

5-2024

## In Pursuit of Water Justice in Jakarta

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### Recommended Citation

Tuslian, Widya Naseva; Rinwigati, Patricia; and Sandyawan, Stanislaus (2024) "In Pursuit of Water Justice in Jakarta," *The Indonesian Journal of Socio-Legal Studies*: Vol. 3: No. 2, Article 3.

DOI: [10.54828/ijsls.2024v3n2.3](https://doi.org/10.54828/ijsls.2024v3n2.3)

Available at: <https://scholarhub.ui.ac.id/ijsls/vol3/iss2/3>

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### Cover Page Footnote

Widya Tuslian is an PhD researcher (AIO) of the Van Vollenhoven Institute (VVI) of Leiden Law School and The Royal Dutch Institute of Southeast Asia and Caribbean Studies (KITLV) Leiden & Affiliate Researcher of Djokosoetono Research Center University of Indonesia. The author can be reached at: [w.n.tuslian@law.leidenuniv.nl](mailto:w.n.tuslian@law.leidenuniv.nl). Patricia Rinwigati is a senior Lecturer in Human Rights and Criminal Law at Faculty of Law University of Indonesia and Executive Director of Djokosoetono Research Center (DRC) Faculty of Law Universitas Indonesia ([rinwigati@ui.ac.id](mailto:rinwigati@ui.ac.id)). Stanislaus Sandyawan is a researcher at Djokosoetono Research Center (DRC) Faculty of Law Universitas Indonesia ([momosandyawan@gmail.com](mailto:momosandyawan@gmail.com)). This work is supported by the Faculty of Law University of Indonesia.

### Erratum

Minor revision from "II. History of Water Remunicipalization in Jakarta" to "History of Water Remunicipalization in Jakarta"



# THE INDONESIAN JOURNAL OF SOCIO-LEGAL STUDIES (IJSLS)

e-ISSN: 2808-2591 Volume 3 No. 2 Year 2024 DOI: 10.54828/ijsls.2024v3n2.3

## In Pursuit of Water Justice In Jakarta

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Received: January 25, 2024 | Reviewed: March 3, 2024

Accepted: April 18, 2024 | Published: May 28, 2024

### Abstract

Despite becoming a rapidly growing megacity, in some of Jakarta's areas, particularly in the underprivileged areas, a significant portion of its citizens still lack access to adequate domestic water. For years, water privatization has been considered a major barrier to solving the issue. Jakarta's citizens have mobilized themselves to publicly reclaim Jakarta's water governance. One of the significant actions was filing a citizen lawsuit against the relevant state authorities, which eventually was ruled in favor of the state authorities due to procedural reasons. Using the ROLAX framework developed by Bedner and Vel, this paper tries to understand to what extent the water privatization lawsuits and civil society's legal mobilizations in Jakarta reflect an effective access to justice process. Incorporating socio-legal methods by combining empirical and doctrinal research, this paper shows that the process of access to justice is not straightforwardly related to the outcome of legal processes. In this case, the access to justice process does not end with the citizen lawsuit, as citizens' mobilization goes beyond the courtroom. CSOs representing citizens who experienced water access problems have adopted the courts' favorable legal considerations in further pushing the government to conduct full public management of Jakarta's water management and demanding the fulfillment of their water access rights.

**Keywords:** Water Rights, Access to Justice, Privatization, Jakarta.

### Abstrak

Meskipun menjadi kota besar dengan pertumbuhan yang cepat, di beberapa area di Jakarta, terutama di daerah miskin, banyak dari warga Jakarta masih kekurangan akses terhadap air yang layak untuk keseharian. Selama bertahun-tahun, privatisasi air dianggap sebagai tantangan terbesar dalam menjawab permasalahan ini. Menghadapi masalah ini, warga Jakarta telah memobilisasi diri untuk menuntut pengelolaan air Jakarta oleh publik. Salah satu upaya mereka adalah mengajukan gugatan warga negara terhadap penyelenggara negara yang berkaitan. Namun, pengadilan tidak memenangkan mereka. Menggunakan kerangka ROLAX yang dikembangkan oleh Bedner dan Vel, tulisan ini berupaya untuk memahami sejauh apa gugatan privatisasi air dan mobilisasi hukum warga Jakarta telah merefleksikan suatu proses mencari keadilan yang efektif. Dengan menggunakan metode sosio-legal menekankan menekankan studi interdisipliner yang mengkombinasikan studi empiris dan doctrinal, tulisan ini menunjukkan bahwa proses tersebut tidak sederhana. Hasil dari proses tersebut tidak hanya bisa dilihat dari putusan pengadilan semata karena mobilisasi warga juga terjadi di luar ruang pengadilan. Warga telah memasukkan berbagai pertimbangan hukum dari hakim dalam mendorong pemerintah untuk melaksanakan pengelolaan air secara penuh dan menekan pemerintah agar segera memenuhi hak atas air dari warga Jakarta. Perlu ada penelitian selanjutnya untuk mengkaji dengan lebih baik efektivitas dari mobilisasi warga ini terhadap pencapaian keadilan atas air di Jakarta.

