

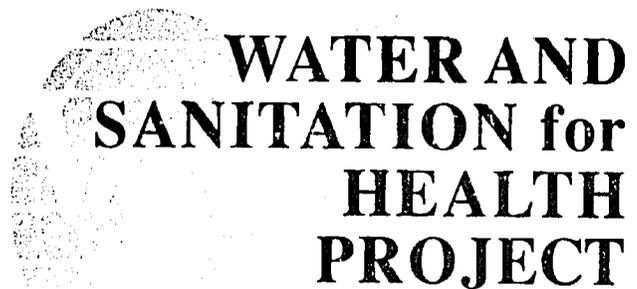
F I E L D R E P O R T

PNAS-694 702

REPORT OF THE WORKSHOP
ON PRIVATE SECTOR PARTICIPATION
IN URBAN WATER SUPPLY

BALI, INDONESIA
16-18 May 1991

Field Report No. 346
September 1991



Sponsored by the U.S. Agency for International Development
Operated by CDM and Associates

WASH Field Report No. 346

**REPORT OF THE WORKSHOP
ON PRIVATE SECTOR PARTICIPATION
IN URBAN WATER SUPPLY**

BALI, 16-18 May 1991

Prepared for the Government of Indonesia and
the U.S. Agency for International Development
under WASH Task No. 186

by

James Clarkson
James McCullough
and
Rashid Thabrani

September 1991

Water and Sanitation for Health Project
Contract No. DPE-5973-Z-00-8081-00, Project No. 836-1249
is sponsored by the Office of Health, Bureau for Science and Technology
U.S. Agency for International Development
Washington, DC 20523

This Workshop was sponsored jointly by the Ministries of Public Works and Home Affairs of the Government of Indonesia and the U.S. Agency for International Development. The Workshop was conducted by the Water and Sanitation for Health (WASH) Project and the Municipal Finance Project (MFP), both technical assistance programs of the Agency for International Development. This Workshop Report has been prepared jointly by WASH Consultants and MFP Staff.

CONTENTS

EXECUTIVE SUMMARY	iii
RECOMMENDED ACTIONS	v
1. PROJECT BACKGROUND	1
I. Project Background	1
II. The WASH Study	1
2. WORKSHOP BACKGROUND	3
I. Workshop Background	3
II. Workshop Structure	4
3. FINANCIAL WORKING GROUP	5
I. Summary	5
II. Specific Proposals	7
4. INSTITUTIONAL WORKING GROUP	11
I. Summary	11
II. Specific Proposals	13
5. LEGAL WORKING GROUP	17
I. Summary	17
II. Specific Proposals	17
6. SUMMARY AND CONCLUSIONS	23
I. Summary and Conclusions	23
II. Action Plan Recommendations	25

7.	RECOMMENDED ACTIONS: GENERAL	27
	RECOMMENDED ACTIONS: OTHER FINANCIAL	29
	ADDITIONAL RECOMMENDATIONS	29

APPENDIXES

A.	Agenda of Workshop and List of Participants	31
B.	Opening and Closing Remarks	37
C.	Working Group Recommendations (Original)	47

EXECUTIVE SUMMARY

Overview

The Workshop on Private Sector Participation in Urban Water Supply has served as an important milestone in the continuing privatization policy development of the Government of Indonesia. The Workshop is firstly a culmination of the USAID/WASH Study on Private Sector Participation in Urban Water Supply which was begun in September 1990 and produced a series of Working Papers and Reports in the spring of 1991. Secondly, the Workshop has also served as the starting point for translating the policy dialogue surrounding the Study into concrete actions by the GOI.

The Workshop was sponsored by USAID and the GOI Ministries of Public Works and Home Affairs. It was organized with support both from the WASH Project and the Municipal Finance Project which are technical assistance programs of USAID.

The Workshop came at a time when the GOI has committed itself to accelerating the pace of private sector involvement across a range of public services, including water supply. Therefore, this Workshop has relevance to sectors beyond water supply—notably power, transportation and telecommunications. The Workshop succeeded in bringing together the representatives of the main groups whose involvement will be critical to accelerated private sector participation: GOI officials (including central and local governments and public enterprises), the private sector (investors, contractors, service operators and consultants), as well as members of the donor community. A total of 70 participants attended.

Workshop Format and Findings

The three day Workshop was built around discussion of the key findings of the WASH Study and deliberations in a series of small working groups. Emphasis was placed on developing an agenda of concrete next steps.

The WASH Study findings were presented to the participants as a group and some initial discussion of options took place. More detailed discussion of options as well as formulations for next steps occurred in Working Group sessions, divided into Financial, Institutional and Legal aspects.

Each of the three Working Groups developed a list of recommendations, next steps and interpretations which provide a framework for recommendations for an Initial Action Plan.

Recommended actions fall into six general areas recommended by all of the Working Groups. A further two are unique to the concerns of the Financial Working Group.

General Headings:

1. Communication
2. Project Identification
3. Funding Identification and Provision of Incentives
4. Regulation Inventory and Clarification
5. Tariff Guidelines Improvement
6. PDAM Improvement

Unique to Finance:

1. Decapitalization Regulation
2. Asset Valuation

RECOMMENDED ACTIONS

GENERAL

1. COMMUNICATION

1A. Communications Forum

Establish a continuing Communication Forum composed of GOI and Private Sector participants. This forum will hold regular meetings to deal with a predetermined agenda. The goal is to improve mutual understanding, by means of a continuing dialog, and to produce mutually acceptable guidelines and Standard Operating Procedures (SOP's) for involving the private sector in urban water supply development.

1B. Coordinating Team

Establish a governmental Coordinating Team which will (a) prepare and recommend improvements in existing regulations; (b) develop SOP's, (c) assist local government and provide guidance in setting tariffs, contract negotiations, vetting of investors, etc. (to be done only at request of local government); and (d) to seek out funding sources and prepare information for potential investors.

2. PROJECT IDENTIFICATION

2A. A series of detailed case studies should be prepared based on the actual private sector participation to-date in urban water supply. This will result in clarification of the potential scope of activity for the private sector as well as developing a set of improved procedures for involving private sector investors. The 23 project identification studies previously undertaken by MOPW should be reanalyzed in accordance with the private sector's interests and perspectives. Specific cities and areas within cities could then be targeted for potential development with private sector participation.

2B. In order to develop alternative forms of private sector participation (e.g. management, service or training contracts), as well as in BOTs and joint ventures, follow-up studies should be made in the form of:

i) Study tours

- ii) Pilot projects
- iii) Feasibility studies

3. IDENTIFICATION OF FUNDING AND PROVIDING INCENTIVES

- 3A. Potential alternative sources of capital such as domestic mutual funds should be further explored. These sources have a medium return/low risk investment profile which more closely matches the typical project profile of water resource development.
- 3B. Incentives such as the waiving of the Value Added Tax and Import Duties on items pertaining to water supply development projects should be explored.

4. INVENTORY AND CLARIFICATION OF REGULATIONS

- 4A. To answer private sector concerns regarding regulatory confusion and uncertainty, a list of all laws and regulations pertaining to water resource exploitation as well as private sector investment should be compiled. This will lead to clarification and modification, where necessary.
- 4B. With regard to Minister of Home Affairs Regulation No.4 of 1990 (which concerns the guidelines for cooperation between a regional enterprise and a third party) a series of Operational Guidelines (JUKLAK) should be written to clarify procedures and provide guidance for various types of private sector participation.

5. TARIFF GUIDELINES IMPROVEMENT

- 5A. The guidelines for setting water tariffs should be analyzed and modifications suggested that will help realize the goal of full cost recovery.
- 5B. A mechanism should be established whereby the legal basis for tariffs can be set out in a formula in the joint venture agreement.

6. PDAM IMPROVEMENT

- 6A. Immediate efforts should be made to determine what form private sector participation might take for the purposes of management, rate collection, maintenance and other services to upgrade the present financial and technical performance of the PDAMs.

- 6B** These should be accompanied by training contracts involving private sector participants, existing governmental management training facilities and overseas training designed to upgrade the management capabilities of existing PDAM personnel.

OTHER FINANCIAL

1. REGULATIONS TO PREVENT DECAPITALIZATION OF THE PDAMS

Regulations should be formulated, put in place and enforced to prevent decapitalization of the PDAMs. This will require extensive discussion with the heads of regional government and the development of alternative sources of regional funds to replace potential lost revenue from PDAM profits.

2. ASSET VALUATION OF ALL PDAMS

An asset valuation of all PDAMs should be conducted. This will provide an improved, nationwide methodology for valuation purposes as well as the basis for a classification of the PDAMs. This documented valuation will assist in enforcing regulations to prevent decapitalization.

ADDITIONAL RECOMMENDATIONS

1. REGULATORY BODY

The WASH Study recommendation for "independent Regulatory Bodies to balance the objectives of the government and the legitimate financial needs of the private sector in setting water tariffs" was not a priority item for the Workshop participants. However, this issue will continue to figure prominently in the minds of potential investors in water supply projects and may be considered in the long term; perhaps at higher levels of the Government than were represented at the Workshop.

2. FOLLOW-UP ASSISTANCE

In addition to encouraging and stimulating continuing discussion, it is necessary to assist in providing technical and logistical assistance in these efforts. It is important that this come from outside normal GOI channels in order to assure the active participation of private sector investors. Additional USAID/WASH technical assistance may support this function.

3. NEXT STEP ACTION

The list of Recommended Actions given above indicates that there is much ground for common and immediate activity. A small, temporary and informal steering committee should be formed with members from GOI, the private sector and USAID/WASH to determine the appropriate role of each group in these steps and to discuss possible sources of funding for their implementation. It might be wise to get private sector involvement, no matter how modest, in providing support for such activity.

Chapter 1

PROJECT BACKGROUND

I. Project Background

The growth in demand for water in urban areas is related to the growth rate of the urban population. According to the 1990 Census, Indonesia's urban population grew from some 32.8 million in 1980 to 55.4 million in 1990, representing an increase of some 22.6 million people and a growth rate of over 5.3% per year. Despite a doubling of actual water production capacity over the period, urban piped water supply coverage increased from 35% in 1980 to only 41% in 1990 as compared to the goal of 75%.

It is against this background of growing demand for water that the Government of Indonesia (GOI) has been recently exploring the policy of private sector participation in the sector. The GOI's current and primary interest in private sector participation is in tapping private sector investment to augment public funds, thus allowing an acceleration in the proportion of urban households serviced with piped water supplies. Although the GOI has been discussing possible investment opportunities with the private sector for over five years, Build, Operate and Transfer (BOT) concession agreements are only now beginning to be reached with two or three initial schemes (Umbulan Springs, East Java; Nusa Dua, Bali; and Lhok Seumawe, Aceh). This slow pace can be discussed within the context of legal, financial, and institutional constraints.

II. The WASH Study

The WASH Study is an assessment of prospects for increasing private sector participation in the Indonesian urban water supply sector. The Study was carried out between 1 October and 15 December, 1990 by a Water for Sanitation and Health (WASH) Project consulting team financed by the U.S. Agency for International Development (USAID) and composed of Indonesian and foreign consultants with specialties in engineering, law, economics, finance and public administration.

