as a form of business it must strive (produce) optimum profits for shareholders. Service to the community or public service is not its orientation. It can even be stated as contradictory to its basic character, so it cannot be expected that private business entities will devote themselves to public services that are social in nature.

The problem of involving Business Entities in the implementation of SPAM by the Government/Regional Government has actually led to the emergence of legal cases between Community Members and the Government/Regional Government through Citizen Lawsuits due to unlawful acts by the authorities (onrechtmatige overheidsdaad). For example, it can be seen in the Supreme Court Decision Case Number 31 K/Pdt/2017, community members as Plaintiffs/Applicants for Cassation against the Defendants/Respondents for Cassation, namely PT. Aetra Air Jakarta, PT. PAM Lyonnaise Jaya, the Republic of Indonesia cq. President of the Republic of

Indonesia, Vice President of the Republic of Indonesia, Minister of Public Works, Minister of Finance, and Governor of DKI Jakarta Province, DPRD DKI Jakarta, President Director of the DKI Jakarta Provincial Drinking Water Company.

The object of the lawsuit in this case is the state's negligence in terms of water management in Jakarta where the state, which in the a quo case that was sued was the state administrator (Government) element, namely the President to PAM Jaya, because it made and implemented a cooperation agreement policy by handing over water management to a private party, namely PT. PAM Lyonnaise Jaya. The Defendants committed an unlawful act because they had become parties to a cooperation agreement that legally clearly contradicted the provisions of applicable laws and regulations.

The Jakarta Water Privatization Cooperation Agreement has violated Regional Regulation Number 13 of 1992 and after the Cooperation Agreement, the service for the management of clean water and drinking water for DKI Jakarta residents has not increased in terms of quality, quantity and continuity. PAM Jaya lost its authority to manage drinking water because it was transferred to the private sector. The Supreme Court through Decision Number 31 K/Pdt/2017 in its decision has granted the cassation request from the cassation applicants and annulled the Jakarta High Court Decision Number 588/PDT/2015/PT DKI., dated January 12, 2016 which annulled the Central Jakarta District Court Decision Number 527/PDT.G/2012/PN JKT.PST., dated March 24, 2015.

The Supreme Court emphasized that the Jakarta Water Privatization Cooperation Agreement, although formally permitted by laws and regulations, does not substantively eliminate the responsibility of the state c.q. the Government, Regional Government, UPT, UPTD, BUMD to fulfill the state's guarantee of the people's right to water to meet the minimum basic daily needs for a healthy and clean life in sufficient quantities, good quality, safe, sustainable, and affordable.

Legality of Management of Drinking Water Supply System by Business Entities

Article 7 of Law Number 17 of 2019 emphasizes that Water Resources cannot be owned and/or controlled by individuals, community groups, or business entities. On February 18, 2015, the Constitutional Court issued a Decision Based on Decision Number 85/PUU-XI/2013, in its legal considerations it was stated that "as a continuation of the state's right to control and because water is something that greatly controls the livelihoods of many people, the main priority given to water management is state-owned enterprises or regional-owned enterprises". Water Resource Management Activities by private business entities can still be carried out with certain and strict requirements.

When referring to the provisions of Article 2 of Government Regulation Number 121 of 2015, the management of water resources is carried out by considering the following principles:

- a. not disturbing, ignoring, and eliminating the people's right to water;
- b. state protection of the people's right to water;
- c. environmental sustainability as one of the basic human rights;
- d. state supervision and control over water are absolute;
- e. the main priority for water management is given to BUMN or BUMD; and**
- f. granting of Water Resources Management Permits and Groundwater Management Permits to private businesses can be done with certain and strict conditions;**
- g. after the principles as referred to in letters a to e are met and there is still water availability.

The provisions of Article 2 of Government Regulation Number 121 of 2015 are coherent with the provisions of Article 46 of Law Number 17 of 2019 which reads as follows:

- (1) The use of Water Resources for business needs is carried out by taking into account the following principles:
 - a. not disrupting, not setting aside, and not eliminating the people's right to Water;
 - b. state protection of the people's right to Water;
 - c. environmental sustainability as a human right;
 - d. state supervision and control over Water are absolute;
 - e. the main priority for the use of Water Resources for business activities is given to state-owned enterprises, regional-owned enterprises, or village-owned enterprises; and
 - f. granting permits for the use of Water Resources for business needs to the private sector can be done with certain and strict conditions after the principles as referred to in letters a to e are met and there is still water available.
- (2) The use of Water Resources for business needs is intended to increase the benefits of Water Resources for the welfare of the people.
- (3) The use of Water Resources for business needs as referred to in paragraph (2) is carried out by prioritizing the public interest.