**Kata Kunci:** Hak atas Air, Akses terhadap Keadilan, Privatisasi, Jakarta

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## I. Introduction

Jakarta as the Republic of Indonesia's capital, has been Indonesia's economic and political centre for over 70 years. Despite its importance, it has long grappled with persistent challenges pertaining to the provision of domestic water to its citizens. As of 2022, the piped water network, which constitutes the primary avenue for domestic water distribution, only extends to approximately 65% (Fransisca 2022) of Jakarta's populace, predominantly catering to affluent locales (Tempo 2023). The lack of piped water access is only one among other notorious water issues, as the problems in Jakarta relating to water management are manifold. Lack of adequate water sources, water pollution, subsurface contamination (by waste and saltwater), and water mismanagement are some of the prevalent issues that need to be redressed today. However, one issue that has attracted public attention for years is water privatization which is considered by many social activists as the main source of the domestic water access problems in Jakarta (Lailam 2023). On this account, those activists strive to mobilize water rights in multiple ways. Their most remarkable mobilization is a lawsuit against the government demanding to cancel the water privatization contract by the Jakarta regional government with two private water corporations. These activist believe that this lawsuit is the most effective way to pursue water justice for all citizens of Jakarta.

In Jakarta, water pipeline management has been carried out by the private sector since 1997 (UNOSSC 2012). According to water activists, water privatization affected the market-based approach to water management and, consequently, the water price is excessively high, particularly for middle to low-income households. The quality of the supplied water does not follow this high price, as the water flow is unsteady and inadequate to be processed as drinking water. For this reason, in 2015, a group of Jakartan citizens who actively opposed water privatization filed a *citizen lawsuit* against the central government and two private water companies, PT Palyja and PT Aetra, as co-defendants in the District Court of Central Jakarta. The petitioners won the lawsuit in first instance, lost in appeal and won again in cassation. This triumph inspired people to demand the government to improve domestic water access in Jakarta. But this success appeared premature as the government filed a court decision review in the Supreme Court (re: *Peninjauan Kembali/PK*) 2018, which it won, invalidating the previous Supreme Court ruling.

From the procedural justice perspective, the Supreme Court's *PK* ruling makes the citizen lawsuits against water privatization look ostensibly unsuccessful. However, the whole



picture of the lawsuits reflects a broader mobilization on the issue of water rights. Despite the *PK ruling*, a number of civil society organizations continue their struggle against Jakarta's water privatization. One strategy they apply is quoting favorable court arguments, that affirmed that water privatization is against Article 33(3) of the Indonesian constitution, which stipulates: “*The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people*”. Based on this stipulation, the court in its first-instance ruling dismissed Jakarta’s policy of water privatization and demanded that the government takes fully control over water management, as current water governance involving private sectors unsuccessfully provided Jakarta’s citizens’ water needs (Handayani 2015). Moreover, even though the struggle against water privatization seem an uphill battle, those endeavours are not totally unavailing. As many observers see no significant improvement in water governance, the Jakarta regional government is currently conducting a remunicipalization process in which it is trying to return water management in Jakarta to the government-owned enterprise PAM Jaya. In other words, the civil society groups’ struggle for water access did not end in the courtroom and is ongoing. In fact, it pushed the government to take real action and change its privatization policy. Borrowing Mnookin and Kornhauser’s words, it is interesting that these civil society groups are “bargaining in the shadow of the law” (Mnookin 1979), as these civil societies use elements of the court’s reasoning to mobilize people’s rights beyond the formal legal forum in their political discourse aimed at the Jakarta government.

The fight against water privatization in Jakarta must not solely be viewed as a process of legal mobilization but also as an access to justice process. In referring to the United Nations Development Programme (UNDP), Bedner and Vel define access to justice as “the ability of people to find a remedy by means of formal or informal justice institutions, in accordance with human rights” (Bedner 2010). One predominant element is a ‘remedy’, an important goal for access to justice process. Another captivating element from this definition is using a ‘formal or informal’ institution. Therefore, as it stands, the formal justice mechanism is not the sole path heading toward a remedy. It is different from earlier definitions of access to justice (Marden 1962, 154) that emphasize access to the formal justice system, Bedner and Vel’s definition of access to justice offers a much broader context and refers to access to several forms of all redress mechanism that are available in a pluralistic country as Indonesia. Their definition also befits the context of water justice mobilization in this study, as the courtroom process is not the only avenue CSO’s use to seek a remedy for adverse consequences of water mismanagement in



Jakarta. The courtroom process and favorable elements of court judgments are being used in a broader political mobilization on water access rights. Thus, when examining the water rights mobilization in Jakarta as an access to justice process the issue is whether the combined strategies in the end provide a remedy for citizens who are bereft of access to domestic water.