The Study was designed to investigate:

- Characteristics of the Indonesian water sector that could influence the nature and level of private sector involvement
- Policy issues that should influence the approach of the GOI to private sector participation

- **The level and nature of private sector interest in the Indonesian water sector**
- **Institutional, legal, regulatory and financial constraints that should guide the design of a strategy to increase private sector participation**
- **Lessons from other developing countries and different approaches to private sector participation that might be applied to the Indonesian situation**

The results of that Study are set out in a summary of findings, implications and recommended next steps (Volume I); suggested administrative guidelines for water authorities dealing with a BOT private investor (Volume II); and a series of Working Papers on issues the GOI must address if it is to successfully involve the private sector (Volume III).

Chapter 2

WORKSHOP BACKGROUND

I. Workshop Background

In order to disseminate the findings of the WASH Study as widely as possible and to provide an opportunity for face-to-face discussion among GOI, private sector, WASH project and USAID participants, a Workshop was held in Bali on 16-18 May, 1991 (see Appendix A "List of Participants"). The Workshop had three goals: (1) to present the WASH Study findings; (2) to discuss options; and (3) to agree on next steps.

The final section of Volume I of the original study presented seven recommendations around which the Workshop was initially organized. These recommendations were:

- Changes in laws and regulations to remove ambiguities and inconsistencies that discourage private sector investment
- The types of guarantees prospective investors should and should not be given to encourage participation in the urban water sector
- Local governmental assurances to prospective investors against unilateral intervention that, at the same time, preserve the authority of local government and legislative bodies;
- Definition of the authority and process for adjusting water tariffs such that the public interest in social equity and the private investors' interest in revenue protection are held in balance
- The establishment of a regulatory structure that would define authority, the relationship between the investor and various local government bodies and the review and approval process to safeguard both the public and private interests
- A PSP (Private Sector Participation) plan that would establish the types of projects in which investment is encouraged, the standards of coverage and quality assurance to be met, the technical standards that are expected and an organizational roadmap to assist the private sector in its search for profitable investment opportunities

This plan would outline: (1) a policy for encouraging "enclave" developments in a manner consistent with other policy goals such as

the financial viability of the PDAM structure and the maintenance of economies of scale in water supply; and (2) a policy for BOT developments—mainly large projects such as bulk water supply or treatment suited to international market conditions for size of investment—that clarifies terms acceptable to the GOI; and

- A review of measures to strengthen the institutional capacity of the PDAMs to ensure they are placed on an equal footing with private sector partners.

II. Workshop Structure

In order to address the seven specific points of the original study, the Workshop was structured around three topics: Financial, Institutional, and Legal (See Appendix A, "Agenda of The Workshop"). WASH and MFP consultants made presentations which summarized the findings of the original study in each of these areas. This was followed by panel discussions and questions from the floor. On the second day of the Workshop, participants were assigned to or chose one of the three areas and the resulting Working Groups spent the day in developing recommendations for next steps to be taken by the GOI in order to further the goals of increasing private sector participation in urban water supply. These Working Group results were then presented to the participants as a whole on the final day of the Workshop.

Each of the three groups produced somewhat different formats of recommendations, comments, clarifications and action plans. The following three sections of this report discuss the product of each group in some detail.

Chapter 3

FINANCIAL WORKING GROUP

I. Summary

As public sector funds will clearly be inadequate to meet the pressing needs for urban water supply investments, the Government's primary objective in encouraging private sector participation is to increase the absolute level of investment at reasonable (acceptable) levels of costs to the beneficiaries. In attracting private investors, the WASH study emphasized the need to match the risk/return profiles of water supply projects with the risk/return profiles demanded by the "market" of potential investors; both domestic and foreign.

Water supply projects in Indonesia are currently perceived by investors to have relatively low returns with unacceptably high levels of risk because (1) the current mechanisms for establishing tariffs do not fully recover total costs; and (2) future tariff increases are totally within the discretion of local authorities with no recourse to higher authority. Because of this, private sector interest in the water supply sector is now mainly confined (and will probably continue to be confined in the near future) to source development/raw water transmission projects (typically stand-alone BOT projects where take-or-pay contracts can ensure the revenue stream) and enclave developments.

Unfortunately, source development and raw water transmission typically account for only 25% of total water supply investments while treatment and distribution account for 75%. Therefore, if the impact of private sector participation is to be maximized in the long run, the private sector must also be attracted to treatment and distribution projects as well. From the private investor perspective, this represents crossing a huge threshold as treatment and distribution projects would typically involve a joint venture with a PDAM. Any joint venture with a PDAM is subject to the tariff risks as well as the risk of operational inefficiency and/or non-commercial decision making. To interest the private sector in these projects, the WASH report pointed out the need for:

- tariff structures which fully recover total water costs, including depreciation and opportunity costs of capital
- more efficient PDAM operations to make them commercially viable and desirable as joint venture partners or even as customers in take-or-pay contracts
- the creation of an independent regulatory mechanism (or commission) which would be capable of setting tariffs by balancing the social

objectives of the public sector versus the reasonable return expectations of private investors

The risk and return expectations and structural characteristics of the "market" of both equity investors and sources of debt financing were covered in the report. There was much discussion in the Workshop on the Financial Internal Rate of Return (FIRR) expectations of various types of private investors. During the WASH Study, when the domestic prime lending rate was 22-23%, potential domestic investors were looking for minimum FIRR to Equity of 30-35%. At the same time, the US\$ prime lending rate was around 9% with BOT investors looking for minimum FIRR to Equity of 20-25% (after absorbing foreign exchange risks). Obviously, private investors realistically expect a return substantially over the long-term debt financing rate to accept the project risks; the higher the project risks the higher the premium. Equally obvious is the fact that privatization, involving financing with private equity and high cost commercial debt, may be substantially more expensive than financing with concessionary sovereign loans. Unless private sector efficiency can compensate for these additional costs, higher tariffs or subsidies are inescapable. This is the realistic cost of the "additional" investment funds.

Due to their typically low investment returns, it is doubtful that water supply projects will ever be able to attract domestic industrial/manufacturing equity investors with a profile for high returns/medium risk. Therefore, target equity investors will remain the supplier-led and enclave investors in the near term and perhaps institutional investors with medium return/low risk profiles in the longer term. Expanding the interest of these target investors within the constraints of affordable tariffs requires strong initiatives to reduce the perceived level of investor risks. With regard to debt financing, it was noted that banks also perceive the existing tariff setting mechanisms as inadequate to ensure the revenue stream of water supply projects.

It appears to be within the power of the government, at relatively low costs, to substantially reduce the level of perceived investment risks by setting an explicitly stated policy and legal framework for private sector participation in urban water supply and by clarifying/modifying the tariff-setting mechanisms. However, the other demands of the private sector participants for additional guarantees, especially foreign exchange guarantees, must be considered in a much more critical light because of:

- the problem of how to ensure that the costs of guarantees are comprehended in the water cost/water pricing mechanisms
- the broader policy implications of any government guarantees which must be considered across all utilities sectors, not just for water supply

(It should be mentioned in passing that there is an example of foreign exchange guarantees in a water supply project agreement between the World Bank and the Republic of the Philippines.)

II. Specific Proposals

The financial group developed an action plan consisting of eight specific proposals plus one general recommendation. Each proposal was put into a modified logframe format, with columns for action to be taken, expected results, measure of achievement, unit responsible and anticipated time requirements.

Proposal 1. Establishing a Communications Forum

In order to provide a venue for ongoing discussions on a face-to-face basis, the first proposal calls for the establishment of a forum with participants from government and private sector. This group would meet on a regular basis and with a specific agenda. Its goal would be to establish guidelines for private sector participation and its product would be a set of standard operating procedures. Participants would include representatives of the Ministry of Public Works as the lead agency, the Ministry of Home Affairs and representatives from the private sector. Three months was allotted for the establishment of this forum and the development of a set of operating procedures.

Proposal 2. Project Identification

The second proposal called for the preparation of detailed case studies on actual private sector participation projects to date in order to learn from previous work. Then, more focused project identification could begin with a reappraisal of the 23 Project Identification Studies conducted by MOPW whose findings were critiqued in the WASH Study. Detailed case studies of additional projects would also be carried out. This activity would result in (a) greater understanding of the problems of private sector funding and the gap between private sector financial needs and expectations and actual water supply project performance; and (b) a list of potential investment projects identified by in-depth case studies of existing projects. This analysis would help clarify the areas and scope of activities of the private sector in water development and would also produce a set of improved processes and procedures for getting private sector involvement. The lead agency would be Cipta Karya, working in conjunction with private sector participants and representatives from national and regional government; possibly supported by technical assistance from USAID/WASH. It was thought that three to six months would be sufficient for this activity.

Proposal 3. Inventory and Modification of Regulations

A call for an inventory of, and modifications to, the various applicable regulations concerning finance and monitoring to encourage private sector participation was the third proposal. The list and possible modifications would be the product of this action. Leading agencies would be the Ministry of Finance in conjunction with the Ministry of Home Affairs (PUOD) but other appropriate government bodies would also be involved. Six to twelve months was given for this job.

Proposal 4. Identification of Sources of Funding

Fourth on the list was a proposal for a more detailed identification of sources of funding for projects with private sector participation, including alternative sources such as institutions (i.e. pension funds, mutual funds, etc.) The results of this action would be an improved inventory of sources of funding available, as reflected in an alternative and more selective listing of identified sources. A group consisting of private sector participants and interested government units would be responsible for producing such an inventory in six to 12 months. It was thought that this might be funded and technical assistance provided by USAID/WASH.

Proposal 5. Improved Tariff Guidelines

A fifth proposal called for improvement of the guidelines for setting water tariffs, the results of this action being the guidelines themselves and the measure of effectiveness being increased revenues from water sales. Current guidelines do not provide for total recovery of all costs (including depreciation and the opportunity costs of capital). The lead agency would be the Ministry of Home Affairs (PUOD), working with various departments of Government (in dealing with PEMDA and PDAMs) and the private sector. This was thought to require six to 12 months.

Proposal 6. Prevent Decapitalization

During the course of discussions, it was pointed out that many of the PDAMs were at risk of becoming decapitalized. Under pressure from local government to produce profits, they were not fully depreciating the physical infrastructure in their accounts on a commercial basis and they were not setting aside adequate replacement funds from their retained earnings. Thus, proposal six suggests formulating regulations to prevent this from continuing. The product of this step would be regulations and precautionary guidelines, success being measured by the increased financial stability of the PDAMs. The lead agency would be the Ministry of Home Affairs (PUOD), working with PEMDA, PDAMs and various government bodies. A time frame of six to 12 months was suggested for these measures as well.

Proposal 7. PDAM Asset Valuation

To support Proposal Six, Proposal Seven suggests a PDAM asset valuation. This would produce an improved methodology for valuing assets and would enable a classification of PDAMs to be developed. These documented asset valuations would help in enforcing that PDAMs adequately provide for revaluation of assets. The lead agency would be the Ministry of Home Affairs (PUOD), working with PDAMs and appropriate Government groups. It was anticipated that six months would be required for this.

Proposal 8. Increased Financial Capacity of PDAMs

The eighth and final proposal called for increasing the financial capacities of the PDAMs. Increased efficiency could be achieved through the use of service and management contracts. This would result in an increase of income and profit for the PDAMs. The groups involved would be the private sector, PDAMs and appropriate government units. As this would be an ongoing activity, no time frame was set.