Furthermore, Article 50 of Law Number 17 of 2019 emphasizes that the Permit to Use Water Resources for business needs using Water and Water Power as materials that produce products in the form of drinking water for basic daily needs is granted to BUMN, BUMD or BUMDesa that organize the Drinking Water Supply System.

Article 54 of Law Number 17 of 2019 also confirms that permits to use Water Resources for business needs can be granted to private parties after meeting certain and strict requirements, at least:

- a. in accordance with the Water Resources Management Pattern and Water Resources Management Plan;
- b. fulfilling technical administrative requirements;
- c. obtaining approval from stakeholders in the Water Resources area; and
- d. fulfilling Water Resources Conservation cost obligations which are components of BJPSDA and other financial obligations in accordance with the provisions of laws and regulations.

Based on the description above, the laws and regulations have limited the control of SPAM implementation carried out by private business entities. Thus, the implementation of SPAM is prioritized for BUMD as the SPAM organizer. Even in the case of areas or regions that are not covered by SPAM services by the BUMD, the implementation of SPAM remains the responsibility of the Regional Government by forming a UPT or UPTD to serve areas or regions that are not covered by BUMD services.

The legal question that arises is related to the meaning of the phrase "not yet covered by drinking water services by BUMD" in the provisions of Article 52 of Government Regulation Number 122 of 2015. This is because Government Regulation Number 122 of 2015 does not further explain the meaning or criteria of the phrase "not yet covered". The following explanation is given regarding this legal question:

1. Systematically, the meaning of the word "affordable" can be found in the Explanation of Article 2 letter b of Law Number 17 of 2019 as an explanation of the principle of affordability, namely affordable both in terms of location and economy. Therefore, based on a systematic (vertical) interpretation, the meaning of the phrase "not yet accessible to drinking water services by BUMD" is that BUMD has not been able to reach the location of the area and economically if BUMD provides services in the area or location, the costs will be higher, causing water rates to be more expensive and ultimately the community will not be able to reach (not able to pay for) the water provided by BUMD;
2. Grammatically, the meaning of the word "affordable" in KBBI is 1) achieved, taken; and 2) purchased, paid for. The two meanings of the word "affordable" are in line with the meaning contained in the Explanation of Article 2 letter b of Law Number 17 of 2019 above. The meaning of achieved and taken is related to location or distance, while purchased or paid for is related to economic capacity. Therefore, based on grammatical interpretation, the meaning of the phrase "not yet covered by drinking water services by BUMD" is that BUMD has not been able to reach the location of the area or region and economically if BUMD provides services in the area or location, the costs will be higher, causing water tariffs to be more expensive and ultimately the community cannot afford to buy or pay for water provided by BUMD;
3. Government Regulation Number 122 of 2015 uses 2 different phrases, namely the phrase "outside the reach of drinking water services by BUMD" to regulate

the requirements for organizing SPAM by UPTD/Community Groups and the phrase "not yet covered by drinking water services by BUMD" to regulate the requirements for organizing SPAM by Business Entities. Therefore, the requirements for organizing SPAM by UPTD/Community Groups with the requirements for organizing SPAM by Business Entities are different. Grammatically, KBBI interprets the word "not yet" as still in a state of not, so "not yet covered by services" means "not covered by services" or does not have a BUMD. In other words, the meaning of "not yet reached" is if a district/city does not have a BUMD, then the implementation of SPAM can be carried out by a Business Entity. This is different from the phrase "out of reach" which means that a region has a BUMD, but the reach of the service area location cannot be reached by the BUMD. Thus, if based on this meaning (systematic-grammatical), if a region already has a BUMD, then the implementation of SPAM cannot be carried out by a Business Entity. However, if an area in the region cannot be reached by the BUMD's drinking water service, then it can be carried out by the UPTD and/or Community Group, not by the Business Entity.

