

Chapter I

Introduction

“We shall not finally defeat AIDS, tuberculosis, malaria, or any of the other infectious diseases that plague the developing world until we have also won the battle for safe drinking water, sanitation and basic health care.”

**Kofi Annan, United Nations
Secretary-General, 2001**

“And He has provided you with properties and offspring.” [Nūh: 12]

1.1 Introduction

Water is viewed as a social good and the most substantial element for the life of all creatures all over the world. Access to potable water is regarded as a fundamental human right and in majorly agricultural communities, the water that is supplied is considered the exclusive authority owned by governments. In the history of water as a public utility, about half of the water systems in the United States are managed by public utilities, which remains the standard norm in big cities. In addition, all municipal water networks are publicly administered, operated and owned even though there have been recent privatisation schemes in, for example, Ontario, Alberta and British Columbia.¹

The idea that water should be managed economically because of its high scarcity value, has arisen with the augmentation of the clean water services supply, the disposal of wastewater and rapid urbanisation. Determining the price of water in the urban environment has been subject to various considerations. Authorities considered that pricing water too low eventuated the superfluous utilisation, over-consumption and

¹ Teti Argo and Aprodicio A. Laquian, “Privatization of Water Utilities and Its Effects on the Urban Poor In Jakarta Raya and Metro Manila” (Paper delivered at the “Forum on Urban Infrastructure and Public Service Delivery for the Urban Poor, Regional Focus: Asia,” sponsored by the Woodrow Wilson International Center for Scholars and the National Institute of Urban Affairs, India Habitat Centre, New Delhi, 24-25 June 2004).

disproportionate environmental effects, as well as being a heavy drain on public finance. Pricing water too high, on the other hand, raised serious issues including health and justice. With the number of the urban poor swiftly increasing in the big cities of developing countries, imposing a high tariff for water tended to enforce the impoverished societies to make use of harmful water from shallow wells, rivers and streams, causing pestilence and other ailments that affect the residents of the entire city. Highly priced water also tended to boost water stealing, illegal joints and unauthorised tapping of fire hydrants, particularly in slum areas and squatter settlements.²

The economic policy that spread cross-national has a familiar logistic S-shape and is known as privatisation. Following the initial wave of the state-owned asset sales in Britain in the early 1980s (and earlier still in Chile), the privatisation agenda began to emerge in other nations: at first in other OECD member countries but then in developing and transition economies as well.³ Privatisation is still among the top priorities in the policy agenda of developing and transitional countries and has also become a global phenomenon. Privatisation has been conceptualised in a narrow and broad sense. Initially the sale of state-owned enterprises to the private sector has been represented as a scheme of privatization in the narrow sense. This general definition of privatisation is accepted by the International Monetary Fund and the World Bank as being opposite to nationalisation and is familiarised as denationalisation, seemingly the purchase of state assets by the private institutions, including the sale of the whole or parts of SOEs to the private sector directly. In the broad sense, it represents any shift of activities or particularly the production of goods and services function from the public to the private sector. This includes outsourcing, contracting-out, franchising,

² *Ibid.*, 2.

³ Nancy Brune, "The international monetary fund and the global spread of privatization," IMF Staff Papers 51, No. 2, (2004) 195 – 219.

privatisation of public finance, liberalisation and the sale of state property to the private sector.⁴

This study is based on Indonesia's experience of its public enterprise and privatisation programme. The Indonesian SOE sector has recently undergone privatisation programmes. The choice of Indonesia for studying privatisation is justified for a number of reasons.

The historical and economic reasons why the large SOEs have been built up in Indonesia play an important role in its economy. As a historical point, the size, scale and scope of SOEs have been developed periodically since the independence of Indonesia in 1945 and they have also become a central part of the development strategy in this country. From the economic viewpoint, SOEs have also operated in some of the most substantial industries, such as electricity, cement, telecommunications, banks and insurance, finance, transport, agriculture, consulting services, construction, energy, aircraft, ships and ports. SOEs offer essential raw materials and dominate capital-intensive sectors as power, steel, chemicals and machinery. Accordingly, national enterprise reforms and privatisation broadly influence multiple stakeholders involving national enterprise managers, employees, the government and society.⁵

Secondly, since it is an example of a developing economy in transition, Indonesia represents an interesting research context, inasmuch as the early years of independence of Indonesia, SOEs have had their strategic roles in the economic and political development. The Indonesian constitution mandates that "sectors of production

⁴ Eva Yonnedi, "Privatization, organizational change and performance: evidence from Indonesia," *Journal of Organizational Change Management* 23, No. 5 (2010), 537-563.

⁵ *Ibid.*, 539.

which are important and affect the life of the people shall be controlled by the State”. The roles of SOEs have occasionally been changed by various reforms.⁶

Another wave of privatisation of SOEs was undertaken at the beginning of the Asian economic crisis in 1997/1998. A separate Ministry of State Owned Enterprises was established by the Indonesian Government based on the Presidential Decrees 12 and 13 of 1998 to represent the government officially as the state shareholder for SOEs and it was decided to separate the roles and responsibilities between shareholders, regulators and centralised supervision. In addition, in 2003, Law 19 of 2003 was issued to particularly address the restructuring and privatisation of SOEs. In point of fact, Government Regulation 41 of 2003 was promulgated to strengthen the role of the Ministry of SOEs as the sole government representative of SOEs.⁷ Thirdly, privatisation was also given considerable emphasis in the International Monetary Fund post-crisis recovery programme between 1997 and 2003. There have been several resultant sales of minority shareholdings to private sector investors. Consequentially, in Indonesia there are some entities that are fully owned by the state and others whose ownership has been partially shifted to private sector investors.⁸

The issue of water is being discussed and constitutes the heart of many international development debates around the world. In Asia, this concern is particularly significant for four major reasons: the majority of the world’s population is located in Asia, the increase of urbanization, the wide spread of poverty and the use and misuse of water in the region are extensive. Consequently, nowadays there is a tremendous and ever increasing need for greater efficiency and sustainability in the management of water and sanitation services in Asia. However, this is not a straightforward undertaking

⁶ Gregory et al. “The effect of privatization on performance of state-owned-enterprises in Indonesia,” *Asian Review of Accounting* 18, No. 1 (2010), 5-19.

⁷ *Ibid.*, 7.

⁸ *Ibid.*, 8.

given that, currently, most of the water and sanitation infrastructure in many places in Asia is poorly managed. This is compounded inasmuch as many governments are short of the capital for the obligatory investment for network improvements because of heavy debt loads and the fact that most Asian countries are still considerably poor from an economic point of view.⁹

Apart from the Philippines, other countries in Asia that decided to privatise in the 1990s were Indonesia, Thailand, Malaysia, Maldives and India.¹⁰ With leaking substandard piping, heavy wastewater pollution, insufficient water pressure, distribution disruptions and high water user exclusion, many Asian water and sanitation systems are gravely run down.¹¹ The outcome of which is taking a heavy toll on people's health and well-being, both when it comes to the household economy, social situation and environmental surroundings, as well as the development and sustainability of society, generally.¹²

Due to the current situation, in 2012, the water services company had been privatised for 16 years. Citizens in Jakarta are suffering from unimproved services, high prices, low quality of water and environmental deterioration. The public is demanding a just and transparent renegotiation of the contract with the private operators. If this does not happen then more protests should be expected. With protests, rallies and petitions, the message from the public has been clear: the water service in Jakarta should be re-municipalised, to save the water system from financial ruin and the water service from a profit-oriented private sector. Re-municipalisation has been a global trend and

⁹ Gary Wolff et al., *The New Economy of Water: The Risks and Benefits of Globalization and Privatization of Fresh Water*. (Oakland, CA: Pacific Institute, 2002), 1.

¹⁰ McIntosh, *Asian Water Supplies-Reaching the Urban Poor* (London, UK: IWA Publishing/ADB), 18-163.

¹¹ *Ibid.*, 20.

¹² Sara Westman, "Treasuring Every Drop: Water Privatization and the Urban Poor Report from a Minor Field Study, Manila, Philippines." (master's thesis, Lund University, Sweden, 2005), 3.

international solidarity is needed to protect citizens of the world from a privatised and inaccessible water service.¹³

1.1.1 Research Background

In 1997, the water services company in Jakarta was transferred to the private sector when Suez Environment and Thames Water were each awarded contracts covering half of Jakarta, by PAM Jaya, a company legally owned by the Jakarta government. Unfortunately, it was a one-sided contract from the beginning. The agreement covers the interests of investors at the expense of consumers, PAM Jaya and the Jakarta government.¹⁴

As is commonly understood, the agreed contract was a one-sided contract. There was an instruction from the regional parliament in Jakarta to PDAM Jaya regarding the beginning of negotiations with two private sector companies since the contract seemed one-sided and also disadvantageous to PDAM Jaya. The councils dissembled as reported and Maurits Napitupulu as the director of PDAM Jaya was removed from his position in December 2011. The subject of a letter from the CEO of GDF Suez, Gerald Mestrallet, to the Indonesian Coordinating Minister of Economic Affairs was the situation of Palyja, which was discussed at a meeting between the President of Indonesia with the French Prime Minister, Francois Fillon, in July 2011. The provincial government of Jakarta, as the formal contractual partner, was suggested by the high level of these discussions because it is not the only interlocutor of the private enterprises in the councils.¹⁵

¹³ Irfan Zamzani "Jakarta Water Privatization Today: Dried Water Tap or Change," TNI, March 28, 2012, 1.

¹⁴ Nila Ardhianie, "Thirteen years of privatized water in Jakarta," The Jakarta Post, June 11, 2011, 1.

¹⁵ Irfan Zamzani, "Jakarta Water", 2.

Table 1.0 : Privatising PDAM Jaya

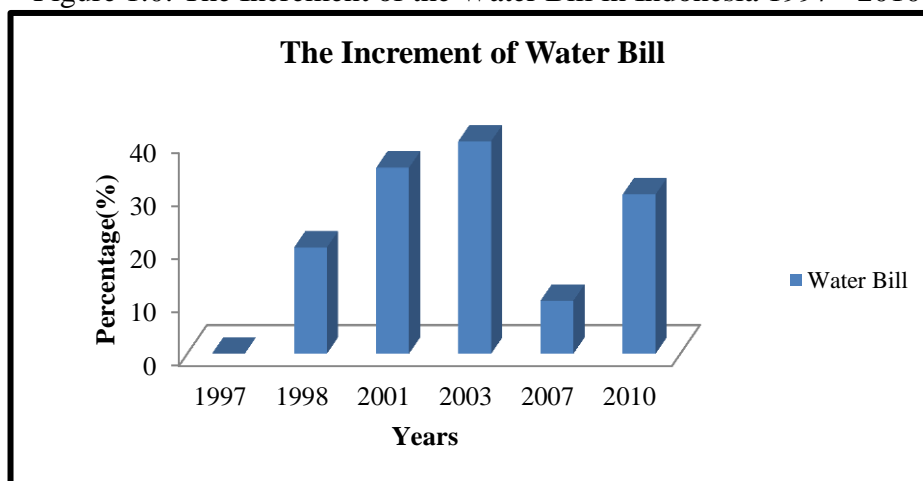
State Owned Enterprise	Location	Private Company	Privatised
PDAM Jaya	Western Jakarta	Suez Lyonnaise Des Eux (France)	Palyja
PDAM Jaya	Eastern Jakarta	Thames Water (England)	Aetra

Palyja: PT PAM Lyonnaise Jaya

Aetra: PT Aetra Air Jakarta

In 1998, consumer water prices were increased by 20%, and they jumped another 35% in 2001. These stiff demands were made, according to the companies, to finance improvements to the system. In April 2003, city council leaders approved another 40% rate hike after both companies threatened to pull out of their agreement with the city's administration and Palyja.¹⁶ A further 10% was applied in 2007.¹⁷ In 2010, there was another 30% increase.¹⁸

Figure 1.0: The Increment of the Water Bill in Indonesia 1997 - 2010



Source: Asia Times Online, Berita Jakarta, Jakarta Supply Regulatory Body

¹⁶ Bill Guerin, "Indonesia losing its thirst for privatization", Asia Times Online, September 15, 2007, 1.

¹⁷ *Ibid.*, 2.

¹⁸ "Tabel Tarif Air Per m³ Tahun 1998 - 2010 (Water tariff table per m³ for the years 1998-2010): 2007-2010," retrieved October 16, 2012, <http://www.jakartawater.org>.