Optional Suggestion

A final, "optional" proposal was set out but not presented to the workshop nor discussed by the participants as a whole. This proposal answered directly some of the concerns expressed both in the original WASH Study and in various discussions, particularly with representatives of the private sector. This proposal calls for the establishment of national and regional regulatory commissions to set and supervise tariffs for water use. While this was seen as an extremely important point by the WASH team and by potential investors it was not a point the GOI participants wished to discuss. There were, consequently, no actions or proposals made regarding the establishment of such a body although discussions could be initiated regarding long-term implementation of such a proposal.

An abbreviated outline of the proposed action plan follows.

**ACTION PLAN
FINANCIAL WORKING GROUP**

ACTION	RESULT
1. Establish Forum	Guidelines and SOPs
2. Project Identification	Identification and Analysis of Projects for PSP
3. Inventory of Regulations	Modified Regulations
4. Identification of Funding	Sources and Alternative Sources of PSP Funding
5. Tariff Guideline Improvement	Improved Guidelines and Increased Revenue
6. Decapitalization Regulations	Regulation and Financial Stability of PDAM
7. Asset Valuation	Improved Methodology and a Classification of PDAMs
8. Increase PDAM Financial Abilities via PSP Contracts	Increased Efficiency, Income, and Profit

Chapter 4

INSTITUTIONAL WORKING GROUP

I. Summary

The original WASH Study has considerable detail on the institutional constraints and opportunities currently existing in the area of water supply (see Working Paper D). Regarding private sector participation it offers two options; private investment (particularly in enclave and supplier-led projects) and improvement in the performance of the PDAMs. Although most investors would prefer not to work through the PDAMs, except in enclave development, they must do so. The PDAMs will thus be partners in joint venture activities and will manage most private sector concessions. In addition, they have basic authority over water supply and they own the existing systems. Therefore, the institutional issues focus most strongly on the PDAM organization and performance. In particular, the report discusses (a) the current problems of PDAMs; (b) how these effect private sector participation in water supply projects; (c) efforts underway to improve PDAM performance; and (d) opportunities which might exist to improve PDAM performance through private sector activities.

Six problems or constraints with implications for private sector participation are listed in the WASH Study. These are:

- Institutional complexity and overlapping responsibilities, which make it difficult for potential investors to identify or understand how they might participate
- Board of Supervisor approval of PDAM actions, which delays the decision making process
- Limited professional capability of PDAMs, which makes it difficult for private sector people to deal with them
- Inadequate career lines for PDAM staff, which means some employees are lost to the private sector
- Limits to government's ability to supervise PDAMs, which means PDAM performance is difficult to monitor and improve
- Considerable external influence brought to bear on PDAMs, which makes them indecisive and slow to act in contract negotiations

Two general opportunities for increased private sector participation are offered: (1) increased direct investment, particularly through build-operate-transfer (BOT) projects; and (2) improvement in PDAM performance by private sector activity in service, management and leasing contracts and in straight technical assistance. It is suggested that these may be complementary because PDAM performance needs to improve before private sector investment will be attracted. Specific ways in which the private sector could improve PDAM abilities are given. These are:

- In the BOT activity of water production and treatment
- Meter reading and bill collection
- Training and customer relations
- Operation and maintenance of water supply systems
- Leasing of water production and treatment
- Specific distribution mechanisms such as standpost/kiosks
- almost any PDAM function helped through technical assistance contracts

The emphasis of the WASH report was clearly on the PDAM institutional and manpower limitations and ways in which to overcome them as the primary government unit in the government/private sector equation. The Institutional Working Group discussed this in the context of improving PDAM performance, in part by studying current performance for lessons to be learned and to identify major areas of strength or weakness. However, the major focus was on a broader perspective, i.e.:

- a review of the laws and regulations pertaining to public sector participation
- reaffirming the centrality of the PDAM in this area
- recommending the formation of a Coordinating Team at the central government level to prepare improved regulations and instructions for increased private sector participation in water supply and to assist in implementation
- proposing the creation of a mechanism for vetting potential investors

- recommending a follow-up to the WASH Study to explore the feasibility of possible non-investment options for improving PDAM performance

II. Specific Proposals

The Institutional Working Group then went on to make four specific proposals.

Proposal 1. Establish a Coordinating Team

A Coordinating Team, including a subgroup as a Technical Team, should be formed at the central government level. After some discussion it was decided that this team should initially focus on water supply issues only but that a greater range of urban services might later be included. Such a Coordinating Team could have branches or representatives at other government levels as well.

- The Coordinating Team would consist of members from:
 - Ministry of Home Affairs
 - The Directorate General of Regional Affairs and Autonomy (PUOD)
 - The Directorate General of Regional Development (BANGDA)
 - Ministry of Public Works
 - Secretary General
 - Directorate General of Cipta Karya
 - Ministry of Finance
 - Directorate General of Monitoring
 - Board for Analysis of National Finance (BAKN)
 - BAPPENAS
 - Deputy II (Social-Cultural Division)
 - Deputy V (Regional Development Division)
 - National Investment Coordinating Board

- The tasks and functions of the Coordinating Team would include at least:
 - to prepare and recommend improvements in regulations concerning private sector participation in water supply
 - to prepare implementing instructions (SOPs) concerning the way of cooperation with the private sector in water supply
 - to assist local governments in providing technical and administrative guidance, such as regarding tariffs, negotiating contracts, investment feasibility analysis, determining bonafide potential investors, etc.; such assistance to be given only if requested by local government
 - to utilize various means to further the role of the private sector in water supply, among others, in searching for soft loans and preparing information, both for local governments as well as for potential private investors;
 - to clarify the degree to which central government can provide financial guarantees to private investors. (This was felt by the private sector to be especially urgent given the questionable financial viability of many local governments.)
 - within the framework of the above functions, the Coordinating Team should prepare an instruction/ guideline book (Buku Petunjuk) spelling out options and procedures for cooperation with the private sector in water supply.

- The Coordinating Team should be initiated through a joint decision letter between Ministers of Home Affairs and Public Works. For this, the Director-Generals of PUOD and Cipta Karya should carry out the required steps.

Proposal 2. Follow-up Studies

In order to assist in developing alternative private sector participation options (BOT, joint ventures, management, service, or lease contracts, etc.) it is felt necessary to conduct a number of follow-up studies in the form of:

- Study tours

- Pilot projects
- Feasibility studies

The emphasis of these activities would be on PDAM performance improvement as outlined in the WASH Study, Working Paper D. These studies should be under the auspices of both the Ministry of Home Affairs and the Ministry of Public Works. It was mentioned that improving PDAM performance so that it would be a better partner for private sector participation should be given very high priority. (USAID or other foreign funds could be sought to support these activities.)

Proposal 3. Improvement of PDAM Performance

To improve the management performance of the PDAMs, it is necessary to carry out education and training of staff; both within Indonesia using available training facilities and overseas using supporting funds.

Proposal 4. Investigating Potential Investors

A mechanism should be established for vetting potential investors since local government and PDAMs would not necessarily be equipped to do this. The institution for doing this could be BKPM and not necessarily the proposed Coordinating Team.

Chapter 5

LEGAL WORKING GROUP

I. Summary

After reviewing laws and regulations concerned with private sector participation in water supply activities in Indonesia, the legal section of the original WASH Study, Working Paper B, concluded that these laws and regulations currently lack precision and clarity. This is of particular importance regarding private sector participation because it leads to an increased perception of risk by investors. In addition, the Study argued that these laws and regulations are inconsistently applied and such rights as are granted to private sector participants are generally unenforceable. According to WASH interviews of both domestic and foreign private investors, this leads to a perception of unpredictability and an attendant lack of interest in participation in the water supply field. Finally, the Study pointed out that existing laws and regulations are in apparent conflict with each other on some points and this may further restrict private sector participation. These issues are reflected specifically in recommendations 1, 3, and 5 of the WASH Study.

The thrust of the Report's recommendations concerning legal aspects is that (1) not only should there be major and minor modifications of existing legislation but that (2) new legislation specifically related to private sector participation in urban water supply projects may be called for. It should be stressed that the report emphasizes the *perceptions* of potential investors; such perceptions being based on private sector needs and expectations regarding legal aspects of the investment climate. This point was reiterated at the Workshop in both the legal and the financial presentations and subsequent exchanges.

The Legal Working Group did not focus on the perception issue. Rather, they concerned themselves with analysis of existing laws and regulations and their meaning and scope. In contrast to the WASH Study analysis and recommendations, the Working Group concluded that there were, in fact, no fundamental contradictions in the laws or regulations and thus no major changes or new legislation is required. However, specific suggestions on procedural issues were made. It should be noted that the private sector representatives participating in this Working Group were all from Indonesian firms; there were no potential foreign investors present.

II. Specific Proposals

The Legal Working Group set out a response to the chart presented in the original WASH Report which indicated which specific laws were felt to be contradictory. These were Basic Law of 1945, Article 33, Law No. 5 of 1962, and Law No. 1 of 1967 (all of

which were deemed to prohibit or restrict private sector participation in water development) and Presidential Decree No. 21 of 1989 and Regulation of Minister of Home Affairs Nos. 4 of 1990 and 3 of 1986 (which seemed to permit such participation).

**POSSIBLE CONFLICT:
LEGAL AND REGULATORY**

Private Sector Participation is:

Prohibited or Restricted	Permitted
<p>Basic Law of 1945; Article 33</p> <p>Law No. 5 of 1962</p> <p>Law No. 1 of 1967</p>	<p>Presidential Decree No. 21 of 1989</p> <p>Regulation of Minister of Home Affairs; Nos. of 1990 and 3 of 1988</p>

Basic Law of 1945, Article 33, states that "Production branches which are important to the State and provide for the needs of the people must be under the control of the State and water is to be managed and utilized by the government for the maximum benefit of the people." The Working Group interprets this to mean that the State does not own the natural resources such as water; it is rather that the State acts as a sort of Board of Authority which manages these resources. It is the role of the State to organize the preservation and maintenance of water and to determine and arrange legal dealings between persons or corporate bodies regarding water. All of this takes place within the framework of the State's duty to improve the welfare of the people.

Law No. 5 of 1962 states that PDAMs have no authority to cooperate with the private sector if this would relinquish management by the PDAM. This law, which deals with the establishment of regional government enterprises, has been revised and is now waiting approval by the National Parliament. Consequently, the Working Group did not address itself directly to this point.

Law No. 1 of 1967 was interpreted to mean that, while *foreign* investors could not exercise full control in the drinking water sector, local investors could. When considered in the light of Presidential Decree No. 21 of 1989 which lists areas in which private sector investment is specifically prohibited and which does not list water as one such area,

this was taken to mean that foreign investment was welcome to come into water exploitation so long as it did not have *full* control over the enterprise.

The WASH Study, in its recommendations, had implied concern about the relationship between various levels of government (national, regional, and local) and regulations regarding water supply exploitation in general and private sector participation in this area in particular. This is the thrust of recommendations 3, 4, and 5. The Working Group emphasized that (a) the Ministry of Public Works, under Law Nos. 5 of 1974 and 14 of 1987, had the right to manage water at the regional level; and that (b) under decentralization, water management should be at the Tingkat I and II (regional and local) levels. The Legal Working Group made three specific proposals for further action.

Proposal 1. Preparation of Operational Guidelines

They pointed out that Minister of Home Affairs Regulation No. 4 of 1990 was incomplete and did not, in fact, provide much guidance for private sector participation in such areas as service or management contracts, BOTs, or joint ventures in general. They felt that Operational Guidelines (JUKLAT) were needed for each such type of cooperation. The most important, however, were BOTs and other joint ventures. It was felt that the BOT was the most desirable form of joint venture in view of the fact that water is to be provided to the people.