In light of the above, this study focuses on the following research question: To what extent do the water privatization lawsuits and civil society's legal mobilizations in Jakarta reflect an effective access to justice process? To answer this question this study will primarily examine the journey of people's mobilization to access domestic water in Jakarta. The next section will delve into the history of water privatization in Jakarta and the rationale behind the process, which CSOs consider as the source of water mismanagement that deprived citizens' rights to access domestic water in Jakarta. Subsequently, the paper will discuss the journey of water privatization lawsuits in Jakarta through the citizen lawsuit mechanism as an attempt to overturn the water privatization in Jakarta and improve water access for people. The next section will examine how civil society organizations have used elements of the court decisions in their mobilization strategy beyond the courtroom. Section 5 will lay out the elements of access to justice's framework, in particular the access to justice framework offered by Bedner and Vel. Section 6 will analyze whether the current legal mobilizations are effective in granting the remedy in accordance with the access to justice concept discussed in the previous section. The last section will highlight the findings of this study and answer the research question.

### **History of Water Remunicipalization in Jakarta**

One of the main drivers of water privatization in Jakarta was the failure of PAM Jaya, a publicly-owned company tasked with providing safe drinking water in Jakarta, to supply water for the entire population (Kurniasih 2008, 5). Before February 1998, PAM Jaya's piped water connections only covered 38%-42% of Jakarta's population (Mangahas 2002). To address this issue, the World Bank and Indonesian government proposed privatization through public-private partnership (PPP) as the solution due to its promises of efficiency advantages, better management, and better access to finance (K. a. Bakker 2011, 203).

However, the initial process of privatization was highly contentious. Without proper public consultation or competitive bidding, two foreign companies, Thames Water and Suez Lyonnaise des Eaux, received 25-year concessions with the close support of the ruling regime through President Suharto's family and cronies (Harsono 2003). The contracts were signed on



June 6, 1997 (Harsono 2003). Thames and Suez each established a company in Indonesia to manage Jakarta's water system directly, namely PT Kekarpola Airindo (later changed to PT Aetra Air Jakarta) and PT Garuda Dipta Semesta (later changed to PT PAM Lyonnaise Jaya or Palyja). With Thames controlling the west and Suez controlling the east half of the city, the two companies controlled the whole water supply chain: from production to customer piped service. Moreover, the two companies committed to reaching 100% coverage by 2023 (K. Bakker 2007, 859). However, it should be noted that this target was "indicative" and not quid pro quo, watering down the legal obligation for the private companies and consequently, rendering any penalty and reward structure for them ineffective (Braadbaart 2007, 313).

McLernon stated that the water privatization in Jakarta was born with "birth defects" due to a lack of transparency and monitoring from independent regulators in the initial stage (Harsono 2003). Moreover, the clauses of the contracts greatly favored the private companies, which in turn created disastrous impacts to the government and Jakarta's population. First, the private companies were not to be paid based on the water tariff set by the government to the water consumers or the cost recovery percentage, but instead based on the volume of water supplied and billed (K. Bakker 2007, 859). Second, the formula used to calculate the payment "hedged the private providers against rupiah-dollar currency fluctuations" (Braadbaart 2007, 310). As a result, most of the economic benefits of the PPP were received by the private companies, while significant risks, including currency fluctuations, macroeconomic shocks, and difficulties in achieving cost recovery, were burdened by Jakarta's government (Braadbaart 2007, 310) (K. Bakker 2007, 859) (Leong 2015, 607).

This was unfortunately proven quickly with the 1998 political and economic crisis in Indonesia. The devaluation of the rupiah and the unwillingness of the Governor to raise the water tariff due to the social unrest made it difficult for Jakarta's government to pay water charges to the private companies (in US dollars), while the revenues collected from the water tariff (in rupiah) decreased (K. Bakker 2007, 860). The local government, bearing the sole risk for the revenue shortfall, sunk increasingly deeper into debt to the private companies (K. Bakker 2007). These clauses also disincentivized Jakarta's government and private companies to extend pipe connections to poor neighborhoods (K. Bakker 2007, 861).

The crisis led to the renegotiation of the contracts on October 22, 2001 (Leong 2015). The new contracts continue to protect the companies from major risks (K. Bakker 2007, 860) (Wu 2013, 216). They also lowered the technical targets to be achieved by the private companies





(K. Bakker 2007, 860). Some commentators found that the involvement of private companies in Jakarta's water management system did not result in higher efficiency compared to the public sector (Harsono 2003) (Araral 2009, 225). A movement to remunicipalize Jakarta's water management grew with the objective of separating essential drinking water services from the purely economic and financial goals of corporations.