An automatic tariff adjustment (ATA) was approved by the City Council in July 2004. The adjustment of the water tariff was agreed by the provincial government to pay its arrears to the private sector, twice a year over a five year period. This water tariff adjustment scheme foresaw that the increment made to the water bill would exceed customers capacity to pay in order to the financial requirements of the holdings enterprise PDAM Jaya and Jakarta Water Regulatory Body (JWRB).¹⁹ In January 2006, a policy was released by Sutiyoso, as the Jakarta Governor, and the City Council postponed the increment in water bills according to the complaints and protests from city consultants.²⁰

The water tariffs were frozen in 2007 by the successor of Governor Sutiyoso, Governor Fauzi Bowo, because the companies failed to achieve their contractual objectives. If the companies reached their contractual goals, the water tariffs would not be frozen. Nevertheless, performance targets were again reduced in 2008 as part of the rate approved for the period 2008-2012.²¹

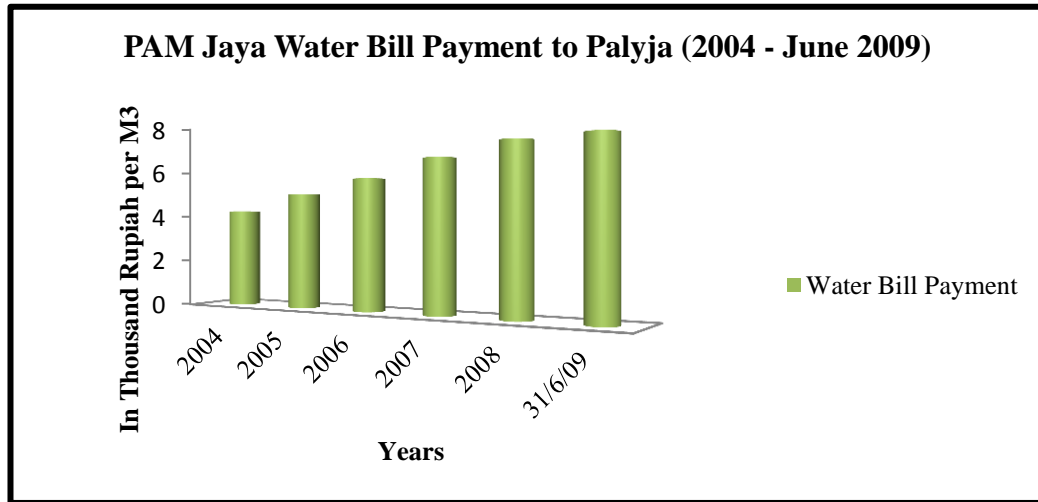
Figure 2 shows that the average for water charges each M3 borne by PAM Jaya is increasing from year to year; from Rp. 4,257.6 (2004) to Rp. 4,997 (2005), Rp. 5,627 (2006), Rp. 6,407 (2007), Rp. 7003 (2008) and Rp. 7,542 (June 2009) per M3.

¹⁹ Achmad Lanti et al., "The First Ten Years of Implementation of the Jakarta Water Supply 25-Year Concession Agreement (1998-2008)". (Paper, Jakarta Water Supply Regulatory Body, Jakarta, 2009), 96.

²⁰ Bambang Nurbianto, "Governor bows to pressure; delays water charges increase," The Jakarta Post, January 5, 2006, 1.

²¹ Andreas Lako and Nila Ardhanie, "Jakarta Water Privatization: Financial Machination and the Impact to the Customer". (Paper, KRuHA People's Coalition for the Right to Water and Amrta Insitute for Water Literacy and Public Services International, Jakarta, 2010), 2.

Figure 1.1: Water Bill from PAM Jaya to Palyja



Source: KruHa People's Coalition for the Right to Water

Water resources in Islam are public property, state property or public domain. Islam imposes no restriction on trading water. Water, being a public property, cannot be transferred, but its uses can. Once in Islamic history, Uthmān Ibn ‘Affan, the third caliph, purchased Romat well from a Jew and he offered it as a public utility for Moslems. The Messenger of Allāh had said:²²

وأخرج البخاري عن أبي عبد الرحمن السلمي أن عثمان حيث حوَصر أشرف عليهم فقال: أنشدكم بالله ولا أنشد إلا أصحاب النبي صلى الله عليه وسلم أستم تعلمون أن رسول الله صلى الله عليه وسلم قال: من حفر بئر رومة فله الجنة. فحفرتها, أستم تعلمون أنه قال: من جهز جيش العسرة فله الجنة فجهزته قال: فصدقوه بما قال

Translation: When Uthman was circled (by the rebels), he looked upon them from above and said, "I ask you by Allāh, I ask nobody but the companions of the Prophet (SAW), don't you know that Allāh's Messenger said, 'Whoever will (buy and) dig the well of Ruma will be granted paradise,' and I (bought and) dug it? Don't you know that he said, 'Whoever equip the army of Ustrā (Tabuk's Ghazwa) will be granted paradise,' and I equipped it?" They attested whatever he said. When ‘Umar founded his endowment he said, "Its administrator can eat from it." The management of the endowment can be taken over by the founder himself or any other person, for both cases are permissible.

²² Muḥammad bin Isma‘il Al-Bukhary. *Ṣaḥīḥ al-Jamī‘*, Cairo: maktabah as-Salafiyyah. (3) 18. *Ṣaḥīḥ al-Jamī‘*, Muḥammad bin Isma‘il al-Bukhary, 18 vol. III, Publisher: Maktabah as-Salafiyyah: Cairo.

عن أبي عبد الرحمن السلمي قال لما حصر عثمان أشرف عليهم فوق داره... ثم قال أذكركم بالله هل تعلمون أن بئر رومة لم يكن يشرب منها أحد إلا بثمن فابتعتها فجعلتها للغني والفقير وابن السبيل قالوا اللهم نعم وأشياء عددها

Translation: Ḥadīth Tirmidhy is equipped with a history: From the ‘Abdurrahmān as-Salmi said ‘Uthmān was besieged when he was looking at them from his house and then he said: I warned you people “do you not know that the well house no one can drink the water unless the purchase”. Then I bought it and gave it for the rich, poor and ibn sabīl? They said: true. (Narrated Tirmidhy). This hadith is ḥasan by at-Tirmidhy.²³

He means Romat well, When ‘Uthmān heard this, he purchased half of it and offered it to Muslims; and people took water from it. When its owner saw that he had no chance to make use of the second half he sold it to ‘Uthmān who offered it as a whole to Muslims. Water, as the most important element, which is seen as a social good, should be treated as an economic good with a high scarcity value. The issue of water has been discussed as a concern of international development economics. In Asia, there are four major reasons: the most populated continents, the increase of urbanisation, high poverty, and the extent of the use and misuse of water.

Nowadays, water services in Indonesia, Jakarta, have been privatised for sixteen years to obtain better management and some improvements. In fact, unimproved services, high prices, bad quality of water and environmental deterioration are the complaints given by society. Water services, which hold an important role, should be saved from financial ruin and a profit-oriented private sector. Another issue is the increment of water bills in Indonesia, which have steadily increased following privatisation. This study is carried out to analyse water services privatisation in Indonesia and the ownership of water services based on Islamic economic principles. Thus, this study intends to explore scholars’ thoughts concerning ownership. In short,

²³ First Edition, 1400H, 1975M, 2778. See: Sunan at-Tirmidhy, Muḥammad bin ‘Īsa bin Surah at-Tirmidhy, vol. V, Publisher: Maktabah Mustāfa al-Halby Baby Ed. Second, 625.

this research can be seen as a work that may stimulate the Muslim mind to reappraise their struggle, confront their shortcomings and approach Islām correctly, especially concerning policy.

1.2 The Questions of the Study

- What are the risks and benefits of water services privatisation in Indonesia?
- What are the Islamic principles concerning water services ownership?
- How to face water services privatisation based on the Islamic economic system?

1.3 Objective of the study

- To describe the concept of ownership in Islām.
- To discuss the risks and benefits of water services privatisation in Indonesia.
- To elaborate upon the Islamic economic principles concerning ownership of water from various scholars.
- To analyse the water services privatisation in Indonesia from an Islamic perspective.

1.4 The scope of the study

This study intends to describe water services privatisation as one of the economic policies in Indonesia and as an economic problem. This research also tries to portray ownership of water services based on Islamic teachings. Water Services Company in Jakarta is PDAM Jaya and Jakarta is chosen because it also represents Indonesia as it is the capital city. Finally, it will focus on water privatisation and ownership of water services as an Islamic economic principle. This is one of the

knowledge disciplines that need to be obeyed with the expectation that this dissertation can be delivered with a high level of quality.

1.5 Literature Review

Water privatisation is one of the privatisations that holds an important role and has been discussed for decades. Islamic economics recognises water as a daily need. On the other hand, ownership is also well-managed in Islām. All of these concerns have been addressed by scholars and researchers, and, finally, written in books, research papers, and journals as discussed below.

1.5.1 Privatisation

Ravi Ramamurti²⁴ offers a formulation to help and understand “(1) why some state-owned enterprises (SOEs) in some EEs have been privatized but not others; (2) how SOEs are privatized and why; and (3) how privatisation affects the performance of firms, industries, and countries.” Nancy Brune, Geoffrey Garrett, and Bruce Kogut²⁵ examine IMF conditionality, in particular, it has an important indirect economic benefit. Investors are willing to pay more for privatised assets in countries that owe the IMF money (and hence that is subject to the policy constraints attached to the lens). The reason for this is that investors view IMF conditionality as a signal of credible policy reform.

Efa Yonnedi²⁶ discusses privatisation of state-owned enterprises (SOEs) that has a relationship with its performance and organizational change. The processes by which privatisation enables corporate performance within an organization through the internal

²⁴ Ravi Ramamurti, “A Multilevel Model of Privatization in Emerging Economies”. *The Academy of Management Review* 25, No. 3 (2000), 525-550.

²⁵ Brune, “The international”, 197.

²⁶ Yonnedi, “Privatization, organizational”, 534.

changes in the field of a developing country. Emita W. Astami, Greg Tower, Rusmin Rusmin, John Neilson²⁷ investigate whether partially privatised state-owned enterprises (SOEs) perform significantly better than fully SOEs in the developing country of Indonesia.

David Hall and Robin de la Motte²⁸ look at how conditionalities and pressures from aid agencies and development banks force developing countries to adopt privatisation policies in public services. They focus specifically on the sectors of water, electricity, and health care, in six countries: Colombia; El Salvador; Indonesia; Mozambique; South Africa; and Sri Lanka. They examine the impact of the requirements and policies of the International Monetary Fund (IMF), World Bank (WB), and other agencies including regional development banks, the European Commission (EC) and donor countries. They include a specific examination of the various ways in which the UK's Department for International Development (DFID) supports privatisation in these services.

Mark Drakeford²⁹ delivers privatisation with the contemporary controversies privatisation and marketisation in the longer-term of such debates within social welfare. Drakeford also explores the social policy consequences of initiatives, which were advanced primarily on industrial and economic grounds. He provides a series of key documents, setting out the ideological framework within which privatisation and marketization policies are derived and disputed and sets out the claims made for and against policies in their application to social welfare services.

²⁷ Gregory et al., "The effect" 5-19.

²⁸ Hall, D., & Motte, R.D.L., "Dogmatic Development: Privatisation and conditionalities in six countries" (paper, Public Services International Research Unit (PSIRU), London, 2004)

²⁹ Mark Drakeford, *Privatisation and Social Policy*, (Edinburgh, Pearson Education Limited, 2010).

Kenneth William³⁰ aims at clarifying the concept and detailing its implications to assist Australia in the future. More specifically, the study focuses on the experience of privatisation and debate about the concept in the United Kingdom and provides: “(1). An analysis of definitions of privatisation derived from literature, legislation, debate and so on, (2) An understanding of the aims and claimed advantages of the British privatisation program, (3) A checklist of the impact of privatisation of date in Britain, (4) An explanation of the forces driving the privatization program and their motivation, (5) A comprehensive resume of the criticisms that have been made of privatization, (6) Identification of possible criteria deriving from British experience which might be used to evaluate privatization policies and practices in Australia.”

Hastings and Levie³¹ do not examine every single act of privatisation that has occurred since 1979. They do not, for instance, have a separate section on the British National Oil Corporation whose privatisation was extremely important politically, but less significant in terms of the union response. The introductory survey does, however, deal superficially with very many aspects of privatisation in order to illustrate the impact it has had on every sector of the economy. This book covers Privatisation 1979-1982 in Great Britain, the struggle for Wandsworth, the NHS, gas and electricity shops, National Freight Corporation, British Telecom, the Construction Industry, Civil Service, and strategies to fight privatisation.

M.E. Beesley³² explains the essays that represent ten years involvement in privatisation and regulatory affairs. They appear at a time when, having become London Business School’s first emeritus professor, reflections on one’s early formative influences are expected. A previous collection of essays – on urban policy – was

³⁰ Kenneth William, *Privatisation: The British Experience*, (Melbourne, Australia, Longman Cheshire Pty Limited, 1987).

³¹ Hastings and Levie, *Privatisation?*, (Nottingham, Russel Press Ltd, 1983).

³² Michael Edwin Beesley, *Privatization, Regulation, and Deregulation*, (London, Routledge 11 New Fetter Lane, 1992).

published in the early 1970s. This book covers privatisation: principles, problems and priorities; privatisation: reflections on the UK experience, the regulation of privatised monopolies in the United Kingdom, mergers and water regulation, the required rate of return/cost of capital, competition and supply in London taxis; information for regulating: the case of taxis; bus deregulation, commitment, sunk costs, and entry to the airline industry: reflections on experience, the UK experience with freight and passenger regulation; liberalization of the use of British Telecommunications' network; the liberalization of British Telecom, regulation and the 1984 Telecommunications Act; the British Teleco/Mercury interconnect determination: an exposition and commentary, Extracts from the future of telecommunications.