The Working Group went on to outline what it felt was the appropriate scope of activities for a joint venture enterprise. This consisted of:

- Treatment plant
- Transmission
- Distribution
- Management

These correspond to the areas of water exploitation activities which account for approximately 80-90% of costs; the other 10-20% being taken up in source development.

They further considered that the actual sphere of activities of any joint venture should be subject to the approval of the head of the regional government (Kepala Daerah). The supporting argument for this is that it is the responsibility of government to serve the public good. This can be done in various ways determined by the regional head, including cross-subsidies.

Proposal 2. Procedural Stages for Private Sector Investment

The group then moved on to list their suggestions for the procedural stages through which private sector investment should move and the unit or units responsible at each stage. These were:

STEP	RESPONSIBILITY
a) Project Formulation Identification	Regional Government, and Ministry of Home affairs, Public Works
b) Invitation	Regional Government
c) Proposal Presentation Administration Technical Financial	Investor
d) Evaluation/Clarification	Regional Government
e) Appointment	Regional Government
f) Memorandum of Understanding	Regional Governr.ent/Private Sector
g) Principle Clearance >Rp20 billion between Rp10-20 billion <=Rp10 billion	Ministry of Home Affairs Tingkat I Government Tingkat II Government
h) Preliminary Joint Venture Announcement	PDAM/Private Sector
i) License of Consent	Head of Regional Government
j) Budgetary Process	BKPM
k) Founding the Joint Venture Company	Notary
l) Legalization of the Joint Venture Company	Legal Affairs
m) Business License	BKPM

Proposal 3. A) Commercial Law and, B) Legal Basis for Tariffs

An additional set of requirements was also set out; the most important of which were recommendations that the joint venture be administered in accordance with commercial law and that the legal basis for tariffs be set out in a formula in the joint venture agreement. It was felt that incentives are covered under the existing Investment Law but

that additional incentives should be provided by waiving the value added tax and all import duties for joint venture equipment.

Proposal 4. Establishment of Guidance Team

A final recommendation was that a team be established to (a) identify cities and areas within cities for investment; (b) establish guidelines and a standard format for submitting and evaluating proposals; (c) improve the guidance and information on investment already existing in Air Bersih; and (d) formulate Operational Guidelines for incorporation in Minister of Home Affairs Regulation No. 4 of 1990. The team would be expected to complete these tasks by September 1991.

Chapter 6

SUMMARY AND CONCLUSIONS

I. Summary and Conclusions

As a first exercise in discussion between the GOI and the private sector, with inputs from USAID and the WASH consultants, the Workshop can be counted a success. The resulting list of suggestions for positive action meets many of the considerations set out in the original WASH Study. There is now an agreed upon list of positive action steps to be carried out and there exists a common baseline for discussion and elaboration of other action as further discussion and work unfold issues requiring additional attention.

- Concern remained that current government laws and regulations regarding private sector participation in urban water supply are not precise and require clarification. However, there was no consensus on whether this should involve new legislation, modification of existing legislation or merely clarifying statements. That some action is required, however, is emphasized by the strong *perception* within the private sector of such a lack of legal and regulatory clarity and precision.
- By the same token, it was generally agreed that the issue of tariff regulation (balancing the requirement of government at all levels to consider the welfare of the population on the one hand, against the need of private sector investors to have a reasonable return on their capital on the other), was important and required policy level considerations. However, there was no agreement on the precise form a resolution of the issues might take.
- There was a broad consensus that it was necessary to (a) identify more precisely those areas of activity most appropriate to private sector participation; and (b) develop a clear set of guidelines and standard operating procedures for such participation.
- It was recognized that the PDAM organization is central to the whole water supply issue but that the current PDAMs are generally weak in manpower and training and, thus, in performance. This was seen as another area in which the private sector could serve a useful role (e. g. in developing the capacity to provide specific

assistance via management, service, lease or other contracts as well as by contracting to provide manpower training).

Two recommendations of the WASH Study were not dealt with directly. These concerned (a) the types of guarantees prospective investors should and should not be given to participate in the urban water sector; and (b) assurances by the local governments to private investors that they would not be subject to unilateral intervention. That these were not discussed may be attributed to two causes. Firstly, there may have been no participants who felt competent to discuss these issues and, secondly, it is possible that most of the participants were not aware of how central these points were to the private sector or the extent to which they had been emphasized in the WASH Study. Now that the workshop has initiated direct exchange of views and ideas between GOI and private sector participants in water supply, the additional meetings and forums called for by the participants may assist in resolving those two points as well.

A third point, which was raised and repeatedly rejected for immediate attention, was recommendation five of the original Study. This calls for:

"The establishment of a regulatory structure that would define authority, the relationship between the investor and various local government bodies, and the review and approval process so as to safeguard both the public and private interests..."

It was decided that this recommendation did not require immediate action as the existing line of authority was sufficiently clear. Discussion of the possible establishment of a regulatory mechanism or body for raising tariffs could be deferred to a later date.

The Workshop should be considered a success and it is of vital importance that the discussions continue and that the initiative not be lost now that attention has been focussed on the most salient points. Those areas and recommendations from the original WASH Study which were not dealt with in depth should continue to be addressed. One of the lessons of the Workshop is that there remains a disparity of significant proportion between the approach to private sector participation in urban water supply from the private sector side and from the government side. One of the most valuable products of the Workshop was the increased mutual understanding of the participants involved in that disparity and the beginnings of movement toward mutually acceptable solutions or compromises.

II. Action Plan Recommendations

The specific recommendations for action made at the Workshop are presented in the Executive Summary, and given in somewhat greater detail in the body of this report. These are repeated here for continuity only.

Actions recommended fall into six general headings covered by each of the Working Groups. A further two are unique to the concerns of the Financial Group.

General Headings :

- Communication
- Project Identification
- Funding Identification and Provision of Incentives
- Regulation Inventory and Classification
- Tariff Guidelines Improvement
- PDAM Improvement

Unique to Finance :

- Decapitalization Regulation
- Asset Valuation

Chapter 7

RECOMMENDED ACTIONS: GENERAL

1. Communication

1A. Communications Forum

Establish a continuing Communication Forum composed of GOI and Private Sector participants. This forum will hold regular meetings to deal with a predetermined agenda. The goal is to improve mutual understanding, by means of a continuing dialog, and to produce mutually acceptable guidelines and Standard Operating Procedures (SOP's) for involving the private sector in urban water supply development.

1B. Coordinating Team

Establish a governmental Coordinating Team which will (a) prepare and recommend improvements in existing regulations; (b) develop SOP's, (c) assist local government and provide guidance in setting tariffs, contract negotiations, vetting of investors, etc. (to be done only at request of local government); and (d) to seek out funding sources and prepare information for potential investors.

2. Project Identification

2A. A series of detailed case studies should be prepared based on the actual private sector participation to-date in urban water supply. This will result in clarification of the potential scope of activity for the private sector as well as developing a set of improved procedures for involving private sector investors. The 23 project identification studies previously undertaken by MOPW should be reanalyzed in accordance with the private sector's interests and perspectives. Specific cities and areas within cities could then be targeted for potential development with private sector participation.

2B. In order to develop alternative forms of private sector participation (e.g. management, service or training contracts), as well as in BOTs and joint ventures, follow-up studies should be made in the form of:

- i) Study tours
- ii) Pilot projects
- iii) Feasibility studies

3. Identification of Funding and Providing Incentives

- 3A. Potential alternative sources of capital such as domestic mutual funds should be further explored. These sources have a medium return/low risk investment profile which more closely matches the typical project profile of water resource development.
- 3B. Incentives such as the waiving of the Value Added Tax and Import Duties on items pertaining to water supply development projects should be explored.

4. Inventory and Clarification of Regulations

- 4A. To answer private sector concerns regarding regulatory confusion and uncertainty, a list of all laws and regulations pertaining to water resource exploitation as well as private sector investment should be compiled. This will lead to clarification and modification, where necessary.
- 4B. With regard to Minister of Home Affairs Regulation No.4 of 1990 (which concerns the guidelines for cooperation between a regional enterprise and a third party) a series of Operational Guidelines (JUKLAK) should be written to clarify procedures and provide guidance for various types of private sector participation.

5. Tariff Guidelines Improvement

- 5A. The guidelines for setting water tariffs should be analyzed and modifications suggested that will help realize the goal of full cost recovery.
- 5B. A mechanism should be established whereby the legal basis for tariffs can be set out in a formula in the joint venture agreement.

6. PDAM Improvement

- 6A. Immediate efforts should be made to determine what form private sector participation might take for the purposes of management, rate collection, maintenance and other services to upgrade the present financial and technical performance of the PDAMs.
- 6B. These should be accompanied by training contracts involving private sector participants, existing governmental management training facilities and overseas training designed to upgrade the management capabilities of existing PDAM personnel.

RECOMMENDED ACTIONS: OTHER FINANCIAL

1. Regulations to Prevent Decapitalization of the PDAMs

Regulations should be formulated, put in place and enforced to prevent decapitalization of the PDAMs. This will require extensive discussion with the heads of regional government and the development of alternative sources of regional funds to replace potential lost revenue from PDAM profits.

2. Asset Valuation of All PDAMs

An asset valuation of all PDAMs should be conducted. This will provide an improved, nationwide methodology for valuation purposes as well as the basis for a classification of the PDAMs. This documented valuation will assist in enforcing regulations to prevent decapitalization.

ADDITIONAL RECOMMENDATIONS

1. Regulatory Body

The WASH Study recommendation for "independent Regulatory Bodies to balance the objectives of the government and the legitimate financial needs of the private sector in setting water tariffs" was not a priority item for the Workshop participants. However, this issue will continue to figure prominently in the minds of potential investors in water supply projects and may be considered in the long term; perhaps at higher levels of the Government than were represented at the Workshop.

2. Follow-up Assistance

In addition to encouraging and stimulating continuing discussion, it is necessary to assist in providing technical and logistical assistance in these efforts. It is important that this come from outside normal GOI channels in order to assure the active participation of private sector investors. Additional USAID/WASH technical assistance may support this function.

3. Next Step Action

The list of Recommended Actions given above indicates that there is much ground for common and immediate activity. A small, temporary and informal steering committee should be formed with members from GOI, the private sector and USAID/WASH to determine the appropriate role of each group in these steps and to discuss possible sources of funding for their implementation. It might be wise to get private sector involvement, no matter how modest, in providing support for such activity.