4. Factually-empirically, the meaning of the phrase "not yet reached" is if the BUMD does not yet have the technical-operational and financial capabilities to provide drinking water services in a certain area, so that the provision of SPAM in a certain area or region can be carried out by a Business Entity. Thus, if a BUMD has the technical-operational and financial capabilities to reach the provision of drinking water services in an area, then the Business Entity cannot organize SPAM because the main priority for water management is given to the BUMD.
5. A contrario, Article 52 must be read and interpreted as follows: "The Business Entity as referred to in Article 42 paragraph (1) letter d cannot organize SPAM to meet its own needs in areas that have been reached by drinking water services by BUMN, BUMD, UPT, and UPTD." Thus, based on the a contrario interpretation, the Business Entity cannot organize SPAM in areas that have been reached by drinking water services by BUMD and UPT.

Furthermore, regarding the benchmark for the validity of a Business Entity in implementing SPAM, the following applies:

1. Absolute requirements as the main requirements that must be met, namely if an area has not been reached by drinking water services by a BUMD or UPTD.
2. Relative requirements, namely if the absolute requirements as referred to in number 1 are met, then the implementation of SPAM can be carried out by a Business Entity with the following requirements:
 - a. the implementation of SPAM to meet its own needs is carried out to meet the basic needs of daily drinking water and does not serve the general public;
 - b. obtain a permit for the Implementation of SPAM from the regent/mayor;
 - c. the tariff is set by the Central Government or Regional Government in accordance with its authority by considering the purchasing power of the community/customers and referring to a fair price in accordance with the

- provisions of laws and regulations regarding BUMD drinking water tariffs;
- d. supervision is carried out by the Central Government and/or Regional Government in terms of quality, quantity, and continuity in accordance with its authority;
 - e. can only be carried out by the type of Business Entity regulated in the provisions of Article 6 paragraph (1) of the Regulation of the Minister of Public Works and Public Housing Number 25/PRT/M/2016; and
 - f. The BUMD that organizes SPAM collaborates with private business entities if the BUMD is unable to finance the needs of organizing SPAM.

Cooperation between BUMD and private business entities in the implementation of SPAM can only be carried out with certain principles and forms of cooperation. Certain principles, namely the Water Withdrawal Permit is owned by BUMD and cooperation in the implementation of SPAM prioritizes low-income communities. Certain forms of cooperation, namely: investment in SPAM Development and/or SPAM Management of Raw Water units and production units; investment in distribution units which are then operated and managed by the relevant BUMD; and/or investment in operating and maintenance technology in order to strive for effective and efficient SPAM Implementation with a performance-based contract mechanism.

Procurement of private business entities in cooperation is carried out in accordance with the provisions of laws and regulations. In order to realize the cooperation as intended, the Regional Government can provide the necessary support in accordance with its authority. The implementation of SPAM to meet its own needs is carried out to meet the Basic Daily Drinking Water Needs and does not serve the general public.

In line with Government Regulation Number 122 of 2015, the Regulation of the Minister of Home Affairs Number 9 of 2009 concerning Guidelines for the Handover of Infrastructure, Facilities, and Utilities for Housing and Settlement in Regions regulates the basic essence of the purpose of handing over infrastructure, facilities, and utilities for housing and settlements (non-housing and flats) from developers to regional governments, which aims to ensure the sustainability of maintenance and management of infrastructure, facilities, and utilities in housing and settlement environments.

In the provisions of Article 47 paragraph (4) of Law Number 1 of 2011 in conjunction with Article 11 to Article 13 of the Regulation of the Minister of Home Affairs Number 9 of 2009, it is stipulated that housing and settlement utilities in the form of clean water networks are one of the housing and settlement utility facilities that must be built and handed over by developers to the Regional Government no later than 1 (one) year after the maintenance period and in accordance with the site plan that has been approved by the regional government. The handover of housing and settlement utilities in accordance with the site plan is carried out in stages, if the

development plan is carried out in stages or all at once, if the development plan is not carried out in stages. The provisions of Article 11 paragraph (1) of the Regulation of the Minister of Home Affairs Number 9 of 2009 *expressis verbis* regulate the norm of orders to the Regional Government asking developers to hand over housing and settlement infrastructure, facilities, and utilities (including clean water networks). In full, Article 11 of the Regulation of the Minister of Home Affairs Number 9 of 2009 reads as follows:

(1) The regional government requests the developer to hand over the infrastructure, facilities, and utilities of housing and settlements as referred to in Article 8, Article 9, and Article 10 built by the developer.