Madsen Pirie³³ (1988) in his book "Privatisation" covers the introduction, problem areas of the public sector, attempts to solve public sector problems, an alternative approach, the techniques, privatisation in theory and practice, future privatization in Britain, privatisation outside Britain, privatisation in developing countries.

1.5.2 Water Privatisation

Jean Shaoul³⁴ uses the study of the water industry that has been privatised to make two points: initially, the first point is to discuss the level to which an accounting sample and the financial amounts in the annual reports and accounts can certainly portray and define such outcomes. The second point is to evaluate whether accounting takes responsibility in a constructive and emancipatory role, by disputing the truth of the existing problem of an exact description, for instance, of public sector inefficiency, and submitting alternative questions and solutions.

³³ Madsen Pirie, *Privatization*, (Hants, England, Wildwood House Limited, 1988).

³⁴ Jean Shaoul, "The power of accounting: reflecting on water privatization?," *Accounting, Auditing & Accountability Journal* 10, No. 3 (1997), 382 – 405.

Stuart Ogden and Julia Clarke³⁵ aim to study how annual reporting for lawful points has been used in the context of the ten recently privatised regional water enterprises in the UK. Although privatisation itself seems to possess the water ports to build several fixed lawful institutions for themselves as client enterprises are also considered with the private sector status, it was evident from the world of their privatisation that they would experience trouble in achieving this. Privatisation did little to alter their preceding monopoly character, which resulted in a distinction with the design of private sector enterprise that is run by a competitive trading. The commentary strains the great significance of the character of collective reporting as a supply of material in legitimacy management. The policy document also exchanges conflicting views that, without being affected by supported forces, some parties did not attain to believe that the privatisation of water was worthwhile.

Jan Marchant³⁶ offers a general review of the commercial activities and financial situation of the arrangements of the industry for the last 15 to 20 years. It is considered as a project that has been finalised for a measured European research water business in a number of various European states.

1.5.3 Islamic Economics

M. Umer Chapra³⁷ describes that instead of the Islamic world, where the core of political trends is slightly marked, the broad political stage is controlled by rhetoric and standards that are primarily the principles of consumer usage and that individual tension and self-satisfaction are the major keys of political doings.

³⁵ Stuart Ogden and Julia Clarke, "Customer disclosures, impression management and the construction of legitimacy: Corporate reports in the UK privatised water industry," *Accounting, Auditing & Accountability Journal* 18, No. 3 (2005), 313 – 345.

³⁶ Jan Marchant, "The Business and Financial Structure of the Water Industry in England and Wales," (paper, CRI Research Report, London, 2003).

³⁷ Muhammad Umer Chapra, *Islām and the Economic Challenge*, (Riyāḍ, Saudi Arabia: The Islamic Foundation and The International Institute of Islamic Thought and Islamic Research Institute, 1995).

M. Umer Chapra³⁸ explains Islamic and economic development as an effort and to face this challenge, it is composed of two parties. In the first place, it encompasses the stillborn systems – systems that the Muslim countries must keep away from if they are to actualise their socioeconomic aims. The first three chapters of this part elaborates the worldview and strategy of the prevalent systems, not just for the purposes of criticism, but to recognise the excuses for, and the characteristics and the views of, the contradiction in the midst of their objectives and their worldview strategy. This will enable the people to understand why the inadequacy of concordance has caused disappointment and frustration, the government works succeeding these systems which should be put in the right way both the benefit and justice in the system of distribution. It also allows them to continue the study in chapter 4 concerning why the formula of discretion inside the prevalent systems has brought about inconsistencies in the economic wisdom followed by developing countries, and has sharpened their problems by not only emphasising the macroeconomic and outward disproportion but also the disappointment in their aim for justice.

The next section of this book, consisting of seven chapters, studies the Islamic response. The first part of these chapters, chapter 5, discusses the worldwide and strategy of Islam and the imprescriptibility of these with the maqāṣid. Chapter 6, through an account of the malaise in Muslim countries, places the foundation for a debate of five certain policy ideals that are necessary for the Muslim world to consider in light of the Islamic principles; to recognise the maqāṣid without prolonged inapplicabilities. Each policy of these ideals is addressed in a separate chapter. Chapter 7 studies the ways of reinforcing the human element, which is generally acknowledged to be very substantial, but which obtains the great importance of value in a system that enacts human beings the axis of all socioeconomic regenerate and works to realise both

³⁸ Muhammad Umer Chapra, *Islamic and Economic Development: A Strategy for Development with Justice and Stability*, (Riyāḍ, Saudi Arabia: International Institute of Islamic Thought and Islamic Research Institute, 1985).

efficiency and equity. Chapter 8 discusses the particular methods of lowering centralization of property, a requirement of realising socioeconomic equity to which Islam provides maximum benefit in its value system. Chapters 9 and 10 represent the types of economic and financial restructuring that are required to realise the socioeconomic objectives of Islām. Chapter 11 addresses the strategic policy design, which is needed to practice to good purpose the policy points of Islamic principles. Finally, it concludes the discussion running through all eleven chapters, which lets the readers review the essence of the whole analysis. Following this book is particularly a study of the economic problems, it does not include the formal inmost facets and hayÉtan ṭayyibah except to the extent to which they have a relation to the economic challenges.

It may appear improbable to examine the challenges of the entire Muslim world in only one book, as there are various types of Muslim country. For instance, Muslim countries that have high earnings, middle earnings and low earnings in different levels of economic development and dealing with various challenges. Nevertheless, the essence of their problems is much the same, the differences being only in measurement. They all suffer with a comparative deficiency. Nonetheless, being Muslim countries, it is their indisputable moral responsibility to realise the maqāṣid without producing prolonged inapplicabilities. Consequently, they can all take advantage from the study, albeit at various levels. This document is purposely directed, however, to the poor and middle earning countries the challenges of which are more chronic.

1.5.4 Ownership

Taqiuddin an-Nabhaniy³⁹ defines the Islamic perspective of the economy and its goals, how to possess property and advance it, how to consume and discard it, how to share the means among the townspeople in communities and how to set up a balance

³⁹ Taqiuddin An-Nabhaniy, *al-Niẓām al-Iqtiṣādiy fil Islām*, (Beirut: DÉrul Ummah, 1990).

inside it. It elaborates upon the kinds of properties (private, public and state property) involving the property, which is in consequence of the Baitul Māl and the fields over which is depleted.

Muḥammad Baqir as-Sadr an-Najaf⁴⁰ is unwilling to encounter the outer form of the Islamic principles in economics in private and is not involved together with the shape of a writing model, with innumerable tremendous conflicts and insignificant generality. Somewhat, it is a foremost work – anything its fruitfulness and factors of creativity – to explore the profound of economic ideas in Islām and to manage it as a model of ideas, on which a precious framework of the Islamic economics could be a main point; a framework which is fruitful in its philosophical system and basic thoughts, evident in its nature, identities and general spirit, clearly interpreted as to its connection and its foundation in respect to the other substantial teachings, and related to the agreed regular framework in Islam. Thus, it is significant for the book to be learned as a modest seed of pat is prepossessing Islamic composition. The book explains the philosophy of Islamic economics by viewing it as an economic existence and the chronicle of humankind, and elaborates the economic value of this world of economy.

John Nellis⁴¹ explains that based on this reasoning and evidence, it is clear that ownership matters – that it is a significant determinant of the profitability and productivity of an enterprise. Politicians and organisational factors are fundamental to the reason why. Ultimately, as Oliver Williamson is fond of saying, “politics trumps economics”.

⁴⁰ Muḥammad Baqir as-Sadr an-Najaf, *Iqtiṣādunā*, (Beirut: Dīr al-Ta'āruf, 1982).

⁴¹ John Nellis, *Is Privatization Necessary?*, (New York: Private Sector Development Department Vice Presidency for Finance and Private Sector Development, 1994). (1994).

M. Umer Chapra⁴² elaborates on reducing the concentration in ownership, such as land reforms and rural development, size of landholdings, terms of tenancy, rationale and objections, rural development, proliferation of small and micro enterprises (SMEs) wider ownership and control of corporations, activation of zakah and inheritance systems, zakah: the social self-help programme, inheritance, restructuring the financial system.

Table 1.1: Literature Review

No	Subject	Explanation
1	Privatisation	Hastings and Levie (1983), Kenneth William (1987), Madsen Pirie (1988), M.E. Beesley (1992), Ravi Ramamurti (2000), Mark Drakeford (2000), Nancy Brune, Geoffrey Garrett, and Bruce Kogut (2004), David Hall and Robin de la Motte (2004), Efa Yonnedi (2010), Emita W. Astami, Greg Tower, Rusmin Rusmin, John Neilson (2010).
2	Water Privatisation	Jean Shaoul (1997), Jan Marchant (2003), Stuart Ogden, Julia Clarke (2005), Andrea Guerrini, Giulia Romano, Bettina Campedelli (2011).
3	Islamic Economics	M. Umer Chapra (1995) and (2000).
4	Ownership	M. Umer Chapra (1981), Muḥammad Baqīr as-Sadr an-Najaf (1982), Taqiuddīn an-Nabhaniy (1990), John Nellis (1994).

⁴² Muḥammad Umer Chapra. (2000), "Is it necessary to have Islamic economics?," The Journal of Socioeconomics 29 (2000), 21-37.

Privatisation has been explained in books and journals by many scholars for several reasons. Firstly, it is seen as an important indirect economic benefit which has a relationship with state-owned enterprises (SOEs). Privatisation has been made to be one of policies in public services for developing countries. In a social welfare, it also brings the contemporary controversies between privatisation and marketisation in the longer-term of such debates. Water privatisation is one of the privatisation schemes that applies in public sectors.

Islamic economics and Islamic development economics come to address this phenomena. The ownership has specifically been defined how to possess property and advance it, how to consume and discard it, how to share the means among the people in communities. It also elaborates upon the kinds of properties such as private, public and state property.

1.6 Methodology of the Study

This research will analyse sources that are mainly from journals, research papers, books and other reference materials from the main library of University Malaya, Za'ba memorial library, main library and research centre in the International Islamic University Malaysia.

1.7 Methods for collecting data

Several methods were used in collecting data that relate to this study. These are:

1.7.1 Document Method

This study is supported by library research, so in collecting and looking for data, the researcher utilised the sources from the library, including books, magazines,

documentaries, and so on. This method is applied for identifying the definitions and scientific data that are used in this research. Data and documents, which are sources for the researcher, include research papers, books on Islamic economics both classical and contemporary, history books, science books, magazines, journals, and news from the Internet.

1.7.2 Historical Method

This method proposes to understand and analyse events and phenomena that consist of historical values. This method aims to obtain data about the ownership of the water services company in Indonesia based on Islamic economic principles. This will be discussed in chapters III and IV.

1.7.3 Interviews

Interviews are applied in this field. A list of questions was made for the interviews, but neither the exact word order nor the phrases in which the list of questions was ordered was agreed ahead of time. The interviews began with general open-ended questions and the responses of the interviewees would flow as the conversation progressed.

1.7.3.1 List of Participants

Two distinct categories of people were interviewed:

a) Representatives from the extensive row of institutions:

i. Authorised Regional Water SOE

PDAM Jaya – A State owned Jakarta Water Services Company, liable for monitoring and evaluating private sector performance in drinking water provision for the Jakarta City. The interviewee is Hartuti Kartika Sriwardhani, as the manager of system and technology development.

ii. IICB

Indonesia Investment Coordinating Board – The Investment Coordinating Board of the Republic of Indonesia. As the primary interface between business and government, IICB is mandated to boost domestic and foreign direct investment through creating a conducive investment climate. The interviewee is Tamba P. Hutapea as the head of division of IICB for plan and investment.

a). Interview with a Muslim scholar and the customers – Six interviews were conducted:

i. Syeikh ‘Abdurrahmān al-Baghdadiy is a Muslim Scholar who has published 30 Arabic books and several books in Bahasa Indonesia.

ii. Five customers, which included residents of South Jakarta, Central Jakarta, West Jakarta, East Jakarta and North Jakarta. They are Maimunah (59 years old), Erika (20 years old), Riyan Hidayat (20 years old), Feriyanti (25 years old), Rasminto (30 years old).

b. The criteria for the respondents are:

i. The respondent is using Jakarta Water Services Company.

ii. The respondent has lived in Jakarta for at least 20 years and has experience with both Jakarta Water Services Company and the private sector as well.

iii. The respondent agreed to be interviewed.

1.7.3.2 Location

Daerah Khusus Ibukota Jakarta (DKI Jakarta) is the Special Capital Province of Jakarta, which is subdivided into five municipalities, including South Jakarta, Central Jakarta, West Jakarta, East Jakarta and North Jakarta.

1.8 Methods for Analysing Data

1.8.1 Descriptive Method

All of the data collected by the methods applied by the researcher will be analysed thoroughly. The researcher adopted this method to ensure the validity of the

data gathered. Through the collection of data and information, this study will use the descriptive way to answer questions concerning the problems of the study. This method will be explained in all chapters.

1.8.2 Comparative Study

Comparative study will be used by giving some comparison between water privatisation that has been applied in Indonesia and ownership in Islām to evaluate both concepts and to understand the difference between them. This will be delivered in Chapters II, IV and V.