Appendix A

AGENDA OF WORKSHOP AND LIST OF PARTICIPANTS

ACTUAL AGENDA

May 16, 1991 (Thursday)

09:00-10:00	Opening Remarks and Introduction	<ul style="list-style-type: none">• Rp. Atar Sibero (Director General of PUOD)• Mr. Lewis Reade (Director of USAID)
10:00-11:00	Workshop Overview and WASH Study Key Findings	<ul style="list-style-type: none">• Dr. Jim McCullough (Municipal Finance Project)• Ms. Jane Walker (WASH)
11:00-11:15	Coffee Break	
11:15-13:00	Legal and Regulatory Aspects of PSP/UWS: <ul style="list-style-type: none">• Study Findings• Panel Discussion	<ul style="list-style-type: none">• Ir. Prayogo Padmowihardjo—Moderator• Rashid Thabrani SH• Santoso Donosepoetro (PT. Indocu Matra)• Dr. Son Damar (PUOD)• Ali Muhammad SH (Biro Hukum, MPOW)• Drs. Soekrisno (Staf Ahli Menteri, MOPW)
13:00-14:00	Lunch Break	
14:00-15:30	Institutional Issues: <ul style="list-style-type: none">• Study Findings• Panel Discussion	<ul style="list-style-type: none">• Drs. B.S. Tambunan—Moderator• Dr. John L. Taylor• Dr. Richard Moulton (Sir M. MacDonald)• Drs. Syafij Djohan (PUOD)• Ir. A.R. Tambing (Cipta Karya)

- | | | |
|-------------|--|---|
| 15:30-16:00 | Coffee Break | |
| 16:00-17:30 | Financial Aspects and Private Investment Considerations: | <ul style="list-style-type: none"> • Ir. Soedarsono Soekardi—Moderator • Mr. William Kugler |
| | <ul style="list-style-type: none"> • Study Findings • Panel Discussion | <ul style="list-style-type: none"> • Subakti Harsono (Bromo Consortium) • Drs. S. Pandjaitan (PUOD) • Mr. William Frej (USAID) |
| 19:00 | Welcoming Dinner | |

May 17, 1991 (Friday)

- | | | |
|-------------|--|---|
| 9:00-10:00 | National Policy Action Items | <ul style="list-style-type: none"> • Ir. Susanto Mertodiningrat—Moderator • Ms. Jane Walker |
| 10:00-13:00 | 3 Working Groups will meet in separate sessions to address actions in: | |
| | (1) Laws & Regulation | <ul style="list-style-type: none"> • Drs. Soekrisno—Moderator • Drs. Alex Pioh—Notulen |
| | (2) Institutional Aspects | <ul style="list-style-type: none"> • Dr. Son Damar—Moderator • Ir. M. Hatta—Notulen |
| | (3) Financial & Investment Concerns | <ul style="list-style-type: none"> • Dr. Singgih Riphath—Moderator • Ir. Paul A. Natapradja—Notulen |
| 13:00-14:00 | Lunch Break | |
| 14:00-17:00 | Working Groups continue in the afternoon | |
| 19:00- | Dinner | |

May 18, 1991 (Saturday)

09:00-11:00	Presentation of Working Group Recommendations and Discussion	<ul style="list-style-type: none">• Ir. Prayogo Padmowihardjo—Moderator (all moderators/notulen from 3 Working Groups)
11:00-12:00	Closing Remarks	<ul style="list-style-type: none">• Mr. William Frej (USAID)• Dr. Dono Iskandar Djojosebroto (Head, Board for State Finance, Credits and Balance of Payments Analysis, Ministry of Finance)

List of Participants

I. Central Government Officials

1. Drs Soekrisno—Staff Ahli Mentri, MOPW
2. Ir. Soenarjono Danoedjo—Director General Cipta Karya, MOPW
3. Ir. Prayogo Padmowihardjo—Staff Ahli Dit. Jen. Cipta Karya, MOPW
4. Ir. Susanto Mertodiningrat—Staff Ahli Dit. Jen. Cipta Karya, MOPW
5. Paul Adhi Natapradja—Staff Ahli Dit. Jen. Cipta Karya
6. Ir. Suratmo Notodipuro—Sekretaris Dir. Jen. Cipta Karya, MOPW
7. Ir. Parulian Sidabutar—Director Bina Program, Cipta Karya, MOPW
8. Ir. A.R. Tambing—Director Dit. Air Bersih (DAB), Cipta Karya, MOPW
9. Ir. Rachmat Rani—Kasubdit Perencanaan Teknis DAB, Cipta Karya, MOPW
10. Ir. Bambang Purwanto—Subdit Pengaturan, DAB, Cipta Karya, MOPW
11. Ir. Djoko Rismianto—Subdit Perencanaan Teknis, DAB, Cipta Karya, MOPW
12. Ir. Somba Tambing—Subdit Perencanaan Teknis, DAB, Cipta Karya, MOPW
13. Suharto Basuki—Biro Sarana Perusahaan, MOPW
14. Ali Muhammad _ Biro Hukum, MOPW
15. Drs. Atar Sibero—Director General PUOD, MOHA
16. Dr. Ir. Son Damar—Staff Ahli Dit. Jen. PUOD, MOHA
17. Drs. B.S. Tambunan—Director Regional Finance, PUOD, MOHA
18. Ir. Sahat Pandjaitan—Kasubdit Public Enterprises, DRF, PUOD, MOHA
19. Ir. Eddy Kurniadi—Subdit Public Enterprises, DRF, PUOD, MOHA
20. Cut Viyantimala—Subdit Public Enterprises, DRF, PUOD, MOHA
21. Drs. Syarif Djohan—Director Bina Pendapatan Daerah, PUOD, MOHA
22. Ir. Timbul P. MPF—Staff, DRF, PUOD, MOHA

23. Drs. Oentarto—Kepala Bagian Perencanaan, PUOD, MOHA
24. Ir. Soedarsono Soekardi—Director Bangkota, BANGDA, MOHA
25. Ir. M. Hatta Ahadis—Kasubdit Human Settlements, BANGDA, MOHA
26. Drs. Alex Pioh—Bina Program, BANGDA, MOHA
27. Dr. Singgih Riphath—Kepala Bidang Analisa Pajak Daerah, BAKN, MOF,
28. Drs. Parluhutan Hutahaeen MA—Staff BAKN, MOF
29. Drs. Sumarden—Staff BAKN, MOF
30. Drs. Adeng Zakaria—Kepala Biro Perencanaan non-Industri, BKPM

II. Provincial and Local Government Officials

1. Drs. Zainuddin Japri—Director Utama, PDAB, East Java Province
2. Drs. M. Zuhdi—Assistant Sekwilda, Pemda, East Java Province
3. Ir. Husodo—Director Utama, PDAM, Surabaya
4. Sutrisno Suharto—Walikota, Semarang
5. Ir. Djaelani S.—Director Utama, PDAM, Semarang
6. M. Ridwan SH—Bupati Kab. Aceh Utara
7. Drs. H. Ghazali A. Gani— Director Utama, PDAM, Lhokseumawe (Kab. Aceh Utara)
8. I.G. B Alit Putra—Bupati Kab. Badung (Bali)
9. Ir. Uki Ashardiyatno—Direktor Utama, PDAM, Kab. Badung
10. Ir. Soeroso Martowidjojo—Kepala Kanwil P.U., Bali Province
11. Ir. Ibrahim—Director Utama , PDAM, Kotamadya Bandung
12. Ir. Achmad—Director Utama, PDAM, Kabupaten Bandung

III. Private Sector Representatives

1. Richard Moulton—Mott MacDonald
2. Drs. Pramono Sungkano—P.T. Malasara Buana (Humpus Group)
3. Subakti Harsono—Bromo Consortium
4. R. Santoso Donosepoetro—P.T. Indocu Matra
5. Ir. Deddy Natsir—P.T. Wirontono & Co., Ltd.
6. Hindro T. Soemardjan—Direksi Pelaksana Pengendalian Pembangunan Komplek Kemayoran
7. Panario Prawoto SE—Direksi Pelaksana Pengendalian Pembangunan Komplek Kemayoran.
8. Ir. Semeru Soekarno—Direksi Pelaksana Pengendalian Pembangunan Komplek Kemayoran
9. Mr. Michael Ashburn—IPCO/Lahmeyer International
10. Ir. A.F. Dengah—P.T. Waseco Tirta

IV. USAID and Resource Persons

1. Lewis P. Reade—Director, USAID Indonesia
2. William Frej—Urban Advisor, USAID Indonesia
3. Barbara Foster—RHUDO/USAID Bangkok
4. Dr. Johan Bastian—HIID (MOF)
5. Nancy Happe—Team Leader, Financial Markets Project
6. Michael Romanos—DSP Advisor to BAPPENAS

V. Consultants

1. Dr. James McCullough—Municipal Finance Project
2. Mr. William Kugler—Municipal Finance Project
3. Mr. Steven Pereira—Municipal Finance Project
4. Dr. John L. Taylor—Municipal Finance Project
5. Mrs. Jane Walker—WASH Study Team
6. Rashid Thabrani, SH—WASH Study Team
7. Ir. Mohd. Maulana—WASH Study Team
8. Dr. Jim Clarkson—Consultant to MFP

VI. Others Members of Panitia

1. Sri Hartini—Secretary MFP
2. Menuk Rahardjo—Secretary MFP
3. San San—Secretary MFP

Appendix B

OPENING AND CLOSING REMARKS

DEPARTEMEN DALAM NEGERI
REPUBLIK INDONESIA

KEYNOTE SPEECH
OF
DIRECTOR GENERAL OF PUBLIC ADMINISTRATION AND REGIONAL AUTONOMY
MINISTRY OF HOME AFFAIRS
ON
USAID/WASH WORKSHOP ON PRIVATE SECTOR PARTICIPATION
IN URBAN WATER SUPPLY

MAY 16, 1991 - BALI

Honorable Governor of Bali, Bpk. Prof Dr. Ida Bagus Oka, Mr. Lewis Reade (of USAID) and Distinguished Ladies and Gentlemen,

This is a special morning for us. It is special, because we are going to talk about one of the important development issues in Indonesia : private sector participation in supplying a necessity for people, whose health and life expectation depend much on it, WATER.

In this opening, I would like to express my appreciation to USAID for its effort to conduct this workshop. This is one of the evidences of continuous support USAID provides us, Indonesian people. Thanks to USAID.

I would like to extend a very warm welcome to everyone gathered here today. As I look around this room, I notice our central government colleagues, Local Government Officials, bi-and multilateral agency representative and, of course, private sector representatives. You all represent a broad spectrum of the principle actors involved in our economic development and I am happy to join with you, through this workshop, in cementing a partnership for new alternatives and advances in the challenges that face us.

PROBLEMATIC SITUATIONS

We know that Indonesian people who live in urban areas are about 50 millions. Sixty percent of them, however, remain unserved and may still utilize unhealthy water. Since their number

increases at a rate of 4% per year, it is a challenge for us to act faster, such that we will see that all urban people can use healthy water in the near future.

I believe, it is necessary to promote Private sector participation, in order to be able to satisfy the needs of water supply. However, there are some problematic situations we have to deal with that require some thought from this workshop.

First, we realize that the existing laws and regulations may have been inadequate to ensure acceptability and financial feasibility of the private sector to participate in water supply activity.

The Ministry of Home Affairs through its Regulation No. 4 of 1990 Concerning the Guidelines for Cooperation between a Regional Enterprise and a Third Party has actually attempted to encourage private participation both in developing existing or already running business and in establishing new enterprises based on considerations of prospects and mutual benefits. As stated in article 5 (2), the private sector may choose types of cooperation which range from management contract, to technical assistance cooperation at national and/or international levels, or any combination thereof. We know that some perception of uncertainties and risks may still prevail in the private sector. The private sector may perceive that the Basic Law of 1945 Article 33 prohibits its involvement in water supply activity. Private sector companies may perceive it as a risk to its cash flows. These misperceptions must, of course, be removed. The truth is, I believe, in order to ensure the fulfillment of public objectives, Government must retain some control, and neither domestic nor foreign investors may exercise full control of such public utility. I also believe that pricing policy can be arranged in such a way to achieve mutual benefits for the public and private sector, and put the arrangement in a binding agreement. Therefore, water supply activity is open to the private sector and it is our task here in the workshop to find out what improvements can be made in the area of laws and regulations.