## II. Water Privatization Lawsuits in Jakarta

Decades after the start of the privatization, Jakarta's water service remained poor. In 2011, water pipe connections only covered 62% of the entire Jakarta region (Decision Number 527/PDT.G/2012/PN.JKT.PST, 22). PAM Jaya's debt to private companies rose, reaching Rp583 billion in 2010 (Decision Number 527/PDT.G/2012/PN.JKT.PST, 39). Not only the debt, but the water tariff charged to the consumers increased to Rp7.800/m<sup>3</sup> in 2011 – making Jakarta's water tariff one the highest in Asian cities and creating huge barriers for Jakarta's poor communities (Decision Number 527/PDT.G/2012/PN.JKT.PST, 31 and 33-37). In a collective action to remunicipalize Jakarta's water management, members of the Coalition of Jakarta Residents Opposing Water Privatization (*Koalisi Masyarakat Menolak Swastanisasi Air Jakarta/KMMSAJ*) sued several state administrators as defendants (*para tergugat*), including the President, Minister of Finance, Governor of Jakarta, and PAM Jaya, as well as PT Palyja and PT Aetra Air Jakarta as co-defendants (*para turut tergugat*) through a citizen lawsuit (CLS) in 2012 (Decision Number 527/PDT.G/2012/PN.JKT.PST, 3) (Rismansyah 2020, 133-157). The plaintiffs argued that the defendants had committed unlawful acts related to Jakarta's water privatization which had detrimental effects on the state and Jakarta's citizens (Decision Number 527/PDT.G/2012/PN.JKT.PST, 60).

The plaintiffs made several claims for the District Court of Central Jakarta to decide on. Some of them will be highlighted in this paper. First, the plaintiffs asked the court to declare that the defendants had been negligent in fulfilling and protecting the citizens' human right to water (Decision Number 527/PDT.G/2012/PN.JKT.PST, 59). Second, the plaintiffs asked the court to declare that the defendants had committed unlawful acts by giving the authority to manage Jakarta's water to the private companies because it reduced the authority of PAM Jaya to supply and distribute water for Jakarta's citizens and was not preceded by the Governor's approval (Decision Number 527/PDT.G/2012/PN.JKT.PST, 23-29 and 60). They were in conflict with the existing laws, particularly the DKI Jakarta Regional Regulation Number 13





the Year 1992 on Regional Water Utility Company of DKI Jakarta (DKI Jakarta Regulation No. 13/1992) (Decision Number 527/PDT.G/2012/PN.JKT.PST, 23-29). Third, based on the previous claim, the plaintiffs demanded that the privatization contracts be void by law (Decision Number 527/PDT.G/2012/PN.JKT.PST, 60). Fourth, the plaintiffs requested the court to order the defendants to cease Jakarta's water privatization policy and then manage Jakarta's drinking water based on existing regulations and the principles of human right to water according to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) as well as its General Comment Number 15 (Decision Number 527/PDT.G/2012/PN.JKT.PST, 60). Fifth, the defendants also demanded the revocation of the Governor of Jakarta's and Minister of Finance's support letters for Jakarta's water privatization which had guaranteed the fulfilment of the government's payment obligations to the private companies (Decision Number 527/PDT.G/2012/PN.JKT.PST, 42-46 and 60).

In its monumental decision in 2015, the court upheld all claims (Decision Number 527/PDT.G/2012/PN.JKT.PST, 265-266). The considerations of the court were as follows. First, the court declared the privatization contracts void because PAM Jaya did not willingly consent to be bound by the contracts, as the President had directly appointed the two companies beforehand to enter into contracts with PAM Jaya (Decision Number 527/PDT.G/2012/PN.JKT.PST, 260). Thus, the contracts did not fulfil the consent and capacity requirements of establishing a contract as mandated by the Indonesian Civil Code (Decision Number 527/PDT.G/2012/PN.JKT.PST). Second, the court was in an opinion with the defendants that the contracts had reduced the authority of PAM Jaya and ran contrary to the provisions of DKI Jakarta Regulation No. 13/1992 (Decision Number 527/PDT.G/2012/PN.JKT.PST, 260-262). Third, the court referenced the State Audit Board's investigation report, which had found that PAM Jaya's financial loss and the high water tariff were due to PAM Jaya's asset transfer to the private companies, unreported asset procurement, and sale, lack of transparency and balance in the calculation and determination of water tariff, power imbalance in the contract drafting process, and lack of planning, monitoring, and evaluation by PAM Jaya (Decision Number 527/PDT.G/2012/PN.JKT.PST, 262-263). Fourth, the court noted the high water tariff burdened by the consumers, PAM Jaya's asset transfer without clear accountability, and increasing shortfall, which had to be covered by the state budget as some of the harmful impacts of the defendants' unlawful acts (Decision Number 527/PDT.G/2012/PN.JKT.PST, 264). Fifth and most importantly, the court found that the



defendants had failed to satisfy their obligations to fulfill Jakarta's citizens' human right to water (Decision Number 527/PDT.G/2012/PN.JKT.PST).