1.9 Outline of Thesis

This study consists of five chapters. Chapter one introduced the aims, objectives, research background and methodology. Chapter two addresses Islamic ownership, and the history of water privatization in Indonesia will be studied in chapter three. Chapter four comprises discussions and analyses. The conclusions and recommendations will be given in chapter five.

1.10 Conclusion

Water is seen as a social good and the access to potable water is considered much as a fundamental human right. The idea of water should be controlled economically because of its high scarcity value that has arisen for certain reasons such as the clean water services supply, the disposal for wastewater and rapid urbanisation. In Indonesia water is managed by state owned enterprise called PDAM Jaya. The study of Indonesian state owned enterprise has recently undergone privatisation programmes.

In 1997, the water services company in Indonesia was transferred to the private sector. It is commonly understood that the agreed contract was a one-sided contract. Besides, water resources in Islam are public property, state property or public domain. Finally, this study is carried out to analyse water services privatisation in Indonesia and the ownership of water services based on Islamic economic principles.

Chapter II

The Concept of Ownership in Water Services Company

2.1 Introduction

The following discussion of the concept of economic thoughts, such as socialism and capitalism, is a systematic treatise on political philosophy. Interdisciplinary in scope, it will raise several aspects about the main problems of political economy and political philosophy: how to organise the community so as to advance and promote the production of wealth and exterminate poverty, and how to arrange it efficiently.

As the most authoritative economic systems, capitalism and socialism have become the dominant economic and political ideologies all over the world. The entire Western world has been covered by capitalism for the most part such as North America and Western Europe under the influence of the United States of America. On the other hand, socialism was the authoritative economic system in the USSR, Peoples Republic of China and several countries of Eastern Europe. Although socialism, with the downfall and dissolution of its former leader, Soviet Union, has received a great decline, it still holds a lot of relevance as an economic philosophy.⁴³

The Islamic economic system has its own principles that may counter the non-Islamic economic systems and the Islamic economic principles in various concepts of economy. These principles might also be seen as an alternative and a solution to the economic problems that occur in many countries where Islamic principles are not implemented. Finally, it is necessary to elaborate capitalism, socialism, and Islamic views with a high level of understanding to enable an equitable comparison between the

⁴³ Muḥammad Sharīf Chaudry, *Fundamentals of Islamic Economics System*, (Lahore: Burhan Education and Welfare Trust, 1999), 201.

Islamic economic system and the non-Islamic economic systems pertaining to the ownership of the water services company.

2.2 Ownership of Water Services Company Based on Capitalism and Socialism

In the nineteenth-century, economics was understood through a variety of methods. It was actually interpreted as the knowledge of prosperity or of exchangeable wealth. In the twentieth-century, economics was typically defined as the science that discusses the allocation of scarce means among competing ends.⁴⁴ However, in the world of economy, capitalism and socialism tend to develop the basis value of both views.

The basis of the value of the capitalism is ultimately the same as the basis of the value of science, namely, human life and human reason. Capitalism is the social system necessary for the well-being and survival of human beings and in their life as rational beings. It is also necessary to the pursuit of science – to the pursuit of truth without fear of the initiation of physical force. These are all demonstrable preparations. The advocacy of capitalism by economists, therefore, should be no more remarkable, and raise no more grounds for objections, than the advocacy of health by medical doctors.⁴⁵ As a social order, the inherent dynamism of capitalism is strengthened by the common presence of competitive pressure in its free markets. The actors are continually forced by competition to observe their position and strategic behaviour. Although, in principle, governed by competitive markets, the efforts have been seen by all capitalist political economies to contain competition through private agreement or public regulation. In

⁴⁴ Kizner M Israel, *The Economic Point of View*, (New York: D. Van Nostrand, 1960), 1.

⁴⁵ Leonard Peikoff, "Fact and Value," *The Intellectual Activist* 5 (1989), 1.

fact, initiatives to “stabilise” markets tend to be as omnipresent in capitalism as a competition.⁴⁶

Private ownership is considered preferential to public ownership when the encouragement to innovate and contain costs is strong. Predominantly, this is the case for capitalism over socialism, asserting the “dynamic vitality” of free enterprise. During the 1930s and 1940s, the great economists failed to consider the dangers of socialism partially because they focused on the role of prices under socialism and capitalism, and ignored the enormous importance of ownership as the origin of capitalist incentives to innovate. In addition, many of the concerns that private firms failed to address, “social goals”, can be addressed through government contracting and regulation, without resorting to government ownership. The matter of private provision only becomes stronger when competition between suppliers, rotational mechanism, and the possibility of provision by not-for-profit firms are brought into play. Last but not least, the pursuit by government officials of political purposes, goals and individual earnings, as opposed to social prosperity, further affirms the matter of private ownership, as the dismal record of state enterprises around the world and the tragedy of communism explain all too well.⁴⁷

Socialism plays its role in the division of labour where the means of production of the private ownership is almost ignored. Specifically, people think of privately owned means production in terms that would be properly accepted only in a non-division-of-labour society. Goods, in other words, are assumed as being of benefit only to their owners. They are convinced that before the non-owners can benefit from the means of production, they must, in advance, become owners. This belief underlies the popularity

⁴⁶ Wolfgang Streeck, “Taking Capitalism Seriously: Toward an Institutionalist Approach to Contemporary Political Economy”, Cologne: Max Planck Institute for the Study of Societies. MPIfG Discussion Paper 10, No. 15 (2010), 5-36.

⁴⁷ Andrei Shleifer, “State Versus Private Ownership”, *The Journal of Economic Perspectives* 12, No. 4 (1998), 133-150.

of all forms of “re-distributionism” and “socialism”.⁴⁸ However, before the Islamic economic system is compared with capitalism and socialism, it is necessary to briefly introduce these two systems first.

2.2.1 Ownership of Water Services Company based on Capitalism

The origin of capitalism, controlling the markets for commodities to push up prices or keep them from falling has been a characteristic of capitalism itself since its creation in early modern Europe. The history of capitalist business reveals the nearly continuous development of *de facto* and *de jure* practices that protect individual capitalists, partnerships, and companies from the unpredictability and volatility of markets. Monopolies, oligopolies, cartels, licences, copyrights, and patents are some examples of this ever present characteristic of the actual practice of capitalism.⁴⁹ Capitalism comes in various forms. As a working definition, capitalism is a form of organising production that involves extensive private ownership of the means of production, with associated property rights over the fruits of production for the firms and the efforts of the workers.⁵⁰ It is portrayed by the pursuit of physical matters of self-benefit and it lies within the substratum of the cultural impact of core. According to the foundation and primary key of nature, Capitalism is further represented by the combination between funds and assets, trade, and money, financial self-benefit, and the gain of objectives, the independence of economic advance, and a consonance of the physical things of all the persons who take part in it.⁵¹

⁴⁸ Ludwig Von Mises, *Socialism*, (New Haven: Yale University Press, 1951), 402.

⁴⁹ Ronald Edsforth, “On the Definition of Capitalism and Its Implications for the Current Global Political-Economic Crisis,” (The International Conference on Cultural Diplomacy & the UN. “Cultural Diplomacy and Soft Power in an Interdependent World: The Opportunities for Global Governance”. New York and Washington, D.C, 2012), 7-8.

⁵⁰ Michael Walton, “Capitalism, the state, and the underlying drivers of human development” (Paper, United Nations Development Programme Human Development Reports Research Paper, New York, June 2010).

⁵¹ George Reisman, *Capitalism: A Treatise on Economics*, (California: TJS Book, 1998), 4.

The word “capitalism” indicates not just markets for the exchange of goods and services, which have stood since time immemorial, but to the system of innovation, wealth creation, and social change that has brought to billions the welfare society that was unimaginable to earlier generations of human beings.⁵² Capitalism has great power and is fundamentally superior to any other method for organising economic activity. It is more efficient in providing resources and in its corresponding supply and demand. It is demonstrably effective in creating wealth. It is more congruent with higher levels of freedom and self-governance than any other system. It unlocks a higher fraction of the human potential with ubiquitous, organic incentives that reward hard work, ingenuity, and innovation. These strengths are why it is fundamental to every successful economy. Crucially, capitalism has proven itself to be adjustable and flexible enough to fit the specific needs of particular countries.⁵³

Treasure involving funds and assets from the political, social, and economic perspective under capitalism is possessed and set for the most part by the private sector, either a group or individual. The pricing system is applied by mechanism that provides the usage of users. The level to which the price system is practiced, the extent of the rival in trading, and the degree of state interference differentiates the appropriate shapes of Capitalism.⁵⁴ It recognises the price mechanism as its key conforming tool in contrast to instruction and regulation, and recommends that capitalist systems are differentiated by the level and characteristics of civil intercession and the match of their markets.⁵⁵

As a social, political, and economic system, capitalism aims at financial self-interest and the profit motive that undoubtedly portrays it. It brings harmony of the material self-interest for every person who takes part in it. The private person owns this

⁵² Tom G. Palmer, *The Morality of Capitalism*, (New York: Students For Liberty and Atlas Economic Research Foundation, 2010), 1.

⁵³ “Generation Investment Management LLP, *Sustainable Capitalism*, (London: Generation Investment Management LLP, 2012), 6.

⁵⁴ Macmillan Dictionary of Modern Economics, 3rd Ed., (1986), 54.

⁵⁵ Bruce. R. Scott, *The Political Economy of Capitalism*, (Harvard Business School: California, 2006), 3.

political, social, and economic system in which material and assets are within. The grade of competitiveness in markets and the stage of administration interference differentiates the narrow shape of this system. This concept simply provides a very short explanation of the concepts of capitalism as a system.

It is possible for governments to interfere directly in trading by way of proceeding to impound the area or by regional or nationalisation of an enterprise; otherwise they may interfere circumstantially by transforming the organisational bases in which trading dealings come about, e.g. transforming measurement, format, or place of a trade, or transforming the claims and obligations of several grades of economic actors, the regulations of accounting, and so on. Governments' roles and modes of interference can be shown in matrix form as in Table 2.1.⁵⁶

Table 2.1: Governmental roles and modes of intervention

Roles	Modes of Intervention	
	Direct	Indirect
Administrative	Operate SOE	Enforce laws and regulations Maintain infrastructure
Entrepreneurial	Take property Buy/ sell/ grow SOE	Pass new laws Issue new regulations Builds new infrastructure

Source: **Bruce R. Scott**⁵⁷

Based on what Bruce R. Scott has explained above, the government roles, both administrative and entrepreneurial, can intervene both directly or indirectly. In the administrative role, the government will directly operate SOEs, for example, water services companies, while indirectly it enforces laws, and regulations and maintains the infrastructure. For the entrepreneurial role, it will directly take property, buy, sell, or

⁵⁶ Bruce, R. Scott "The Political Economy of Capitalism" retrieved October 10, 2012, <http://hbswk.hbs.edu>.

⁵⁷ Ibid.,

grow SOEs; in this case it will indirectly pass new laws, issue new regulations, and build new infrastructure.⁵⁸

In the history of capitalism, it is acknowledged that capitalism aims to control the market for commodities to push up prices. It also protects individual capitalists, partnerships, and companies from the uncertainty and variability of markets, for instance, monopolies, oligopolies, cartels, licences, copyrights, and patents, savings and capital accumulations, exchanges, money, financial self-interests, and the profit motives, the freedom of economic progress, and the harmony of the material self-interests of all the individuals. In capitalism, water services companies are run by either the government or private sector. As long as it gives more benefit, the ownership is not the priority. It is not the main issue to be concerned with this system. Water, as a vital good, might even be monopolised because, as previously mentioned, freedom is the nature of this political system on the basis of the cultural influence of reason.

2.2.2 Ownership of Water Services Company Based on Socialism

In the history of socialism, this system was seen by many as the phase of the future and as a historical alternative to capitalism. One American observer of European socialist movements affirmed in 1913 that socialism has regulated the most extensive body of human beings that the world has known. Its worldwide organisation has but one rival for homogeneity and zeal, the church.⁵⁹ Without doubt, the steady increase of Labour Party members in the British House of Commons added to the prestige of socialist ideas all over Europe. Therefore, by 1924 there had been no less than eight socialist administrations, three in Europe (Sweden 1920, Denmark 1924 and Great Britain, 1924); and the remaining five in the British authorities overseas.⁶⁰

⁵⁸ Ibid.,

⁵⁹ Fossey John Cobb Hearnshaw, *A Survey of Socialism*, (London: Macmillan and Co: Ltd, 1928). 2.

⁶⁰ Thomas Kirkup, *A History of Socialism*, (London: Adam and Charles Black, 1906), 7-15.

Central to the comprehensiveness of socialism, it is clear that the definition given to socialism embraces a social ideal – a suggested or expected system of society. But the word “socialism” has a broadness, an inclusiveness, which takes on several meanings. It may be regarded:⁶¹

1. In a usage somewhat loose and vague, but necessary from a genetic or historical standpoint, as a spirit, a passion, an inspiration, with its resulting effort, for industrial equality.
2. As a theory of social evolution.
3. As a system of political economy.
4. As an organised international movement.
5. As – in the definition given above – a social ideal.