Second, we may have also found some problematic situations in the institutional area. One of the difficulties is that, perhaps, the private sector interested in water supply projects must deal with many agencies at the local, regional, and the national levels. The complexity may discourage the private sector from participating. Another difficulty is that PDAMs themselves may have been lacking management autonomy. "Too many" directions provided by the two main agencies at the provincial level, which are the Provincial Water Supply Project (PPSAB) and the Provincial Monitoring and Development Unit (PMDU) may have confused the PDAMs, particularly in the area of management. Decision making process involving Supervisory Board for a wide-range of policies, from the strategic policies to the technical operational ones, may have caused delays which may disturb the efforts towards private participation. These problematic situations, however, are not unsolvable. These are challenges for us to overcome.

Third, in the area of private investment and finance, we may have also seen some problematic situations. A good climate exists for Private Investments for the following reasons. Indonesian non-oil GDP grows at a rate of 6 to 7 percent per year. Another reason is that the monetary situation has been stable with low rates of inflation. Still another, the government has been pushing privatization. The problems, however, among others, private investors may have been lacking information of the "real demand" for water. On the one hand, the construction for water supply may have met the needs for areas like Jakarta that has achieved a capacity of 10.000 liters/second. This should have been sufficient for all people in Jakarta. But on the other hand, what we have really found is that more than half of the people remain unserved. Another problematic situation is that, perhaps, even though generally feasible only in the long run; It is not a quick-yielding investment. Still another, capital goods and intermediate goods necessary for producing water, such as machinery, equipment, and chemicals, may have been available at relatively higher prices, which could have been overcome by domestic production and collective purchasing, since water supply activity is done on a great economic scale. Finally, tariff policy for water, which must meet both "public objectives" and "private wish", may have been difficult to formulate.

PUOD's ROLES AND STRATEGIC POLICIES

The role of the Director General of Public Administration and Regional Autonomy (PUOD) can be seen, at least, in two contexts. One is in the context with the main job mandated to the Ministry of Home Affairs. Another is in the context of the function of the Advisory Council for the Regional Autonomy (DPOD).

As stated in the Presidential Decree No. 15. of 1984, the main jobs mandated to the Ministry of Home Affairs include the areas of general government, development of socio-politics, public administration and regional autonomy, regional development and village development. In the area of Public Administration and Regional Autonomy, the Minister of Home Affairs's Decree No. 22 of 1986 states that the main functions, among others, are to determine national policies, develop systems, provide guidance and supervision in the areas of administration, finance, revenues of Regional and Local Governments, as well as managerial aspects of Regional and Local Enterprises.

As stated in the Presidential Decree No. 250/M of 1983, the Minister of Home Affairs serves as the Chairman of the Advisory Council for the Regional Autonomy. The members of the Council, among others, are the Ministers of Planning, Defense, Finance, and Public Works. The Director General of PUOD serves as the secretary of the council.

One of the central issues the Ministry of Home Affairs as well as the DPOD must deal with is to strengthen autonomy. PUOD's strategic policies are directed to support this issue.

PUOD strategic policies, among others, are to support any effort which leads to providing more "power" to the local governments and promoting private participation, as well as providing more information necessary to improve managerial aspects of local administration. The delegation of "powers" from the central and provincial governments to local governments are delivered by authorizing them to carry out tasks such as : improving personnel, providing funds, and adequate technology transfer. Actions for these include changing or establishing new laws and regulations, institutions, conducting training, computerization, and setting up pilot projects for innovative approaches for privatization of water and other urban services.

PUOD strategic policies are to achieve three basic objectives. First, to improve efficiency of the public services. Second, to improve efficiency in development management and to promote "bottom up" planning. Third, to promote private participation in regions and localities.

WHERE SHOULD WE GO?

I hope this workshop will be able to come up with clear and applicable recommendations that will be useful to both the government as well as the private entrepreneurs, on how to increase private sector participation in water supply.

There are, perhaps, some basic questions we want to answer in the area of laws and regulations. First, how to improve laws and regulations so that the laws and regulations would be clear in terms of "rights" and "obligations" of the governments, the private sector, and the consumers, and "enforceable" ? Second, how to write the laws and regulations so that they will "encourage" the private sector to participate, within "the spirit" of Article 33 of the Basic Laws of 1945 ?

In the institutional area, some basic questions may also need answers from this workshop. First, how should we set up mechanisms such that, while keeping interests of every level government fulfilled, they are simple enough for any proposal to improve Water Supply is able to get a prompt response ? Second, what kind of support, i.e. personnel, training, and managerial technology, should we provide to the enterprises ?

Some other questions also need answers in the area of investment and finance. First, how should we acquire information of the "real market demand" for water supply ? Second, how should we create mechanisms for getting production factors with less costs taking advantage of the already great economic scale of water supply activity ? Third, how should we establish criteria of "pricing policies" for water, as well as the procedures of policy-making process, so that the policies will meet both public objectives and private wishes in the public-private partnership ? Fourth, what type of participation is the best way for public-private partnership

In water supply ? Fifth, what creative financing approaches exist to increase investor interest in water utilities ?

There are, of course, many other questions which need to be answered. However, this workshop I believe has limitations, such as in time and information. Maximizing outputs with the constraints, should be our attempt in this workshop, perhaps.

I am happy to declare this workshop open!

Good luck to you all participants!

Director General
Public Administration and Regional Autonomy

ATAR SIBERO

LEWIS P. READE'S REMARKS
FOR THE USAID/GOI WORKSHOP

ON

PRIVATE SECTOR PARTICIPATION IN URBAN WATER SUPPLY

MAY 16, 1991

The honorable governor of Bali, Professor DR. Ida Bagus Oka; Director Generals Atar Sibero and Soenardjono Danoedjo; Distinguished Guests; Ladies and Gentlemen.

On behalf of The United States Agency for International Development, I take great pleasure in joining you this morning as a co-sponsor of this extremely timely workshop - timely both in terms of President Soeharto's new initiatives in finding innovative ways to provide private investors with incentives for the development of infrastructure and because of USAID's new programmatic direction in support of the private provision of public services.

I have just recently arrived in Indonesia to serve as the Director of the USAID Mission. Thus, this is only my second trip to this dynamic, and culturally rich, island of Bali.

On my first trip, I attended the Asean Economic Conference and participated, first hand, in dialogue with the private and public sectors on the expansion of Indonesia's economy. In all of these discussions, there was a familiar theme - for economic expansion to continue, improvement of Indonesia's infrastructure is a critical ingredient.

Last July in Bandung, Minister of Planning Saleh Afiff stated that the role of Government will have to be increasingly catalytic to develop a more expansive role for the private sector in financing and operation of urban-based infrastructure. As I understand it, it is your intent, over the next three days of this Workshop, to provide the assurance that this theme will be continued.

USAID hopes that the strategies and approaches discussed at this workshop will be useful to the GOI in formulating the specifics of an action plan which can expand the role of the private sector in water and other urban service delivery and to create viable private/public partnerships for the provision of urban infrastructure in general.

My training as an engineer, my 27 years in the private sector and 11 years in economic development have provided me with not only the insight but also the technical understanding of why infrastructure is so important to the economic productivity of both and developing countries and , as this productivity increases, it derives to a great extent from cities.

Surprisingly, cities throughout the **developing** world (that's right developing) contribute an estimated 50% to 70% of GNP. In Indonesia, the same holds true. Yet, Indonesia's cities face severe challenges in feeding, housing and employing their swelling numbers. Urban population is multiplying at nearly triple the national rate and will grow from 56 million this year to 90 million by the year 2000. The urban growth rate over the last decade was 5.36 percent per year, high by any standard. By 2025, the urban population will be greater than those living in rural areas. The urban labor force tripled from 6 to 20 million between 1971 and 1990 and the services and manufacturing sectors will soon overtake the agriculture sector as the principal source of employment. Over the next 35 years nearly 50 million off-farm private sector jobs will have to be created to absorb additional entrants to the national labor force.

This unprecedented growth has created a demand for urban services already so great that public finances seemingly can no longer underwrite it. For example, it is estimated that nearly two-thirds of Indonesia's city dwellers do not have access to adequate sanitary water supply. In addressing these problems, government subsidies for basic human services and infrastructure in urban areas have been a central element of the GOI's poverty alleviation efforts. During the present five year plan, urban water, solid waste management and road capital expenditures alone will exceed one billion dollars annually, double that of the previous five year plan, but far below government targets. Eighty-five percent of this investment is financed by central government, almost exclusively through foreign loans. Despite these additional resources, service deficits in urban areas will continue to rise as investment fails to keep pace with demand.

We are here today to address the urgency of this problem which has compelled the Government of Indonesia to look to the private sector to meet these spiralling demands.

USAID **supports** this new search for solutions to the growing needs in urban areas which we **hope** will be found in the development of innovative, efficient approaches to providing urban services, with the private sector taking the leadership provision role.

However, within the Indonesian context, urban services delivery and finance issues are very complex. As Minister Saleh Afiff has pointed out, such areas have been considered as "social sectors" in which the government cannot abdicate its responsibility to assure the provision basic services to all citizens, regardless of the ability of individuals to pay for the facility offered. Clearly, a balance must be found between inducing the private sector to participate in urban service delivery through the assurance of a fair chance of profit comparable to that obtainable in other areas of investment and in the vital realm of protecting the public interest.

The determination of a realistic scope for private sector participation in urban service delivery and finance is clearly a major and diverse task. It first requires the identification of areas in which such participation is readily acceptable. It requires that the legal and institutional framework is in place for binding agreements to be reached by interested parties in the public

and private sectors. It also requires that municipalities receive clear guidance as to the range of activities in which private participation or partnership is acceptable, and guidance regarding a regulatory framework applicable to each type of private participation, designed both to protect the public interest and to induce the mobilization of private resources.

It is also essential to identify the private sector target groups whose participation is most likely, and to ensure that their main concerns are considered in drawing up the regulatory framework including removal of the barriers and administrative and financial disincentives which are constraints to their investment in urban services.

The technical assistance requirements for creating the appropriate conditions for large scale private sector participation are considerable both in the range of expertise and in the amount of time needed. This expertise includes: technical familiarity with the priority target areas for private sector participation; knowledge of administrative and contract law; (to enable the drafting of new laws or amendments as necessary); the ability to formulate draft licensing regulations and prototype contracts between the public and private sector; and knowledge of public finance and administration in Indonesia to insure that agreements with the private sector are entered into with the proper authority regarding the financial and administrative implications of such contracts.

In longer term, the mobilization of private sector savings for municipal borrowing is yet another avenue for private participation in urban development.

USAID realizes that this workshop is but one step in long-term process of change. USAID also views this change as very positive and fully intends to support Indonesia's goal of strengthening and expanding the capability of the private sector to finance and deliver urban services and infrastructure required for Indonesia's economic expansion. This support will continue through our currently policy-based housing guaranty loan program and a new project initiative currently under design - privatizing urban services.

It is an honor for USAID to co-sponsor this workshop, and along with my colleague Bill Frej, we wish you success in achieving your admirable and innovative objectives. Terima Kasih.