What followed was a series of judgements made by the higher courts. The District Court's decision was successfully appealed at the High Court of Jakarta in 2016 based on civil procedural grounds (Decision Number 588/PDT/2015/PT.DKI, 16-17). The High Court did not use any substantive argument to support the appeal decision. The considerations of civil procedural, rather than substantive, claims would form the basis of the PK ruling. In 2017, the High Court decision was overruled by the Supreme Court of the Republic of Indonesia (Decision Number 31 K/Pdt/2017, 159-161). However, in 2018, the Supreme Court annulled its previous decision and aligned itself with the 2016 High Court's decision (Decision Number 841 PK/Pdt/2018, 14-15). Thus, Jakarta's water privatization contracts remained valid and enforceable.

The case above shows that litigation may provide a strategic avenue for the people to seek justice. Particularly, the District Court's decision highlights the importance of court to recognize human rights in considering the case and handing down judgement. Explicit reference for the human right to water as well as the clear judgement from the court for the government to fulfill their citizens' human right to water marks a powerful judicial activism. However, it should also be noted that without careful considerations of the procedural aspects of the case, litigation may also be an easy tool for the defendant, or government in this case, to avoid the substantive discussion relating to the core issues brought by the plaintiffs. Legal mobilization beyond the courtroom was the only strategy left for the justice-seekers to continue advancing their cause.

### **III. Legal Mobilization Strategy Beyond the Courtroom**

The struggle to remunicipalize Jakarta's water management and ensure access to clean, sufficient, and affordable water for all Jakarta's citizens is not only being fought on the litigation front but also on legal mobilization and advocacy strategies beyond the courtroom. In the contracts renegotiation period following the 1998 political and economic crisis, PAM Jaya workers staged frequent protests and even physically closed company offices; demanding the termination of Jakarta's water privatization contracts due to concerns regarding wage cuts and layoffs (Harsono 2003) (K. a. Bakker 2011, 207-208) (Zamzami and Ardhianie 2011, 2-8). Although Jakarta's parliament supported their position, the privatization was ultimately



continued out of concern that a cancellation would discourage potential foreign investors from investing in Indonesia's necessary development (Harsono 2003).

One of the biggest opposing forces – if not the biggest force – toward Jakarta's water privatization is KMMSAJ. Comprising various civil society groups working on diverse issues, such as women, the environment, urban poor, corruption, and fishermen's welfare, KMMSAJ has been successful in raising the public discourse on water remunicipalization in Jakarta through public campaigns, engagement with religious groups, community empowerment, public protests, and policy discussions (Marwa, *Changing Water Regime: Remunicipalization in Indonesia under the Global Hegemony of Privatization* 2019, 13 and 19-21). KMMSAJ not only demands water remunicipalization to reclaim ownership from the private sector but also as a means to promote "an emancipatory paradigm shift" of water management based on several values, including the human right to water, water as a commons, and environmental sustainability (Lobina 2019, 734). The social movement to remunicipalize Jakarta's water management also grows nationally and is closely linked to other social justice and environmental issues (Marwa, *A Double-Edged Sword? COVID-19 and Water Remunicipalization in Jakarta* 2020, 228-229).

Although it ended in the defendants' favor, KMMSAJ's lawsuit managed to establish KMMSAJ as one of the major political actors in Jakarta's water regime and bring the issue of Jakarta's water privatization to the attention and political agenda of both national and local governments (Marwa, *Changing Water Regime: Remunicipalization in Indonesia under the Global Hegemony of Privatization* 2019, 14-15). KMMSAJ still referenced the legal considerations of the court decisions in their advocacy, especially regarding the adverse impacts of water privatization on the state budget and Jakarta's citizens and the government's failure to fulfill the citizens' human right to water (KMMSAJ 2023).