The word may thus be used in the sense of any of the definitions given, or broadly and comprehensively, in a sense, including all of them.

Socialism is the collective ownership and democratic management of the social means of production for the common good.⁶² Socialism is characterised by state ownership of most economic resources.⁶³ Certain forms of private industry will be tolerated in the socialist state, and perhaps even definitely encouraged, but the major fundamental economic activities will be socialised. The socialist state shall not be static, and, consequently, what at first may be considered as being properly the subject of

⁶¹ William James Ghent, *The Elements of Socialism*. (Girard, Kansas: Girard, 1916), 5.

⁶² “We use the general term “collective”, rather than some more specific term. Because common ownership under Socialism will no doubt take on various forms-national, state, municipal, labor-union and co-operative. We say “democratic management” because collectivism without democracy would not be Socialism. We say the “social means” of production instead of “all means” because, as all Socialists agree, many kinds of small industry will probably be left in private hands. It is the large. Scale industries, the industries in which labor is performed socially, by groups or masses of men working with tools owned by other men, that socialists insist shall be made collective property. And finally, we say the “common good” rather than the “equal good” or some other term which assumes foreknowledge of the rule of recompense for labor or service in the society of the future. Socialism strives for the “greatest good of the greatest number,” but no one today can say upon what basis the apportioning of that good will be determined.” *Ibid.*,

⁶³ Gregory C. Chow, *Market Socialism and Economic Development in China*. Econometric Research Program Research Memorandum. (New Jersey: Princeton University, 1998), 2.

private enterprise may expand to an extent or in a direction that necessitates its transformation to the category of essentially social assets.⁶⁴

Socialism, as is stated above, is the common ownership. It is also a democratic leadership of the social means of production of the public goods. State ownership is typical of most economic resources of socialism. In this system, water as a commodity that is very important, is compulsorily managed by government. Public companies should be able to administer it as a common good. Private companies are still permitted but not to regulate an essential commodity like water.

Naturally, socialists differ upon this point very materially. However, it would seem sufficiently comprehensive to say that the economic structure of the society includes at least the following:⁶⁵

1. Ownership of all natural resources, such as land, mines, forests, oil wells and so on;
2. Operation of all the means of transportation and communication other than those of purely personal service;
3. Operation of all industrial production involving large capital and associated labour, except where carried out by voluntary, democratic co-operation;
4. Organisation of all labour essential to the public service, such as the building of schools, hospitals, docks, roads, bridges, sewers and the like; the construction of the machinery and plant requisite to the social production and distribution, and of things necessary for the maintenance of those engaged in such public services as the national defence and all who are wards of the state;
5. A monopoly of the monetary and credit functions, including coinage, banking, mortgaging and the extension of credit to private enterprise.

⁶⁴ *Ibid.*, 53 – 54.

⁶⁵ *Ibid.*, 245.

With these economic activities undertaken by the state, a pure democracy differing vitally from all the class-dominated states of history, private enterprise would by no means be excluded, but limited to an extent making the exploitation of public interests and needs for private gain impossible. However, a water services company – which includes water itself as one of natural resources, its operational administration involving large capital, and the organisation of all workers – will definitely be administered by the government. There is no way for private companies to take part in essential commodity businesses with big capital encompassing many employees. The government has all the means of authorisation.

2.3 Ownership of Water Services Company based on Islamic Principles

The concept of Allah, as the Creator-Owner and Lord Sovereign of all that is in the heavens and on the earth, like water, is generally acknowledged in Islām. This implies the common use and benefit to the community.⁶⁶ In addition, humans, as a caretaker of his property, is therefore responsible. It is stated in the Qurān:

فَالَّذِينَ آمَنُوا مِنْكُمْ وَأَنفَقُوا هُمْ أَجْرٌ آمِنُوا بِاللَّهِ وَرَسُولِهِ وَأَنفَقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلِفِينَ فِيهِ
كَبِيرٌ

Al-Hadīd 57:7

Translation: Believe in Allāh and His Messenger and spend out of that in which He has made you successors. For those who have believed among you and spent, there will be a great reward.

⁶⁶ Afzal Rahman, *Economic Doctrines of Islam*, (Lahore: Islamic Publications Ltd, 1980), 20.

Ownership indicates the right to exploit and utilise the wealth and resources provided by Allāh and such right is only transferable through legitimate methods. The owner deserves the right of ownership as long as he utilises the reward blessed to him as best as he is able. In the event that he ceases to do so, and exploits and does not put the wealth into proper and productive utilisation, he will be induced or even forced to give up that right of possession.⁶⁷ ‘Abdul Salām al-Abadī says that ownership is a special human right for goods that are allowed to be utilized and allocated indefinitely until there are reasons against it. In terminology: ownership is the human relationship with something (treasure) that allows them to take advantage of it and use it and prevent anyone else from using it. In language, ownership means human ownership of a property and as an authority to transact freely. According to scholars of fiqh, ownership is a privilege over an object that prevents another party to act upon it and allows the owner to trade directly on it as long as there is no obstacle to Islamic law.⁶⁸ Therefore, this philosophy implies that no single legal system may be used to regulate land issues, but only God's laws (Sharia).⁶⁹

The true owner of all the resources is Allāh the Almighty. Man was entrusted to manage everything as best as he is able. So that at any time, it is easy for Allāh to take back all the treasures that we have. Therefore, the absolute ownership of property is not recognised in Islām. As contained in the Qurān:

لِلَّهِ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَإِنْ تُبَدُّوا مَا فِي أَنْفُسِكُمْ أَوْ تُخَفُّوهُ يُحَاسِبِكُمْ بِهِ اللَّهُ فَيَغْفِرُ لِمَنْ يَشَاءُ وَيُعَذِّبُ مَنْ يَشَاءُ وَاللَّهُ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ

Al-Baqarah 2:284

⁶⁷ Yūsuf. D. S. M, *Economic Justice in Islām*, Lahore: (Islamic Publications Ltd, 1977), 19.

⁶⁸ Wahbah Zuhaili, *al-Fiqh al-Islāmi wa Adillatuh*, (Damsyik: Dar al-Fikr, IV, 1989), 56-57.

⁶⁹ ‘Isa ‘Abduh and Isma’īl Aḥmad Yaḥyā, *Al-Milkiyyah fī Al-Islām*, Cairo: Dārul Ma’ārif, (t.t)), 138.

Translation: To Allāh belongs whatever is in the heavens and whatever is in the earth. Whether you show what is within yourselves or conceal it, Allāh will bring you to account for it. Then He will forgive whom He wills and punish whom He wills, and Allāh is over all things competent.

قُلْ إِنْ كَانَ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ وَإِخْوَانُكُمْ وَأَزْوَاجُكُمْ وَعَشِيرَتُكُمْ وَأَمْوَالٌ اقْتَرَفْتُمُوهَا
وَتِجَارَةٌ تَخْشَوْنَ كَسَادَهَا وَمَسَاكِنُ تَرْضَوْنَهَا أَحَبَّ إِلَيْكُمْ مِّنَ اللَّهِ وَرَسُولِهِ وَجِهَادٍ فِي سَبِيلِهِ
فَتَرَبَّصُوا حَتَّى يَأْتِيَ اللَّهُ بِأَمْرِهِ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الْفَاسِقِينَ

At-Tawbah 9: 24

Translation: Say, [O Muḥammad], "If your fathers, your sons, your brothers, your wives, your relatives, wealth which you have obtained, commerce wherein you fear a decline, and dwellings with which you are pleased are more beloved to you than Allāh and His Messenger and jihād in His cause, then wait until Allāh executes His command. And Allāh does not guide the defiantly disobedient people."

Each individual, male and female, Muslim and non-Muslim are given a right under the divine law to the ownership, a law of visible power, an enjoyment, and an act of transferring of property, a legal entitlement, which must be respected and protected with a safeguard by his fellow men and the government.⁷⁰ Ownership has been conceptualised in Islām and is one of the features of the Islamic teachings. It is the rightful possession given by Allāh the Almighty and only a small portion has been vested in human beings so people may accomplish the obligations in this world by necessarily taking action as a trustee. It can be inferred that there is no absolute ownership in the idea of ownership and treasure in Islām unlike in conventional economics. Ownership of an abundance of valuable possessions is a challenge for people to remember that approval that has been conferred by Allāh the Almighty.

Everything that Allāh has provided for humankind and all other beings is just for benefit and service purposes.

⁷⁰ Muḥammad Hashīm Kamalī, *The Limits of Power in an Islamic State*, (Pakistan: Islamic Research Institute, 1989), 344.

Islām allows lawful ownership by individuals, yet as a matter of fact, the moral responsibility that all wealth and shares of society to own the right to distribute. The Islamic teachings are limited and unrestricted about private and individual ownership. Furthermore, all the means of production are not placed in private ownership as common ownership of particular things of public utility exists in close proximity with it in an Islamic state. The right to nationalise particular things, which are under private ownership, for the importance of the community is also owned by an Islamic state. The estate of the deceased in the midst of a fairly large number of heirs is distributed by the restricted authority of private ownership by act of inheritance. In this way through a small number of hands, it averts the concentration of wealth and thus prevents class-conflict.⁷¹

Islām also has its own principles regarding contracts. The legal status of the sides looking for an agreement of a contract under Islamic law is related to the fundamental necessities to build a lawful contract, the method reaching acceptance of the contract being presented, and, finally, the subject and the careful thought of the contemporary contract sides seeking to engage in an agreement may only do so if both sides are regarded as being legally fit to do so – especially, adults of sound judgement. The contracts, written and verbal, shall be accomplished at the exact gathering session, without any action of interrupting or venue change during the period of time preceding immediate acceptance.⁷² In addition, shariah determines that in the interests of fair and transparent dealing with the contracts between the parties, any unjustified enrichment arising out of uncertainty or undefined of the essential pillars of the contract is prohibited.⁷³

⁷¹ *Ibid.*, 202.

⁷² Susan Rayner, *The Theory of Contracts in Islamic Law*, (London: Graham and Trotman, 1998), 5

⁷³ Muḥammad Ābdul Awwal, “Islamic Business Contracts, Agency Problem And The Theory Of The Islamic Firm”, *International Journal of Islamic Financial Services 1*, No. 2 (2000), 5.

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

Al-Māidah 5:1

Translation: “O you who have believed, fulfil [all] contracts.”

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ

Al-Baqarah 1:282

Translation: “O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice.”

2.3.1 Ijārah

Ijārah is taken from the word al-ajr and the origin of al-ajr means reward or compensation. It can be used for both visible and invisible things. In addition, based on the terminology of law, it is a contract of known and permissible benefit in exchange for a known return or compensation.⁷⁴ Ijārah literally means the term due to compensation, it is a right upon a good deed. It is said that Allāh will double the reward that has been gained. Based on Islamic principles, it can be viewed as the ownership of certain goods with replacement.⁷⁵

Ijārah actually implied a name for retribution before being used as the term of a contract. Based on Islamic teachings, it is a bond according to a benefit that is meant, known as, being able to be delivered, and is permissible with compensation.⁷⁶ Ijārah is a term of Islamic fiqh. Lexically, its method is ‘to give something for rent’. In the Islamic jurisprudence, the word ‘ijārah’ is considered for two distinct situations. In the

⁷⁴ Sharah Zaa’dul Mustaqnaiy Lil Syanqity, *Lisānul al-‘Arab* (9), 60.

⁷⁵ Muḥammad Amin Ibn Ābidīn, *Raddul al-Mukhtar ala ad-Ḍurri al-Mukhtar*, (9), (Riyāḍ: Dar ‘Ālim al-Kutub, t.t), 4-5.

⁷⁶ Shams ad-Din Muḥammad bin Khatib As-Sharbiny, *Mughny al-Muhtāj*, (2), (Beirut: Dār al-Ma’rifah, t.t), 427.

foremost portion, it implies ‘to employ the services of a person on wages given to him as a consideration for his hired services’. The employer is known as *musta’jir* while the employee is called *ājir*.⁷⁷

Ijārah is acquired through the base word *a ja ra*, which means to revenge, counterbalance or give a deliberation and revert. *Ajr* indicates a worker’s earning and *ujrah* to tenancy settlement. In its juristical application, *ijarah* primarily points to both a tenancy as well as a hire deal that engages the merit of individuals. Currently, the application of *ijarah* has developed into two varieties, specifically, processing lease and financial lease; the latter is well-known as *ijārah wa iqtinā’*.⁷⁸ *Ijarah* is approved by the Qurān, Sunnah, and common agreement (*ijmā’*). Certain paragraphs are built in the Qurān, *al-Ṭalāq* 65: 6 and *al-Qaṣāṣ* 28: 26-27, concerning the worker’s entitlement to a fee where sources are also created to the implementations of foregoing Prophets on *ijārah*, thus showing that *ijārah* reflects a model of continuance in the Qurān of the laws of prior states.

أَسْكِنُوهُمْ مِّنْ حَيْثُ سَكَنْتُمْ مِّنْ وُجْدِكُمْ وَلَا تُضَارُّوهُمْ لِتُضَيِّقُوا عَلَيْهِمْ ۖ وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ
فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ ۖ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ ۖ وَأَتَمَّرُوا بَيْنَكُم
بِمَعْرُوفٍ ۖ وَإِنْ تَعَاَسَرْتُم فَسُدِّضِعْ لَهُ أُخْرَىٰ
At - Ṭalāq 65:6

Translation: Lodge them [in a section] of where you dwell out of your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth. And if they breastfeed for you, then give them their payment and confer among yourselves in the acceptable way; but if you are in discord, then there may breastfeed for the father another woman.