CLOSING REMARKS

OF

DR. DONO ISKANDAR DOJOSUBROTO, HEAD OF BOARD FOR STATE
FINANCE,
CREDITS AND BALANCE OF PAYMENTS ANALYSIS, MINISTRY OF FINANCE
AT
USAID/WASH/GOI WORKSHOP ON PRIVATE SECTOR PARTICIPATION
IN URBAN WATER SUPPLY

MAY 18, 1991

Ladies and Gentlemen,

Increasing the role of the private sector , in infrastructure development is a priority goal of the Government and to this end a program of deregulation is being implemented in many key sectors. However, we understand that increasing private sector involvement in infrastructure development, and especially in water supply, is not simple or easy and that we must balance the interests of public consumers with private opportunity. However, as this workshop has demonstrated, we need greater private sector investment both to increase the pace of development through private involvement and to increase the productivity of the water supply sector through introduction of private sector management practices. The importance of this issue is demonstrated by recent statements issued by the President, and by the fact that several large BOT projects are now being expedited by Government. We hope that the findings of this workshop will assist us to broaden the base of private sector involvement in water supply, and also in other infrastructure services. This workshop has come at a very important time for Indonesia.

We are grateful to USAID for sponsoring this workshop and for supporting the WASH Study. We know that private sector participation is of special interest to USAID and has the strong backing of Mr. Lewis P. Reade, the recently appointed USAID Mission Director to Indonesia. We trust that the WASH Study and this workshop are just the beginning of long term cooperation with USAID on this subject.

I know that the participants of the workshop have worked hard and that you have produced some very useful proposals for specific actions. We have been talking a great deal about private sector investment in water supply over the past two years and it is very encouraging to see that the workshop has gone beyond the discussions of problems and has proposed positive actions for the next steps.

We realize that our efforts must include both long and short term solutions. It is clear that we need to learn from our experiences in Aceh, Surabaya, Bali and Semarang. We, in government needs to understand better which types of project are really of interest to the private sector and to target those opportunities. At the same time, we must safe-guard public trust, especially with regard to water supply which is, after all, a basic human necessity, not a luxury. We must also balance our need for quick action with our commitment to the decentralization of responsibility for water supply; water supply is, and will remain a local responsibility.

Given all these considerations, your task in this workshop has not been an easy one. In deed, looking at the recommendations that you have produced the task has just begun and that implementation of the recommendations will require your active participation in the future. I would like to commend you as a group on the quality of the recommendations and for the hard work that has gone into them. I would also like to challenge you not to let your efforts end here today, but to carry the work forward.

With "Bismillahirrahmannirrohim", I declare this workshop close.

Have a nice trip home.

Dr. Dono Iskandar Djojosebroto
Head of Board for State Finance,
Credits and Balance of Payments
Analysis, Ministry of Finance

Appendix C

WORKING GROUP RECOMMENDATIONS (ORIGINAL)

KELOMPOK I

WORKING GROUP "FINANCIAL."

Moderator:	Dr. Singgih Riphahat	(DK)
Notulen:	Ir. Paul Adhi Natapradja	(PU)
Anggota:	—Ir. Sidabutar	(PU)
	—Drs. Syarif Djohan	(DDN)
	—Ir. Soedarsono Soekardi	(DDN)
	—Ir. Ráchmat Rani	(PU)
	—Drs. Noerhasyim	(PDAB Jatim)
	—Subakti Harsono	(Bromo Consortium)
	—Herry Pohan MBA	(BDN)
	—D. Sulaeman	(Astek)
	—Panarto Prawoto SE	(DP3KK)
	—Ir. Bargas	(PDAM Bandung)
	—Dr. Johan Bastin	(Harvard)
	—Nancy Happe	(Harvard)
	—William R. Kugler	(MFP)
	—Michael Romanos	(DSP)
	—Ir. Amran Nur	(Lep. n Kencana)
	—William Frej	(USAID)

KELOMPOK I
WORKING GROUP "FINANCIAL"

RENCANA KERJA

Pokja: Keuangan

Lembar ke: 1/3

KEGIATAN YANG DILAKSANAKAN	HASIL YANG DIHARAPKAN	TOLAK UKUR PENCAPAIAN	INSTANSI/LEMBAGA YANG TERKAIT	JANGKA WAKTU
1) Pembentukan Forum Pengembangan Private Sector Participation	Pedoman Umum PSP	Peningkatan partisipasi sektor swasta dan perbaikan sistem infokom	Interdepartemen/BKPM dan swasta (kadin, dll) Leading Agencies: Dep. PU & Depdagri	3 bulan
2) Identifikasi Wilayah Usaha PSP	- Daftar Proyek Potensial untuk PSP - Analisa Rinci Proyek PSP yang sedang dalam penyiapan	Kejelasan wilayah dan lingkup usaha Penyempurnaan Proses dan Prosedur	Departemen terkait, swasta dan WASH Study Team. Leading Agency: CK/Dep. PU	3 - 6 bulan
3) Inventarisasi dan modifikasi peraturan di bidang keuangan dan moneter, bagi PDAM bila mengadakan kerjasama dgn swasta dalam rangka merangsang PSP (dgn keringanan-peraturan)	Modifikasi Peraturan Keuangan yang diperlukan	Peraturan operasional	Departemen terkait Leading Agencies: Dep. Keuangan dan Depdagri	6-12 bulan

KELOMPOK I
WORKING GROUP "FINANCIAL"

RENCANA KERJA

Pokja: Keuangan

Lembar ke: 2/3

KEGIATAN YANG DILAKSANAKAN	HASIL YANG DIHARAPKAN	TOLAK UKUR PENCAPAIAN	INSTANSI/LEMBAGA YANG TERKAIT	JANGKA WAKTU
4) Identifikasi sumber-sumber pembiayaan untuk Proyek PSP	Mengenai sumber-sumber dana yang dapat dimanfaatkan	Alternatif sumber-sumber dana yang lebih selektif dan menentukan financing pattern	Departemen terkait, swasta dan WASH Team.	6-12 bulan
5) Penyempurnaan Pedoman Penyusunan Struktur Tarif Air Bersih	Pedoman yang disempurnakan dgn melindungi masyarakat kecil	Peningkatan pendapatan dan perusahaan air bersih	Unsur interde- partemen terkait, Pemda, PDAM dan swasta. Leading Agency: Depdagri	6-12 bulan
6) Menciptakan peraturan untuk menghindari terjadinya deka- pitalisasi PDAM	Peraturan dan pengaturan pengamanan	Stabilitas keuangan PDAM	Departemen terkait; Pemda & PDAM Leading Agency: Depdagri	6-12 bulan

KELOMPOK I
WORKING GROUP "FINANCIAL"

RENCANA KERJA

Pokja: Keuangan

Lembar ke: 3/3

KEGIATAN YANG DILAKSANAKAN	HASIL YANG DIHARAPKAN	TOLAK UKUR PENCAPAIAN	INSTANSI/LEMBAGA YANG TERKAIT	JANGKA WAKTU
7) Penilaian asset PDAM (Asset valuation)	Penyempurnaan metodologi penilaian asset	Klasifikasi PDAM	Unsur departemen terkait: PDAM Leading Agency: Depdagri	6 bulan
8) Peningkatan kemampuan keuangan PDAM	Peningkatan efisiensi melalui pengembangan pola service/management control	Peningkatan keuntungan dan pendapatan PDAM	Unsur departemen terkait, PDAM dan swasta	Bertahap dan berkelanjutan
Optional: Pembentukan komisi Penetapan Tarif (KPT)	Pedoman pembentukan komisi	Terbentuknya komisi Pusat dan Daerah	Pemerintah, swasta dan masyarakat Leading Agencies: Depdagri & Pemda	Belum dapat ditentukan

KELOMPOK II

WORKING GROUP "INSTITUTIONAL"

I. PENDAHULUAN

Anggota-anggota kelompok kerja II yang membahas masalah institusi adalah sebagai berikut :

- a. Moderator: Dr. Ir. Son Diamar (DDN)
- b. Notulen: Ir. M. Hatta Ahadis, Msc (DDN)
- c. Anggota-anggota: —Ir. Tambing (PU)
—Ir. Susanto M. (PU)
—Drs. S. Pandjaltan (DDN)
—Drs. Adeng Zakaria (BKPM)
—Ridwan SH (Dati II)
—Ir. Zaenudin Djapri (PDAB Jatim)
—Ir. Dengah (Waseco Tirta)
—Dr. James McCullough (MFP)
—Mr. Richard Moulton (Mott Mac Donald)
—Mr. Michael Ashburn
—Dr. John Taylor (MFP)
—Dra. Cut Viyantimala (DDN)

II. DASAR-DASAR PERTIMBANGAN

Dalam membahas masalah institusi ini, Kelompok Kerja II mengacu pada beberapa peraturan perundangan yang terkait antar lain:

- UUD'45 pasal 33, yang menyertakan bahwa sumber - sumber air dikuasai oleh Negara dan dikelola serta dimanfaatkan oleh Pemerintah untuk sebesar - besarnya kemakmuran rakyat.
- UU No 5/74 tentang Pokok - Pokok Pemerintahan di Daerah
- UU No 5/1962 yang menyatakan bahwa Perusahaan Daerah tidak diperbolehkan bekerjasama dengan pihak ketiga apabila hal demikian mengurangi kewenangan manajemen Perusahaan Daerah tersebut.

- UU No 6/68, tentang Penanaman Modal Asing Penanaman Asing.
- Keppres 21/1989, yang mengizinkan investor di pihak swasta disektor pengadaan air bersih.
- Permendagri No 3/86, yang mengatur kerjasama antara Pemerintah Daerah dengan swasta
- Permendagri No 4/90 yang mengatur kerjasama antara Perusahaan Daerah dengan swasta

Disamping itu Kelompok Kerja II juga mengacu pada :

- Pidato Bpk Presiden tgl 16 Agustus 1990, yang menekankan pengembangan otonomi dengan titik berat pada Daerah Tk II.
- Pengarahan Bpk Dirjen pada upacara pembukaan USAID/WASH WORKSHOP ON PRIVATE SECTOR PARTICIPATION
- Hasil - hasil diskusi para anggota KK II

III. BUTIR - BUTIR USULAN

1. Prinsip - prinsip manajemen sehubungan dengan kerjasama dengan pihak swasta adalah sbb :
 - Pelayanan air bersih tetap dilaksanakan oleh PDAM
 - Kerjasama dengan pihak swasta (asing dan/atau domestik) dilaksanakan dengan :
 - PDAM (Permendagri No. 4 tahun 1991); atau
 - Pemerintah Daerah (Permendagri No. 3 tahun 1986) pada Daerah yang belum memiliki PDAM.
 - Tarif ditetapkan oleh kepala Daerah berdasarkan persatuan yang berlaku. Apabila terdapat masalah didalam penetapan besarnya tarif, berkaitan dengan kerjasama dengan pihak ketiga, maka masalah tersebut diajukan kepada Pemerintah Pusat.
2. Ditingkat pusat perlu dibentuk "Tim Koordinasi Peranserta Swasta di Bidang Air bersih "(TKPSAB) dengan pengaturan sbb:

- Tim Koordinasi terdiri dari "tim teknis". Tim teknis beranggotakan pejabat non struktural untuk melaksanakan tugas - tugas harian tim secara tetap, dan pejabat struktural.
- Anggota tim Pengarah dan tim teknis terdiri komponen 1:
 - Departemen Dalam Negeri :
 - Ditjen PUOD
 - Ditjen Bangda
 - Departemen Pekerjaan Umum :
 - Sekretariat Jenderal
 - Ditjen Cipta Karya
 - Departemen Keuangan :
 - Ditjen Moneter
 - Badan Analisa Keuangan Negara
 - Badan Perencanaan Pembayaran Nasional
 - Deputi II Bidang sosial Budaya
 - Deputi V Bidang regional dan Daerah
 - Badan Koordinasi Penanaman Modal
- Tugas/fungsi tim antara lain meliputi :
 - Mempersiapkan dan mengusulkan penyempurnaan berbagai peraturan yang berkaitan dengan peran serta di bidang air bersih.
 - Mempersiapkan petunjuk pelaksanaan (SOP) tentang tata cara kerja sama dengan swasta di bidang air bersih.
 - Membantu Pemerintah Daerah di dalam memecahkan masalah-masalah teknis dan administratif seperti tarif, pelaksanaan negosiasi, penilaian kelayakan investasi dan bonafiditas calon investor, dll yang dipandang perlu berdasarkan permintaan Pemerintah Daerah.
 - Melakukan berbagai upaya untuk mendorong peran serta swasta di bidang air bersih, antara lain mencarikan pinjaman lunak dan menyediakan informasi, baik bagi Pemerintah Daerah maupun bagi calon investor swasta baik bagi Pemerintah Daerah maupun bagi calon Investor Swasta.