These references carried moral weight for the government considering that the courts had not countered any of the plaintiff's substantive claims on the problems of Jakarta's water privatization, including the High Court and PK judgments where the plaintiffs lost due to procedural reasons. In 2018, the successor Governor of Jakarta, Anies Baswedan, supported the plan to stop Jakarta's water privatization by establishing the Evaluation Team for Drinking Water Management (Septiadi 2019, 635-639). Even after the Supreme Court ruled against the plaintiffs in the PK ruling, the team still continued working and finally, in 2019, it published three scenarios for the Government of Jakarta to reclaim public ownership over Jakarta's water



management, namely (1) maintaining the status quo until the contracts expire in 2023, unilaterally terminating the contracts and taking over the management through buying the shares of the private companies, (2) partnership termination, or (3) gradual acquisition of water management installations by PAM Jaya (Septiadi 2019).

Regardless of the public pressure to take over the water management before the contracts expire, the Government of Jakarta chose the status quo option (Setiawan 2022). On February 2, 2023, Jakarta's government formally restructured the management of Jakarta's domestic water services. However, to the disappointment of civil society organizations, again a cooperation scheme has been established between the government and a private company, in this case PT Moya Indonesia, which will handle water production for a 25-year period (Setiawan 2022). Civil society organizations have criticized this arrangement as just a new chapter of Jakarta's water privatization (KMMSAJ 2023).

By the end of the Aetra's and Palyja's privatization, many of Jakarta's citizens still lacked access to clean, sufficient, and affordable water. In November 2022, piped water only has connected 65,8% of Jakarta's population (Fransisca 2022) (Hananto 2020, 11-12). Many of the connections come with poor quality or contaminated water at a high tariff, which continues to burden the poor disproportionately (LBH Jakarta 2021). In 2019, most of the population – 77,73% of the households – still relies on bottled water to fulfil their daily drinking water and cooking needs (Badan Pusat Statistik 2020, 220).

#### **IV. Access to Justice as an Effectiveness Measurement**

Having discussed the milestones of water rights mobilization through, among other things, the water privatization lawsuit, we will assess whether Jakarta's long uphill battle in fighting for water rights effectively improves water rights fulfilment through the access to justice lens. For that purpose, we will break down the elements of access to justice. As discussed earlier, we will focus on Bedner and Vel's definition of access to justice focusing on the rule of law of access to justice (ROLAX) approach to analyze the current mobilization's efficacy to remedy the water access situation in Jakarta.

To begin with, the access to justice concept proposed by Bedner and Vel is built on Felstiner, Abel, and Sarat's emergence and transformation of dispute: naming, blaming claiming (Felstiner 1980-1981, 635-636). Felstiner, Abel, and Sarat's framework offers a fascinating concept that explores the process of emergence and transformation of an experience into a



dispute. This framework studies the development of how an experience transforms into a grievance, understanding the social process of it occurring, and how it eventually develops into a dispute. According to Felstiner, Abel, and Sarat, “paying attention to naming, blaming, and claiming allows a critical looking in improving access to Justice” (Felstiner 1980-1981, 639). They define *naming* as a process in which one considers that a particular experience is harmful or injurious; *blaming* as a transformation of the harmful experience into a grievance, and ascribing this grievance to the accountability of an individual or group of individuals (or social entity); while *claiming* as a process in which an individual who perceives grievance communicate this grievance to the party he/she believes responsible for his/her grievance to ask a remedy. And a dispute will start once the responsible individuals partially or entirely deny the claim (Felstiner 1980-1981, 639).

Inspired by Felstiner, Abel, and Sarat’s dispute process transformation, Bedner and Vel developed an analytical framework for access to justice that considers access to justice as a process. The framework is called ROLAX and it stands for Rule of Law and Access to Justice. Though ‘the rule of law’ is a part of this framework, Bedner and Vel acknowledge that the rule of law is not a one-size-fits-all concept as a guarantee for access to justice. But, the rule of law is used as a means to observe potential abuse of power in access to justice process. Therefore, from our perspective, this framework is suitable to observe potential power asymmetry in water justice mobilization. The ROLAX framework constitutes a few steps: real-life problems, awareness, categorization, defining grievances, exploring legal repertoire, accessing an appropriate forum, handling grievances, and redressing injustice.

The first three steps—real-life problems, awareness, and categorization—are the steps that refer to the ‘naming’ process of Felstiner, Abel, and Sarat’s. First, Bedner and Vel chose the ‘*real-life problem*’ instead of ‘injustice’ as assessing injustice is far more difficult than determining the real-life problem for the layperson, so this step effectively researches the problem experienced by the poor and disadvantaged groups that normally find difficulties in phrasing injustice. Second, *awareness*. *Awareness* is determining one’s condition in a broader cognitive framework. In this step, Bedner and Vel distinguish between ‘right awareness’ and ‘political awareness’, and only if a subject believes that the solution is in the form of a ‘right’ or something he/she is entitled then this will likely encourage him/her to move to a legal procedure. Finally, Bedner and Vel put *categorization* at the end of the naming step in Felstiner, Abel, and Sarat’s framework. *Categorization* is an important step, as in this part, an individual



will determine whether a problem is ‘just a problem’ or an ‘injustice’. Only if one considers his/her experience as the latter, then he/she will proceed to the next step. Otherwise, that person will not proceed to the next step (Bedner 2010, 15).