قَالَتْ إِحْدَاهُمَا يَا أَبَتِ اسْتَأْجِرْهُ ۖ إِنَّ خَيْرَ مَنِ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ
Al - Qaṣāṣ 28: 26

⁷⁷ Sheikh Muḥammad Taqī Ūthmānī. *An Introduction to Islamic Finance*. (Karaci: Idaratul Ma'arif, 1998), 109.

⁷⁸ Mohammad Hashim Kamali. *A Shari‘ah Analysis of Issues in Islamic Leasing*. J . K U: Islamic Econ. , Vol . 20 No. 1, pp:3-22 (2007A.D. /1428A. H.), 4.

Translation: One of the women said, "O my father, hire him. Indeed, the best one you can hire is the strong and the trustworthy."

قَالَ إِنِّي أُرِيدُ أَنْ أُنكِحَكَ إِحْدَى ابْنَتَيَّ هَاتَيْنِ عَلَى أَنْ تَأْجُرَنِي تَمَامِي حَجَجٍ ۖ فَإِنْ أَتَمَمْتَ عَشْرًا فَمِنْ
عِنْدِكَ ۖ وَمَا أُرِيدُ أَنْ أَشُقَّ عَلَيْكَ ۚ سَتَجِدُنِي إِنْ شَاءَ اللَّهُ مِنَ الصَّالِحِينَ

Al - Qaşāş 28: 27

Translation: He said, "Indeed, I wish to wed you one of these, my two daughters, on [the condition] that you serve me for eight years; but if you complete ten, it will be [as a favor] from you. And I do not wish to put you in difficulty. You will find me, if Allāh wills, from among the righteous."

There are also references in ḥadīth to ijārah and the employer – employee connections, involving, for instance, the implication, in symbolical names, to the owner or manager to “pay the employee his wages before the sweat of his brow dries up”. Whereas the Qurān and Sunnah only see ijārah as an occupation deal, the associates of the Prophet experienced ijārah in the significance of occupation as well as tenancy of real proprietorship. As a matter of fact, the legality of ijārah is thus maintained by definitive ijmā’ of the associates, and the general tradition (‘urf) among Muslims is valid to the contemporary world. Predominantly, legal advisers have examined both leasing of properties as well as employing of employees within the general direction of ijār or ijāra. The entity of a hire deal was regarded by classical legal advisers as a “desirable, known permissible and accessible usufruct,” and lease was thus seen as the charge or retribution for that usufruct. However, one primary and notable difference between leases and sales is that the principle of classical jurists or predominantly legal advisers is permissible postponement and a moratorium.⁷⁹

Ijārah, is a concept that is close to conventional leasing in conventional economics, by which Islamic banks or financial institutions take action as the person

⁷⁹ Maḥmūd A. El-Gamal. *Islamic Finance Law, Economics, and Practice*. (Cambridge: Rice University, 2006), 98.

who leases; purchasing the property and then leasing it to the tenant. The lease payment is firmly decided at the earliest part of the deal and given to the term lasting for only a limited period consumption of the living property. The aim of an ijārah lease deal is a hope-for, prominent, permitted and attainable usufruct, it can be viewed as the sale of usufruct.

The position of ownership as situated under property in Ijārah resides with the lessor. Based on fundamental Islamic principles, the legal advisers provide rigidly enforced conditions to make sure that the side that is presented with something awarded like compensation from a conceptual structure of the lease (the lessor) should obtain the ownership of the property. Consequently, jurists state forcefully that all repair costs, other than a regular sequence of the process of maintaining and physical damage caused by the tenant through cruelty or failure to take care of something, are allocated to the lessor. In other words, the state of being responsible for maintenance and insurance is classified as that of the lessor as the owner-occupier of the property. However, in conventional leasing, the contract can comprise a maintenance deal, even though, the maintenance deal is one of the advantages of deciding on leasing rather than purchasing a property.⁸⁰

Considering that ijārah is the sale of benefits, distinguishes it from sale suitable, a present and help (bay', hibāh, ṣadaqah), which is composed of an act of transferring of the capital property in its entirety and not only of its benefits. Ijārah is thus a sale of benefits, or usufruct, especially for hard-wearing possessions. The action of referring is also prepared and marked by the exactness or firmness of purpose of what may or may not be appropriate for ijārah to the prevailing custom, which is also relevant to the mode of payment, whether a fixed regular payment or an amount paid as a rent, as to how they are dealing with it. Consideration in ijārah is normally required to be paid completely

⁸⁰ Dinna Roḥmatunnisā , “Design of Ijarah Sukuk” (Master’s thesis, the University of Nottingham, Nottingham, 2008), 28.

within an identified portion of time, be it a week, month or year, as the benefit of ijārah generally materialises upon a period of time. However, custom may alter this and may firmly decide that the benefit of ijārah be purchased up front. Custom also determines the means of how the usufruct is acquired in ijārah. A lessee is thus anticipated to stay in certain places and utilise it for common objectives of existence and not outside the renowned expectancies of suitable consumption for that goal. Since ijārah varies according to sale, it is legal for everything that can lawfully be purchased or sold, and the rules of shari'ah that are appropriate for sale are also in most cases applied to ijārah. The fuqahā' have, however, fundamentally separated two things, that is, the person, and the waqf property, which cannot be purchased but can be made the legal subject matter of ijārah. Furthermore, since ijarah varies according to the sale, anything that can be purchased at a price (thaman) in sales can also be served as consideration in ijārah.⁸¹

Islām, however, generally concentrates on the protection of water from pollution, proper distribution, prevention of wasting and the conscious use of it. Basically, in Islām, water should be available to all. It is not permitted to prevent someone from using water. Islām, through the security of life, ensures security of ownership of property to every human being.⁸² Public ownership is the ownership that belongs to all people, not private nor state. All forms of public ownership should not be controlled individually, either individuals or companies. Management of public ownership represented by the state that the results are returned to the people as owners. It is stated in the hadīth:⁸³

⁸¹ Muḥammad Hāshim Kamali. *A Shari'ah Analysis*, 5.

⁸² Sheikh Showkat Hussain. (1983). "Human Rights in Islam: Principles and Precedents," *Islamic Comparative Law Quarterly* 3, No. 2 (1983), 104.

⁸³ Muḥammad Nāṣirūddīn al-Albaniy. *Ṣaḥīḥ Sunan Ibn Majah*. (II). (Riyāḍh, Maktabah al-Ma'ārif, Riyāḍh, First Edition, 1997M.), 265.

عن ابن عباس قال قال رسول الله صلى الله عليه وسلم المسلمون شركاء في ثلاث في الماء والكفا والنار
وثمنه حرام

From Ibnu Ābbas, Rasūlullāh SAW said, "Muslims are united in three things: water, pasture, and fire. Price (sale and purchase) is haram".

Based on this prophetic narration, preventing someone from using water is considered as unlawful in shari'ah. However, there is exception from this general ruling, for example, if someone owns water in his personal property then it is permitted to prevent people from using that water.⁸⁴ Based on this, the water (sea, rivers, lakes, etc.), pasture (forest), and fire (fuel oil, coal, gas, electricity, and other energy sources) belong together. Therefore, included in public ownership. The word 'association (shurokā)' means that it should not be held in private, and should not be privatized.

Certainly, from an Islamic perspective, private ownership is allowed but in the hands of the state, all the means of production, distribution and exchange are not entirely regulated. Although the public ownership of various means of production, which are the public utility to the people is established by Islām, it acknowledges the rights of private ownership of the primary key of the means of production and distribution. Islām, unlike socialism, allows economic freedom to every person who can earn wealth, have it and enjoy it without restraint within particular limits provided he obeys the Islamic teachings in the method of reaching the goals, obtaining, owning and spending it.⁸⁵

A water services company according to Islām belongs to a state property rights. It is also essentially a common property, but the right of management is that of the government authority. The private sector is not allowed to take part in administering a

⁸⁴ Ābd al-Ra'uf. Al-Manawi (1970). Fāid al-Qādir Sharh Jamī al-ṣagīr, (Beirut: Dār al-Ma'rifah, 1970), vol. 6, 271.

⁸⁵ *Ibid.*,

water services company. Associated with the lives of many people, in this case, the water sector, belongs to the state.

In addition, if a property is unclaimed or not claimed by those who own it or its management, it becomes the property of the state. The government has the right to manage the property because it is a representation of the people's interests. Nevertheless, state property rights can be transferred into the property of an individual if state policy requires that. The transfer is based on Islamic rules, the use of the results obtained in use for the benefit of the *Ummah*.

2.4 Comparison of Ownership in Water Services Company between Islamic Principles and non-Islamic Principles

Islamic principles provide credence for a deliberate concept of administration, as the Qurān, its revealed book, commands the Prophet to set common standards in discussion with his adherents. All the basic rights and governmental independence are allowed for the life of the people in the Islamic state. All citizens own freedom of the individual, freedom of faith and conscience, freedom of utterance, right to possess and isolate treasure, right to protection of respect, right to censure the state, right to equality before the law, right to education, right to healthcare and overall right to basic human necessities, such as meals, clothes and security. An authoritarian of any class is not accepted by an Islamic state, neither is it a totalitarian state. However, the state under Islām does not wither away, rather it will be fundamental as it encompasses all the functions of a traditional state and modern welfare state.⁸⁶

The nature of capitalism, with its fundamental values, believes in taking control of the market for goods, such as water. It can even be monopolised, which is one of the

⁸⁶ Muḥammad Sharīf Chaudry, "Fundamentals of", 202.

practices of capitalism nowadays. In other words, creating regulations about production that participates in private ownership of the means of production can be seen as another term of capitalism. While in socialism, as has been mentioned above, as the common ownership, is also a general leadership of the social means of production of the public properties. State ownership is also atypical of most economic treasures of this social system. Water, which is seen as a good that is very essential, is compulsorily arranged by the government. Public companies shall be able to take care of it as a common good. Private companies are still permitted but not to regulate substantial commodities like water and other natural riches. In Islām, every person, Muslim or non-Muslim is bound under Islamic teachings to the ownership, asset, easement, and turnover of property, a right which has to be honoured and maintained by his fellow beings and also the state.⁸⁷

In the case of capitalism, under either state ownership or private ownership, resources are constantly managed by people. The distinction lies within the methods of how society practises the rule of resources and is expected to employ sources. Under capitalism, resources are ruled by competition in the market with the availability of placing the position of one person in a private company, and deficient often in a state agency, by shifting legacy, and by removing from the government through welfare programmes. Under socialism, it has usually been done by advancing through a state enterprise or in a state agency, by joining the ruling political party, and by transfers.⁸⁸

Socialists also believe that so long as wealth remains concentrated in the hands of a relatively small number of capitalists, the capitalists alone benefit from it. For the great mass of non-capitalists benefit, it is believed that the wealth of the capitalists must first be taken away and given to the non-capitalists, or be held by the government and used for the collective good of all.

⁸⁷ Edsforth, Ronald Edsforth, "On The", 8.

⁸⁸ *Ibid.*,

Water service companies in the capitalist system are run by either the government or private sector. As it offers profit, the ownership is not the priority. It is not the primary concern. Water, as a crucial property, might be even monopolised because of freedom in this pattern, as the base form of its nature. However, water services companies – including water itself as a natural resource, its operation involving large capital, the organisation and the workers – will certainly be managed by the government. There is no way for private companies to obtain a chance in substantial good, business with big capital involving a lot of human resources. The government is the main regulator that has authority. Nevertheless, water service companies in Islām come under state property rights. It is also by nature a common property, but the right of management is that of the government authority. The private sector is not authorised to take part in controlling water service companies, as being fundamental to the lives of many people, the water sector belongs to the state.

Different to Western provisions, Islamic law allows acceptance by conduct; under certain circumstances, even not responding to a suggestion can imply acceptance. In fact, once an offer has been granted during a single session, Islamic law includes the principle that the sides retain the right to pull out of the contract up until the moment either party physically departs the venue. Nevertheless, interpretation of how this principle can be best adjusted in custom in the contemporary world can differ between countries.⁸⁹

Ultimately, Islām is the flawless and ultimate religion declared by the Lord of the universe for the guidance of mankind. Its leading objective is to ensure ‘falāh’ or the well-being of humanity in this entire world and in the afterlife. It does not offer importance to mean only at the cost of spirit as does a secular ideology, such as capitalism and socialism. Islām believes in the material as well as moral and spiritual

⁸⁹ Muḥammad Sharīf Chaudry, “Fundamentals Of”, 203.

well-being of its followers at the micro and macro level. The adherents of Islām truly believe in one God, in all the Prophets and Holy Scriptures, in the Hereafter, in the ethical code and in the universal brotherhood of mankind. In an Islamic state there exists no hostile groups contradicting one another, neither are all the occurrences in history established by an interaction of economic strength. In the Islamic view, the prosperity of the community does not depend on economic welfare only, as moral and spiritual advancement is equally significant, however, it does not discourage the pursuit of material prosperity by means of fair methods.⁹⁰

Here is a comparison of the ownership of the water services company. There are three economic views with four aspects – standard, characteristic, water, and water services. These three systems have different thoughts on all aspects, as shown in table 2.2 below:

Table 2.2: The Comparison of the Ownership of Water Services Companies

Aspects	Capitalism	Socialism	Islām
Standard	Profit-Oriented	Collective-Based	Halal and Haram
Characteristics	Monopolies, Oligopolies, Cartels, Licences, Copyrights, and Patents.	Centralisation	The Right of the Individual
Water	Free Market	Common Good	Individual Needs
Water Services Company	Privatisation	Partnership	Contracts

Source: Palmer, Tom G. Palmer⁹¹, William James⁹², Raḥmān., Afzal Raḥmān⁹³

⁹⁰ *Ibid.*, 204.