- Pembentukan tim dilakukan dengan surat keputusan bersama antara Menteri Dalam Negeri dan menteri Pekerjaan Umum. Untuk itu, Ditjen PUOD dan Ditjen Cipta Karya agar segera melakukan langkah-langkah lebih lanjut.
3. Di dalam rangka mengembangkan peran serta swasta dengan berbagai bentuk kerja sama (BOT, Joint Venture, Management Contract, Service Contract, Lease Contract), maka perlu dilakukan studi-studi lanjutan berupa:
- Studi Tour
 - Pilot Project
 - Feasibility Study
4. Untuk meningkatkan kemampuan management PDAM, perlu dilakukan pendidikan dan pelatihan di dalam negeri dengan memanfaatkan sarana-sarana diklat yang ada, dan di luar negeri dengan dukungan dana yang cukup.

LEGIAN BEACH, 18 MEI 1991,

Atas nama seluruh anggota Kelompok Kerja II:

Moderator :

Notulen:

Dr. Ir. Son Diamar

Ir. M. Hatta Ahadis, Msc

KELOMPOK III
WORKING GROUP "LEGAL"

Moderator:	Drs. Soekrisno	(PU)
Notulen:	Drs. Alex Ploh	(DDN)
Anggota:	—Drs. B.S. Tambunan	(DDN)
	—Ali Muhammad, S.H	(PU)
	—Ir. Prayogo Padmodihardjo	(PU)
	—Sudirman, S.H	(Pemda Jatim)
	—Sutrisno Suharto	(Pemda Jatim)
	—I.G. Alit Putra	(Bupati Badung)
	—Ir. Eddy Kumiadi	(DDN)
	—Rashid Thabrani, S.H	(Konsultan WASH)
	—R. Santoso Donosepoetro, MBA	(INDUCO MATRA)
	—Ir. Hindro T. Sumardjan	(Investor)
	—Ir. Mochtar	(PDAM Semarang)
	—Ir. Herdriyati	(PDAM Bandung)
	—Pramono Sungkono, MBA	(Investor)
	—Ms. Suharto Basuki	(PU)
	—Ir. Moh Maulana	(WASH Study)
	—Bambang. P.MSc	(PU)

1. Landasan Hukum:

a. UUD 1945 Pasal 33 berbunyi:

ayat 2: Cabang-cabang produksi yang penting bagi negara dan yang menguasai hajat hidup orang banyak dikuasai oleh negara.

ayat 3: Bumi, air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besarnya kemakmuran rakyat.

Pengertian dikuasai (UU No.5/1960 tentang UU Pokok agraria) dalam Penjelasan Umum: UU No.5/1960 mengatakan bahwa dalam pasal 33 ayat 3 UUD 1945 tidak perlu dan tidaklah pada tempatnya bahwa bangsa Indonesia ataupun Negara bertindak sebagai pemilik tanah / air. Adalah lebih tepat jika negara sebagai organisasi kekuasaan dari seluruh rakyat

(bangsa) bertindak selaku Badan Penguasa. Dari sudut inilah harus dilihat arti bumi, air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara. Sesuai dengan pangkal pendirian tersebut di atas perkataan dikuasai dalam pasal ini bukanlah dalam arti dimiliki, akan tetapi adalah pengertian yang memberi wewenang kepada negara sebagai organisasi kekuasaan dari bangsa Indonesia itu pada tingkatan yang tertinggi:

- mengatur dan menyelenggarakan pemerintahan, penggunaan, persediaan dan pemeliharannya.
- menentukan dan mengatur hak-hak yang dapat dipunyai atas bumi, air dan ruang angkasa.
- menentukan dan mengatur hubungan-hubungan Hukum antara orang-orang dan perbuatan Hukum yang mengenai bumi, air dan ruang angkasa.

Segala sesuatunya dengan tujuan untuk mencapai sebesar-besarnya kemakmuran rakyat dalam rangka masyarakat adil dan makmur.

- b.1. UU No.1 tahun 1967, mengatakan bahwa air bersih tertutup bagi PMA secara penguasaan penuh.
2. KEPPRES No.21/1989 (Negative List), mengatakan sektor air bersih terbuka kepada investor swasta secara penguasaan penuh untuk investor nasional dan usaha patungan untuk investor asing.
- c. UU No.11/1974 pasal 11 berbunyi:
 - ayat 1. Penguasa air dan atau sumber-sumber air ditujukan untuk meningkatkan kemanfaatan bagi kesejahteraan rakyat pada dasarnya dilakukan oleh pemerintah baik Pusat maupun Daerah.
 - ayat 2. Badan Hukum, Badan Sosial dan atau perorangan yang melakukan penguasaan air dan atau sumber-sumber air, harus memperoleh izin dari Pemerintah, dengan perpedoman kepada azas usaha bersama dan kekeluargaan.
2. a. Dalam penjelasan pasal 11 berbunyi: Penguasaan air atau sumber-sumber air di sini diartikan, bahwa usaha peningkatan kemanfaatan air dan atau sumber-sumber air itu ditujukan untuk mencari penghasilan yang langsung berupa uang oleh kelompok

masyarakat pengusaha, baik yang berbentuk Badan Hukum, Badan Sosial maupun perorangan dengan selaku berpedoman kepada asas usaha bersama dan kekeluargaan. Yang dimaksud dengan usaha bersama dan kekeluargaan adalah antara lain usaha mengembangkan koperasi.

- b. Sesuai dengan asas Desentralisasi yang diatur dalam Undang-Undang No. 5 th 1974 tentang pokok-pokok pemerintahan di daerah, maka dalam rangka desentralisasi tersebut telah dikeluarkan Peraturan Pemerintahan No. 14 tahun 1987 tentang penyerahan sebagian urusan Pemerintahan di bidang pekerjaan umum kepada Pemerintah Daerah, baik Tingkat I maupun Tingkat II, sebagai pelaksanaan dari undang-undang No.11 tahun 1974 tentang pengaliran.

3. PERMENDAGRI No.3/1986 mengenai:

Penyertaan Modal Daerah kepada pihak ketiga/swasta.

4. PERMENDAGRI No.4/1990 mengenai: a.l. Tata cara kerjasama antara perusahaan daerah dengan pihak ketiga/swasta.
5. Point No.3 dan No.4. memberikan landasan lebih rinci bagi PEMDA dalam mengadakan usaha dengan swasta dalam kewajibannya untuk memenuhi keperluan air bagi masyarakat.
6. Mengingat air itu merupakan penyediaan pelayanan umum maka usaha-usaha patungan khususnya dalam kaitan dengan PERMENDAGRI 4/90 bentuknya adalah BOT (Built Operation and Transfer).
7. Lingkup usaha PT JVC dapat meliputi:
 - a. Unit produksi (Treatment Plan)
 - b. Transmisi
 - c. Distribusi
 - d. Management

Catatan: Sesuai dengan peranan PEMDA Investasi-investasi tersebut dapat menjadi feasible (a.l. terjangkau masyarakat luas) Pemerintah dapat menyediakan sarana air baku (saluran induk/waduk).

8. Wilayah usaha Investasi Swasta dapat melayani daerah-daerah sesuai dengan kesepakatan dengan Kepala Daerah. Khusus untuk daerah kumuh/kurang mampu

dan untuk melayani fasilitas sosial lainnya pada hakekatnya adalah tanggung jawab Pemerintah.(Model Cross Subsidi perlu dikembangkan.

9. A. Prosedur/tata cara penyelenggaraan Investasi:
 - a) Project Formulation/Identification—oleh Pemda, DepDagri, Dep PU.
 - b) Invitation—Pemda
 - c) Penyampaian Proposal—Investor
Administration
Technical
Financial
 - d) Evaluation/Clarification—Pemda
 - e) Appointment— Pemda
 - f) MOU (Memorandum of Understanding)—Pemda/swasta
 - g) Izin Prinsip >20 milil—Depdagri
s/d 10 - 20—Dati I
s/d 10—Dati II
 - h) Preliminary JVA—PDAM Swasta
 - i) Izin Konsesi—Kepala daerah
 - j) Proses BKPM (SP 3)—BKPM
 - k) Pendirian PT JVC—Notaris
 - l) Legalisasi PT JVC—Kehakiman
 - m) Izin Usaha—BKPM
 - B. Izin Konstruksi serta Pelaksanaannya.
10. Dalam pembentukan PT JVC (model BOT) tidak diperkenankan bahwa PDAM mengadakan "merger".
 11. Otonomi PT JVC:
PT JVC dikelola atas dasar prinsip Hukum Dagang (sesuai dengan Hukum Dagang Pemda tidak diperkenankan mengadakan "intervensi" usaha JVC kecuali melalui perwakilannya dalam PT JVC (komisaris/direksi).
 12. Legal basis untuk penentuan tarif diterangkan dalam suatu formula yang tercantum dalam JVA dan diberlakukan oleh Kepolda Daerah.
 13. Bagi PT JVC yang menjual "Bulk Water" diperkenankan untuk membuat kesepakatan tentang besarnya "Built Up Flow" (debit minimum yang harus dibeli) take or pay, yang pelaksanaannya dapat melalui kerjasama dengan Bank Pembangunan Daerah (BPD) atau Badan Keuangan lainnya.

14. Landasan dari "guarantee":
 - a. UU No.1/67 Jo -/70 dan UU No.6/68.
 - b. Kepres 15 Maret 1991.

15. Insentif:
 - a). Segala sesuatunya tercantum di dalam UU Penanaman Modal.
 - b). Diusulkan pemberian pembebasan PPN dan pembebasan bea masuk barang-barang yang sudah diproduksi di Dalam Negeri dengan catatan harga lebih rendah.

16. Pembentukan Team untuk:
 - a. Menentukan kadar prioritas dengan diperlengkapi dokumen pengenalan (identification).
 - b. Menetapkan wilayah usaha pada masyarakat kota prioritas.
 - c. Menyusun landasan format untuk penggunaan proposal/mandat kebijakan/evaluasi
 - d. Menyempurnakan kelancaran penanaman modal di Bidang Air yang sudah ada.
 - e. Menyusun usulan penyempurnaan juklak Permendagri No.4 tahun 1990.

17. Produk Kerja Team diharapkan selesai selambat-lambatnya pada awal September 1991.