The following step is defining the grievance. Bedner and Vel categorize this in the ‘blaming’ stage in Felstiner, Abel, and Sarat’s framework. This stage is when a victim attributes his/her injustice he/she experiences as the fault of someone. If the injustice is put in a particular normative system, it will develop into legal claims. But, if the injustice is perceived as a result of power interests, it will likely develop into a political dispute (Bedner 2010, 16). In this step, there are significant factors, like the outside information, legal aid, and other intermediaries, which will influence how the victim may choose his/her dispute settlement mechanism, be it organizing a demonstration or taking on other courses of action (Bedner 2010).

The next stages are exploring legal repertoire, access to an appropriate forum, handling grievances, and redressing injustice (Bedner 2010, 16-19). In exploring the legal repertoire stage, a justice seeker will determine a strategic choice between the grievance, their norms, and forums. They might choose a single normative system or a combination of some normative systems. In *accessing the appropriate forum*, a justice seeker chooses an appropriate one that can offer the redress he/she expects. In this stage, a justice seeker sometimes falls into a pitfall of mistakenly accessing a forum with a lack of jurisdiction in handling the case as this may lead to the rejection of a claim. Next, the *handling of grievances*, process is firmly related to the previous one, as the forum chosen will determine the outcome of the process. This process can also change the substance of the initial grievance if there is new information or changes in the dispute’s parties. Lastly, *redress of the injustice*. This process is not as simple and forthright as it might look like. An appropriate redress for one justice seeker might not be satisfactory for another. One reason is that what a justice seeker is looking for is not always clear (Bedner 2010, 13).

As discussed earlier, the ROLAX framework does not treat access to justice as an end, but as a process. That is why an analysis through this framework does not always offers a straightforward answer: good or bad access to justice. However, one essential element of the ROLAX framework is that at the end, ROLAX considers the sustainability of redress (Bedner 2010, 19). Unlike the other access to justice-frameworks that end with the outcome of the procedures (court decisions, mediation results, etc.), ROLAX sees beyond such outcomes.





ROLAX considers implementation issues that may occur following a decision and how these issues impact on redress of the initial problem that the justice seeker(s) sought to address.

## V. Heading Toward Access to Water Justice

Having discussed the access to justice framework offered by Bedner and Vel, this chapter will analyze Jakarta's water rights mobilization from the access to justice framework perspective, particularly the ROLAX framework. It is important to note before we start that the perfect chronological steps like the one offered by the ROLAX framework discussed in the previous chapter are hardly ever found in reality. This chapter will refer to the ROLAX as an access-to-justice framework in a general yet all-encompassing manner.

First, we need to define the real-life problem experienced by Jakarta citizens regarding access to water. Essentially as discussed earlier, the real problem of the Jakarta citizen is the lack of piped water access. Piped water is essential because other options such as accessing groundwater, and harvesting rainfall were not feasible options for them. Accessing groundwater is not an option as much of Jakarta's groundwater is polluted by domestic and industrial waste, and seawater intrusion in some areas (Izzati 2018, 325), and is experiencing excessive land subsidence (Taftazani 2022, 22). Harvesting rainfall is not a viable choice as the rain mostly comes only in the rainy seasons, which is even more difficult to predict nowadays owing to climate change (Giarno 2024, 111). This situation happened before the period of privatization in 1997 and continued to happen during the privatization period. PAM Jaya's inability to fulfill water access before the privatization period led to a reform that made PAM Jaya's task as a government-owned company to provide water facilities for citizens delegated to private companies. However, the problem persisted and was followed by unwanted consequences of the privatization process, including high water prices. Here, we see that people started to recognize that privatization in itself is a problem apart from the lack of piped water access. Nevertheless, people do not separate the issue of the lack of water access and water privatization problems. It is evident from the lawsuit's narrative (Decision Number 31 K/Pdt/2017).

People perceived that access to water was their right as citizens, so they attributed the problems of getting their daily water to the government's fault. Therefore, in the *defining grievance* step, people could easily spot which actor(s) they could ask for a remedy. However, as time passed, the water access problems worsened by the consequences of privatization, and people learned that the water access problem was a by-product of privatization. It was indeed,





although not entirely, true. It partially blurred the fact that before the privatization process, the water access problem was already there, and that initially privatization was offered as a solution that subsequently didn't work out. However, the water privatization problem could be a strategic 'entrance' to water access improvement mobilization. As discussed earlier, in this stage, intermediaries like NGOs, legal aid, and civil society groups are important. Some civil society associations like KKMSAJ and Jakarta Legal Aid considered that fighting water privatization through a lawsuit was the right strategy for water legal mobilization. They laid out several legal norms in their demand to undo water privatization. One of the most strong arguments was based on Article 33 (3) Indonesian constitution, which states that the state manages the land and water for the greatest people's welfare (Decision Number 31 K/Pdt/2017, 7). This implies that water is a public good, and the government should manage it for the sole purpose of people's welfare. Civil society associations and people's movements used this legal provision as ammunition to fight against water privatization.