⁹¹ Tom G. Palmer, *The Morality of Capitalism*, (New York: Students For Liberty and Atlas Economic Research Foundation, 2010), 5.

⁹² William James Ghent, “The Elements”, 6.

⁹³ Afzal Raḥmān, *Economic Doctrines of Islam*. (Lahore: Islamic Publications Ltd, 1980), 19.

2.5 Conclusion

Islam, capitalism and socialism are three different ideologies. Each of which has a particular point of view regarding the political, economic and social systems. Capitalism has the intention of controlling markets for commodities, which results in pushing up the prices. It also protects individual capitalists, the partnership and companies and its practice covers monopolies, oligopolies, cartels, licences, copyrights and patents including financial self-interest. Conversely, Socialism is the common ownership and also a democratic leadership of the social means of production of public goods. State ownership is the most economical model that has been used by this ideology.

In the case of water and its management, capitalism sees it as a commodity that may give benefit, so the question concerning whether the water services company is run by the government or private is not the main issue to be prioritised as freedom is also its nature of this political system. However, socialism views water as a commodity that plays an important role and which should be officially managed by government. Public companies must be able to organise it as a common good. The government has all the authorization and there will be neither regulations nor policies made by the private sector.

Finally, water services companies, in Islam belong to the government sector as water itself is an important element, and is also essential as a common property, and, hence, the right of management is that of the government authority. The private sector is not allowed to participate in the administration of a water services company since it is associated with the lives of many people, and, at this point, the water sector belongs to the government. The government has every right to organise the property. However, the rights of state property can be transferred to an individual if needed, and on one condition, that all the transactions should be based on Islamic principles.

Chapter III

History of Jakarta Water Services Company

3.1 Introduction

The study of ownership of the Jakarta Water Services Company should be illustrated along with its history which might provide a complete picture of this phenomenon. Several occurrences that happened in the past are used as evidence to deliver the discussion objectively. At this point, the history of ownership of PDAM Jaya before and after being privatised is expected to make historical events clear that are also useful and helpful for this work. Other things that will be described are company profiles, such as PDAM Jaya, Palyja and Aetra.

Jakarta is a capital city administration as the capital of the Republic of Indonesia. At present, the nomenclature ‘regional government’ was altered into Jakarta Capital City Government, with autonomy residing at the province level as opposed to the city, and the Jakarta Capital City Government was divided into six parts (five municipalities and the Thousand Islands district) in 1999, by virtue of Law No. 34 of 1999.⁹⁴ Jakarta is prosperous in natural resources like water. There is plenty of water in Jakarta. Several rivers and canals wind their way northward through the city, and groundwater can be accessed within a few metres of the surface in most areas of the city.⁹⁵ As a rich supply of groundwater, Jakarta has thirteen rivers and flood channels and the residents have relied on groundwater for many years. As a matter of fact, groundwater is used as a substantial source of water for daily life and it is also used for industries and businesses in Indonesia, especially in Jakarta. However, it is important

⁹⁴ Jakarta Official Website, “Jakarta”, <http://www.jakarta.go.id/english/news/2011/03/history-of-jakarta> Retrieved January 22th, 2013.

⁹⁵ Richard. C. Porter, “The Economics Of Water And Waste: A Case of Jakarta, Indonesia”. (Environmental and Natural Resources Policy and Training Project EPAT/ MUCIA United States Agency For International Development, Department of Economics The University of Michigan, 1995), 18.

for the government of Jakarta to carefully take care of the policies that have been released and the management of groundwater should be a high priority for water as it is one of the most important things for human life. There is no way for groundwater regulation to be exploited; it must be treated as a sustainable use.⁹⁶

Figure 3.1 Map of Jakarta



Source: Istanbul City Guide⁹⁷

In order to discuss the history of the Jakarta Water Services Company – which is PDAM Jaya – and its water ownership including the privatisation, it is necessary to first describe the current Jakarta water supply system. The piped water system was inherited from the Dutch during the colonial era. After independence, this piped water system

⁹⁶ Nicola Colbran, “Will Jakarta be the Next Atlantis? Excessive Groundwater Use Resulting from a Failing Piped Water Network”, *Law Environment and Development Journal* No. 5 (2009) ,1, 18.

⁹⁷ Istanbul City Guide, “Jakarta”, <http://www.istanbul-city-guide.com/map/indonesia/jakarta-map.asp> Retrieved on January 22, 2013

was managed by the government, via the local water company PDAM Jaya, until 1997 when it was privatised.⁹⁸

3.2 History of Ownership of PAM Jaya

Water privatization has become a growing trend all over the world,⁹⁹ with 55 countries having privatised their water services; the fastest privatisation took place in East Asia in the 1990s.¹⁰⁰ During the period of 1990 to 2001, the private sector was involved in more than 2000 water and sewerage projects in developing countries.¹⁰¹ In this case, Indonesia is one of the developing countries where there is a privatisation scheme for its water services company, PAM Jaya. The history of ownership of PAM Jaya will be explained in two ways, before and after being privatised.

3.2.1 PDAM Jaya Before Being Privatised

PDAM Jaya¹⁰² is a city-owned water operator in Jakarta, Indonesia.¹⁰³ It not only gives water services to the community but is also obligated to monitor the environment. In order to keep the environment clean and hygienic, it is PDAM Jaya's responsibility to ensure it is well-maintained.¹⁰⁴ Several events have happened during the history of PDAM Jaya from time to time, as described below:

⁹⁸ Richard. C. Porter, "The Economics", 19.

⁹⁹ Kirkpatrick, C and D. Parker, "Domestic regulation and the WTO: The case of water services in developing countries" *World Economy* No. 28, (2005), 10, 1491-1508.

¹⁰⁰ Naren Prasad, "Privatisation results: Private sector participation in water services," *Development Policy Review* 24, No. 6 (2006), 669-692.

¹⁰¹ Heni Kurniasih, "Water Not For All: The Consequences Of Water Privatisation In Jakarta, Indonesia" (The 17th Biennial Conference of the Asian Studies Association of Australia in Melbourne, 2008), 2.

¹⁰² Incorporated at Jalan Penjernihan II - Pejompongan Jakarta Pusat Indonesia Post Code: 10210 Tlp: 5704250 (Hunting), Fax: (021) 5711796 www.pamjaya.co.id Retrieved January 24, 2013.

¹⁰³ Lenny Trista Tambun, "PDAM Jaya's Clean Water Plant Awaiting Approval," www.thejakartapost.com, September 2012, 1.

¹⁰⁴ Adi, "PDAM Jaya Obligated to Monitor the Environment," www.beritajakarta.com, September 2011, 1.

Table 3.1 The History of PDAM Jaya

Year	History
1843	To fulfil the water needs of the City of Jakarta (Batavia) by the Dutch Government, water supply comes from drilling wells/artesian.
1918 - 1920	Springs Ciburial were found in the area Ciomas, Bogor by East Indies Government with capacity 484 l/sec at the same year Gementeestaat-waterleidengen van Batavia was established.
1922	On 23 December, for the first time, water from Bogor Ciburial flowed into the city of Batavia (Jakarta), and the date was used as the anniversary of PAM JAYA
1945-1963	Water services conducted by the Office of Drinking Water Channels under Unity Township Municipal Public Works
1977	Date 30 April 1977 approved by PAM Jaya Jakarta PERDA No. 3/1977 and Date 2 November 1977 PAM JAYA confirmed by the Minister of Home Affairs Decree No. PEM/10/53/13350 enacted in Jakarta Gazette No. 74 of 1977
1997	6 June 1997, signing of the Cooperation Agreement with PAM Jaya 2 Private Partners for 25 years, PT. Garuda Dipta Universe is currently a PT. PAM Lyonnaise Jaya (PT PALYJA) and PT. Stump Airindo pattern, which has become a PT. THAMES PAM Jaya (TPJ PT)
1998	1 February 1998, is fully operational in water services in the area of business carried out by the two Private Partners Having negotiation revised Restated Agreement (Amended and Restated) the Cooperation Agreement 22 October 2001
2004 - 2005	24 December 2004 signing of the Cooperation Agreement Addendum agreement in 2001 for the West Region (PT PALYJA) and 7 October 2005 signing of the agreement in 2001 Addendum Agreement for Eastern Region (PT TPJ)

Source: PAM Jaya¹⁰⁵

Like the schemes of certainty from preceding periods, the urban water supply infrastructure investments established from 1960s to 1980s sustained the selected few residents who are lawful as citizens. Building on the top of the foundation of the city's splintered urbanism, the New Order's modification of Jakarta's municipal space came to reflect an aggravated social dualism that supplies a high quality environment and more sophisticated infrastructure for the consumer class thereby having to serve all of the people.¹⁰⁶

¹⁰⁵ www.pamjaya.co.id Retrieved January 24, 2013

¹⁰⁶ Randy Cowherd. "Planning and Cultural Construction of Jakarta: Design, Planning, and Development In Jabotabek 1980-1997" (PhD dissertation, Faculty of Architecture. Boston, Massachusetts Institute of Technology, 2002), 271.

All regions of the city into which the New Order did selectively invest in denouncing the shortage of this thought. Instead, examining the development of the municipal water supply infrastructure according to government rationality, the investments of these years can be viewed as the manifestation of the New Order government scheme. The rehabilitation and elaboration of the city's network were directed into districts supporting a strategy of industrial led economic growth, and the provision of public water supply was limited to the economically mobile and politically observant citizens of the New Order. As in previous times, the city's municipal water supply was purposefully splintered between different types of urban space and populations, purposefully contradicting Western standards rather than failure to approach them.¹⁰⁷

Jakarta has a piped water supply network installed during the Dutch colonisation in the 1930s. After independence in 1945, the service was shifted to the local government owned company (LGOC), or known in Indonesia as *Perusahaan Daerah Air Minum Jakarta Raya* (PDAM Jaya or PAM Jaya). It was Jakarta's water network role to build up a broad-coverage piped-water service to the city. By encouraging a policy that aims to lower or limit deep groundwater utilisation significantly due to the surplus abstraction of deep groundwater by the commercial entities (hotels, high-rise buildings, industries) in order to achieve two goals, namely, to safeguard Jakarta from land subsidence, and to ensure good quality water service to the people.¹⁰⁸

Previous to the mid-1960s, the combined records of actual consumption and amounts of customers were not maintained. Water was not metered and charges were inexpensive; the resulting low rate of cost recovery meant that PDAM Jaya was often

¹⁰⁷ Michelle Ellan Kooy, *Relations Of Power, Networks Of Water: Governing Urban Waters, Spaces, And Populations In (Post) Colonial Jakarta*, (Vancouver: The Faculty Of Graduate Studies (Geography). The University Of British Columbia, 2008), 75-76

¹⁰⁸ Riant Nugroho, *The Governance Of The Jakarta Water: The Role Of The Regulatory Body*. (Stockholm: The World Water Week, Stockholm International Water Institute (SIWI), 2011), 12.

unable to pay its employees.¹⁰⁹ The history of the Jakarta Water Services Company all changed in 1965 when the transition to the ‘New Order’ era government (known as *Orde Baru*) officially announced a new political view for Indonesia amidst large-scale violence by reason of the establishment of the anti-communist regime of President Suharto.¹¹⁰ The NEW ORDER regime set up new urban water supply management objectives: fiscal discipline, and facilitating economic growth through enabling Jakarta’s new mission, as the ‘gateway for trade and industrial development’. These objectives guided both the growth of the network into certain ‘productive’ areas of the city, and justified a more ‘economically rational’ management of network water as an economic commodity.¹¹¹

Carrying a ‘New Order’ to the management of Jakarta’s network water supply, a regional water supply company (now known as PAM Jaya) was established in 1968, giving an indication of the fact that the water supply to Jakarta was no longer a ‘national project’, but a local government owned business entrusted to bolster up regional economic growth, and raise profits, while providing for the well-being of Jakarta’s residents by means of the provision of clean water. Water was familiar as an economic commodity that should be paid for by those who directly benefited (the consumers), and the programme of ‘*meterisasi*’ [metering] was introduced throughout the 1970s – installing meters, registering customers, and updating the new tariff structure – established the new sense of ‘New Order’ in PAM Jaya’s operations.¹¹² PAM Jaya, is

¹⁰⁹ PAM JAYA, *PAM DKI 1922-1992 in PAM JAYA, Jakarta, Indonesia*, (Jakarta, PAM Jaya, 1992), 13.