(2) The handover of the infrastructure, facilities, and utilities of housing and settlements as referred to in paragraph (1) is carried out:

a. no later than 1 (one) year after the maintenance period; and

b. in accordance with the site plan that has been approved by the regional government.

The infrastructure and utilities that must be submitted by developers in non-storeyed housing are in the form of land and buildings as regulated in the provisions of Article 12 paragraph (1) of the Minister of Home Affairs Regulation Number 9 of 2009. Thus, developers of non-storeyed housing are required to build a clean water network and submit it to the Regional Government in the form of land and buildings (SPAM buildings).

The management of infrastructure, facilities, and utilities that have been handed over to the regional government is entirely the responsibility of the regional government concerned. The regional government can cooperate with developers, private business entities and/or the community in the management of infrastructure, facilities, and utilities in accordance with the provisions of laws and regulations. In the event that the regional government cooperates in the management of infrastructure, facilities, and utilities with developers, private business entities, and the community, the physical maintenance and funding of infrastructure, facilities, and utilities becomes the responsibility of the manager. The manager of infrastructure, facilities, and utilities cannot change the designation of infrastructure, facilities, and utilities. Specifically for clean water utilities, their management must refer to Government Regulation Number 122 of 2015, namely that they can only be managed with the following management priority order:

a. BUMD;

b. UPTD;

c. Community Groups; and

d. Business Entities.

Management of clean water networks by BUMD for clean water networks that have been handed over to the Regional Government by developers can be carried out through a Regional capital participation scheme or assignment of the Regional Government to BUMD accompanied by the provision of Regional grants to BUMD. This is as regulated in the provisions of Article 108 of Government Regulation Number 54 of 2017 and is in line with the provisions of Article 19 paragraph (6) of Law Number 17 of 2019.

4. Conclusion

Based on the description in the analysis and discussion section above, this Legal Study provides the following conclusions:

- a. The authority to organize SPAM by the Regional Government is a form of state control over water as regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia by establishing a BUMD or UPTD to guarantee the people's right to drinking water, access to drinking water services, and the fulfillment of basic daily drinking water needs for the community. Therefore, BUMD gets top priority in water management in casu the implementation of SPAM as regulated in the provisions of Article 46 of Law Number 17 of 2019 and Article 2 of Government Regulation Number 122 of 2015.
- b. The provision of SPAM by a Business Entity is legally valid if an area has not been reached by drinking water services from a BUMD or UPTD. Conversely, if an area has been reached by drinking water services from a BUMD or UPTD, then the provision of SPAM by the Business Entity is not legally valid. The accessibility of drinking water services by a BUMD or UPTD is an absolute requirement for the validity of the provision of SPAM by a Business Entity and must also meet 6 (six) relative requirements as described on pages 24-25. The meaning of the phrase "not yet reached" is as follows:
 1. The BUMD has not been able to reach the location of the area and economically if the BUMD provides services in the area or location, the costs will be higher, causing water tariffs to be more expensive and ultimately the community will not be able to reach (cannot afford to pay for) the water provided by the BUMD;
 2. If a district/city does not have a BUMD, then the provision of SPAM can be carried out by a Business Entity. Conversely, if a region already has a BUMD, then the provision of SPAM cannot be carried out by a Business Entity. However, if an area in the region cannot be reached by the BUMD's drinking water service, then it can be done by the UPTD and/or Community Group, not by the Business Entity; or
 3. If the BUMD does not yet have the technical-operational and financial capabilities to provide drinking water services in a certain area, then the provision of SPAM in a certain area or region can be done by the Business Entity. Conversely, if the BUMD has the technical-operational and financial capabilities to reach the provision of drinking water services in an area, then the Business Entity cannot carry out the provision of SPAM because the main priority for water management is given to the.

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