The citizen lawsuit against water privatization was the chosen legal mechanism in the next stages. People and civil society groups went for the *citizen lawsuit* as this mechanism is a means to demand state authorities' liability (Indonesian Constitution 1945, Article 28) (Law Number 32 Year 2009 on Environmental Protection and Management, Article 92) (Law Number 48 Year 2009 on Judicial Authority, Article 5 and 10). This lawsuit brought the President of the Republic of Indonesia (together with the Minister of Public Work; and the finance minister); The Jakarta Government (together with Jakarta regional People's Council; and the director of PAM Jaya); and PT Palyja and PT Aetra to the District Court of Central Jakarta. It is important to remember that at this stage of the access to justice process (accessing the right forum) justice seekers must carefully select which forum is suitable for their grievance, lest the choice could result in a rejection. In the case of Jakarta's water privatization lawsuits, for instance, the High Court and Constitutional Court dismissed the citizens' claim. One of the considerations was that the District Court lacked jurisdiction in judging matters related to the government's decisions. In the ROLAX framework, *accessing the appropriate forum* stage will determine the outcome of the next stages: *handling of the grievance and redress of the injustice*. As elaborated in Chapter 3, the final outcome of the *citizen lawsuit* against water privatization was the loss of the citizens due to procedural matters.

Nevertheless, regarding the next step on *redressing injustice*, does the overall process reflect the failure to redress the initial water justice problem of Jakarta's citizens? We have



shown that this is not the case. Although the eventually the citizens lost on procedural grounds, at the cassation court level, the stage in which the citizen got a victory, the Supreme Court upheld all the citizens' demands. The court laid out that the water privatization had resulted in water injustice as the government failed to fulfill citizen's human rights to water; the privatization was in contradiction with existing water regulations; and ruled the defendants among, other things, to stop the water privatization and carry out the water management according to General Comment 15 of ICESCR. In other words, the courts did not dismiss the lawsuit's substance. Although it certainly cannot be deemed as an absolute citizen's victory, the citizens and civil society associations leveraged this by pushing the government to change their water policies by using the elements of the court's judgment that support their mobilizations.

Finally, we can see that access to the justice process is not a straightforward process. In the ROLAX framework, the outcome of the justice finding does not terminate at the outcome of the process. In the Jakarta water access mobilization, the lawsuit process, despite being procedurally lost, can still improve the people's political bargaining position with the government in continuing their struggle to achieve water justice. It is proven that there are some policy changes due to people's rights mobilizations. Currently, the water management is being remunicipalized by the Jakarta's government, although only partially – an issue that is still being criticized by the citizens and civil society groups. Indeed, we still need more time to see the continuity of these changes, as at the end, sustainability of the redress is one of the most crucial elements of access to justice.

## VI. Conclusion

The history of water Jakarta's water privatization and remunicipalization is the story of its citizens' struggle for access to water justice. It began from the end of the twentieth century with the mobilization of PAM Jaya workers and it has not seen any definitive conclusion yet. Jakarta's water privatization case has resulted in the citizens' defeat as they were unable to reclaim the public ownership of Jakarta's water. It remained in the hands of private companies until their contracts expired.

This paper, however, does not see this defeat through a pessimistic lens. After all, the lawsuit was only a part of the larger whole: the mobilization of citizens to fight water privatization in Jakarta. Their claims—ultimately boiled down to the failure of the government to fulfill the right to water of Jakarta's citizens—were not dismissed by any of the courts. They



were even wholly endorsed by the District Court of Central Jakarta and the Supreme Court. This fact has fuelled further mobilization actions. Supporting Bender and Vel's argument through the ROLAX framework, the story of the citizen's mobilization does not stop with the power of the court – it goes *beyond the courtroom*.

To this day, the citizens are still active in protesting the current arrangement of Jakarta's water management. They are utilizing the elements of the lawsuits that were in favor of their struggle, thus creating moral weight for the government to act on. Although the government has reclaimed most aspects of Jakarta's water management, there a regime of partial privatization. How Jakarta's government and the private companies' combined efforts in managing Jakarta's water will affect the citizen's access to water is, understandably, beyond the scope of this paper. As such, the effectiveness of the legal mobilization of Jakarta's citizens should be analyzed deeper in further research.



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