¹¹⁰ Robison, R. and Hadiz, V, “Privatization of the reorganization of dirigisme? Indonesian economic policy in the 1990s”, *Canadian Journal of Development Studies Special Issue*, 1993, 13 – 31.

¹¹¹ Karen Bakker et al “Disconnected: Poverty, Water Supply and Development in Jakarta” (Indonesia Human Development Report Human Development Report Office Occasional Paper, UNDP, 2006), 7.

¹¹² Bakker., et al., “Disconnected: Poverty”, 8.

the regional government-owned water supply enterprise that has an obligation to produce and serve the population for domestic, commercial and industrial uses.¹¹³

The total number of PAM Jaya permanent staff was 2,139, excluding approximately 730 contract workers as of October 1995. The number increased from only 114 in 1985, although the operation of PAM Jaya has been growing significantly. According to the Study of the Revised Jakarta Water Supply Development Project, various organizational problems mostly concerned the overlapping and irrelevant task assignment between organizational components. Redundancies of staff hindered the efficiency and increased operational costs. Lack of interdepartmental cooperation and coordination and excessive centralization decision resulted in delaying some services to the consumers. Problems in the administration also occurred, e.g. ignorance of public relations and customer relations and also an improper filing system. In terms of human resources, ineffectiveness was caused by unbalanced personnel distribution in terms of age, place of assignment and specialization and ineffective mechanism of punishment and reward and unclear career path system.¹¹⁴ However, in 1996, the company had severe problems in enhancing their service due to financial and management problems.¹¹⁵

The installation of the piped-water supply network was done by the Dutch colonization, and, after independence, the service was shifted to LGOC, the local government owned company, or known as *Perusahaan Daerah Air Minum* (PDAM Jaya or PAM Jaya). In 1960, PAM Jaya was proven to be incompetent at company management. The water was charged at too low a cost, which resulted in low income for the company, and, in the end, the employees were not paid properly. The “New Order”

¹¹³ Nur Endah Shofiani. “Reconstruction of Indonesia’s Drinking Water Utilities: Assessment and Stakeholders’ Perspectives of Private Sector Participation in the Capital Province of Jakarta”. Department of Land and Water Resources Engineering Royal Institute of Technology, Stockholm, 2003), 5.

¹¹⁴ *Ibid.*,

¹¹⁵ Riant Nugroho, *The Governance*, 13.

known as *Orde Baru* was officially implemented in 1965 as a new political system in the middle of chaos occurred along with the establishment of the anti-communist regime of President Suharto. This New Order regime made new municipal water supply management goals. Finally, in 1968, a regional water supply company known as PAM Jaya was firmly established. It kept increasing until the PAM Jaya staff numbered 2,139 in 1995 compared to the 1985 period when there were only 114 staff.

3.2.2 PDAM Jaya After Being Privatised

Historically, the formal water system was privatised, and the management changed from PAM Jaya in 1998, the local government's water company, to two private companies: Thames Water Overseas in partnership with PT. Kekar Pola Airindo and Suez Lyonnaise des Eaux, Ondeo, in partnership with PT. Garuda Dipta Semesta. These companies were awarded contracts for 25 years to run the water supply system in Jakarta.¹¹⁶ The Jakarta water system was then divided into two service areas; the Western sector is operated by Ondeo, through the locally established enterprise PAM Lyonnaise Jaya (Palyja) and the Eastern sector, which is operated by RWE Thames through PT. Thames PAM Jaya (TPJ).¹¹⁷ The boundary between the Western and Eastern sector is the Ciliwung River.¹¹⁸ At the same time, the idea of privatization of the public service was introduced by the World Bank, as a *Public Private Partnership* (PPP). In 1998, the idea was adopted in Indonesia, and its application resulted in an agreement between the Jakarta Government – through PDAM Jaya – with two private investors: Thames in the UK and Suez of France. Both of them had their local partners.¹¹⁹

¹¹⁶ Andreas Harsono, (2005), "When water and political power intersect: a journalist probes the story of water privatisation in Jakarta," *Nieman Reports* 59, No. 1, 1.

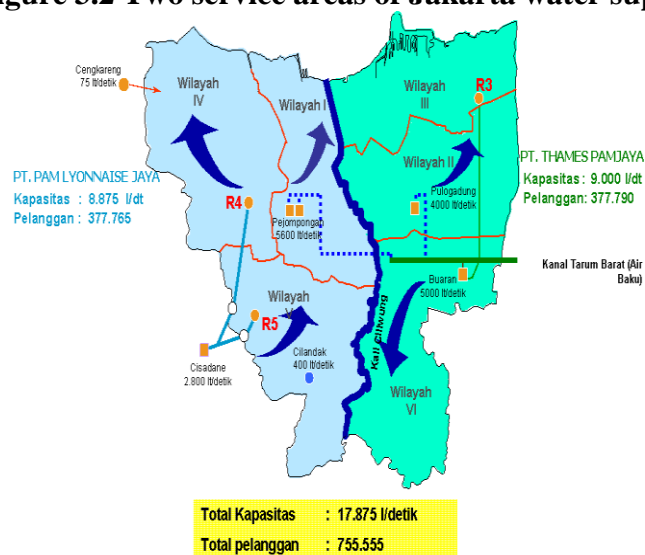
¹¹⁷ Ahmad Lanti, *A regulatory approach to the Jakarta water supply concession contracts*, In Tortajada, C, Varis, O, Lundqvist, J and Biswas, A.K. (eds.), (Routledge: Water management for large cities, 2006), 72-93, 72.

¹¹⁸ *Ibid.*, 73.

¹¹⁹ Riant Nugroho, *The Governance*, 14.

It was sixteen years ago since privatisation of the water services company in Jakarta was presented in 1997. Before 1997, the water service supplier was a local government owned enterprise: PAM Jaya. In 1997, the concession of the western area was granted to PAM Lyonnaise Jaya (“Palyja”), a Suez (formerly Ondeo Service) secondary company. Previous to July 2006, the ownership of the private water supplier company was Suez Environment (majority) and PT. Kekar Pola and PT. Bangun Tjipta Sarana. After July 2006, the ownership was Suez Environment (having majority holdings), PT Astratel Nusantara (Astra International subsidiary, of which Jardine Fleming is one of the majority), and Citigroup Financial Products. In 2011, Astratel requisitioned the Citigroup share. In the eastern area, prior to 2007 the concessionaire was PT Thames PAM Jaya (“TPJ”), owned by Thames UK with majority shares and PT. Tera Meta Phora. In 2007, Acuatico Pte. Ltd (majority, 95%) and PT. Alberta Utilities (5%), requisitioned the company, and the name of TPJ was changed into Aetra Air Jakarta or in short Aetra. The Aquatico was officially possessed by the Indonesian financial institution. In 2011, Acuatico resold its shares to a Philippines-based company with minimal publicity.¹²⁰

Figure 3.2 Two service areas of Jakarta water supply



Source: PAM Jaya¹²¹

¹²⁰ *Ibid.*,

¹²¹ <http://en.palyja.co.id/> Retrieved on January 22, 2013

As figure 3.2 above shows, the Jakarta water system was split into two service zones; the western part is administered by Ondeo, through the regionally established company PAM Lyonnaise Jaya (Palyja) and the eastern part is managed by RWE Thames through PT Thames PAM Jaya (TPJ), which is known as Aetra. The Ciliwung River flows as the boundary between the two private sectors in the two zones. PT Pam Lyonnaise Jaya (Palyja) operates three regions (*Wilayah I, Wilayah IV and Wilayah V*) of the western part and PT Thames PAM Jaya (Aetra) manages three regions of the eastern part (*Wilayah II, Wilayah III and Wilayah VI*). The Palyja has 8,875 litre/sec for its capacity and owns 377,765 customers while the Aetra has 9,000 litre/sec for its capacity and possesses 377,790 customers. Thus, the total capacity of both companies together is 17,875 litre/sec and 775,555 customers.

Table 3.2 Coverage of two service areas of Jakarta water supply

Company	Palyja	Aetra
Service Area	Western Part	Eastern Part
Regional	Wilayah I, IV and V	Wilayah II, III and VI
Water Capacity	8,875 liter/sec	9,000 liter/sec
Customer	377,765 customers	377,790 customers

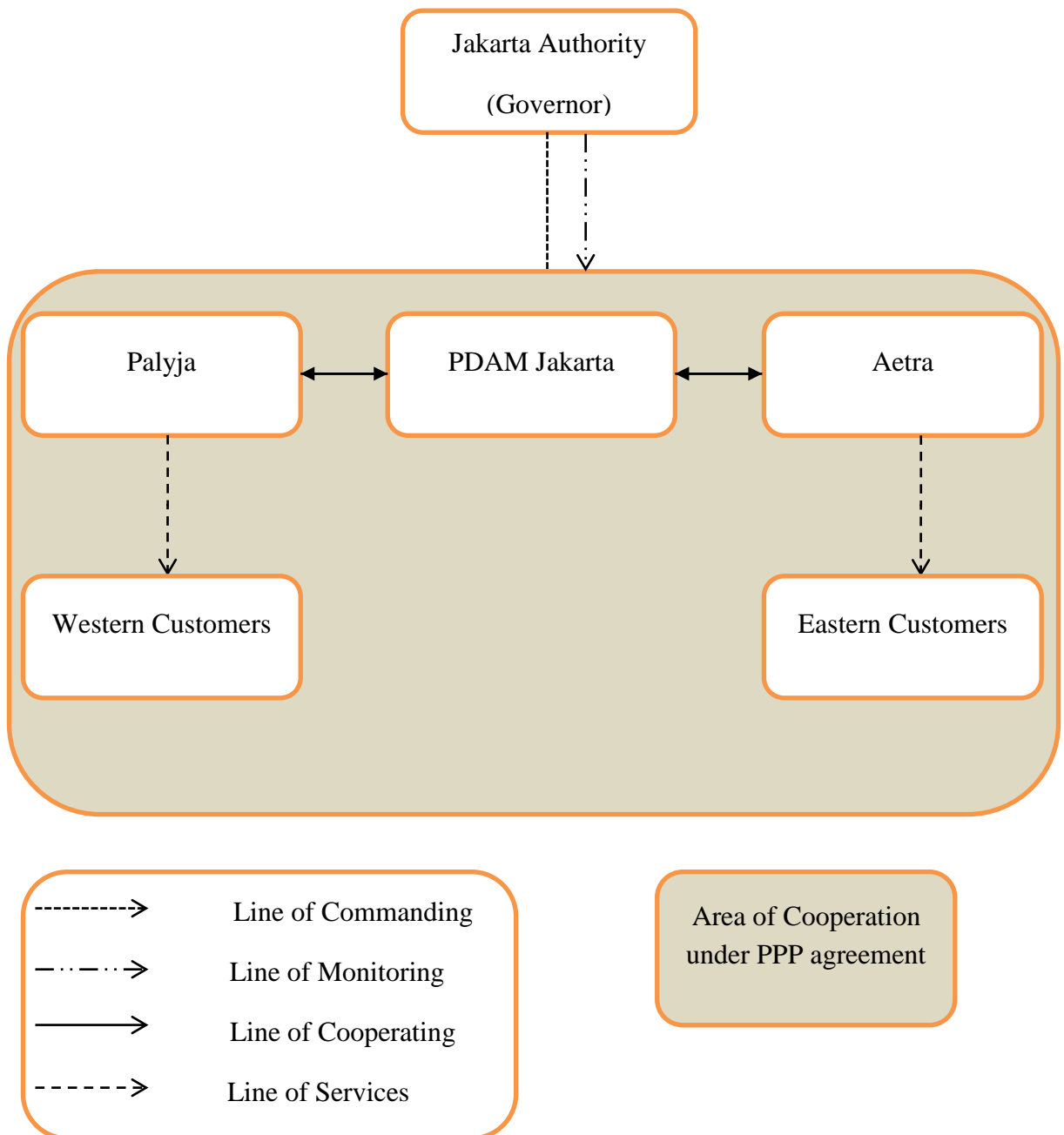
Source: Palyja¹²²

It can be concluded that Jakarta is divided into six parts of five municipalities. Each of these two water services companies covers their respective half; the western part (Wilayah I, IV and V) and the eastern part (Wilayah II, III and VI). The water capacity is slightly different and so is the customer quantity.

¹²² *Ibid.*,

The government acts as the regulatory body. PAM Jaya is obliged as the monitoring body. Operators worked as the “institutions in charge” of PAM’s rights. As can be seen in figure 3.3 below:¹²³

Figure 3.3 The First Governance of Jakarta Water



Source: Nugroho¹²⁴

¹²³ Riant Nugroho, *The Governance*, 15.

¹²⁴ *Ibid.*,

Regarding the first governance of Jakarta Water, Jakarta Authority (Governor) commands PDAM Jaya Jakarta to cooperate with the two private sectors, Palyja and Aetra. The Customers will be given services by these two private enterprises. However, all the institutions and customers are monitored by the Jakarta Authority. Every transaction and cooperation activity is being watched through the governance of Jakarta Water.

3.3 Water Services Company Profiles

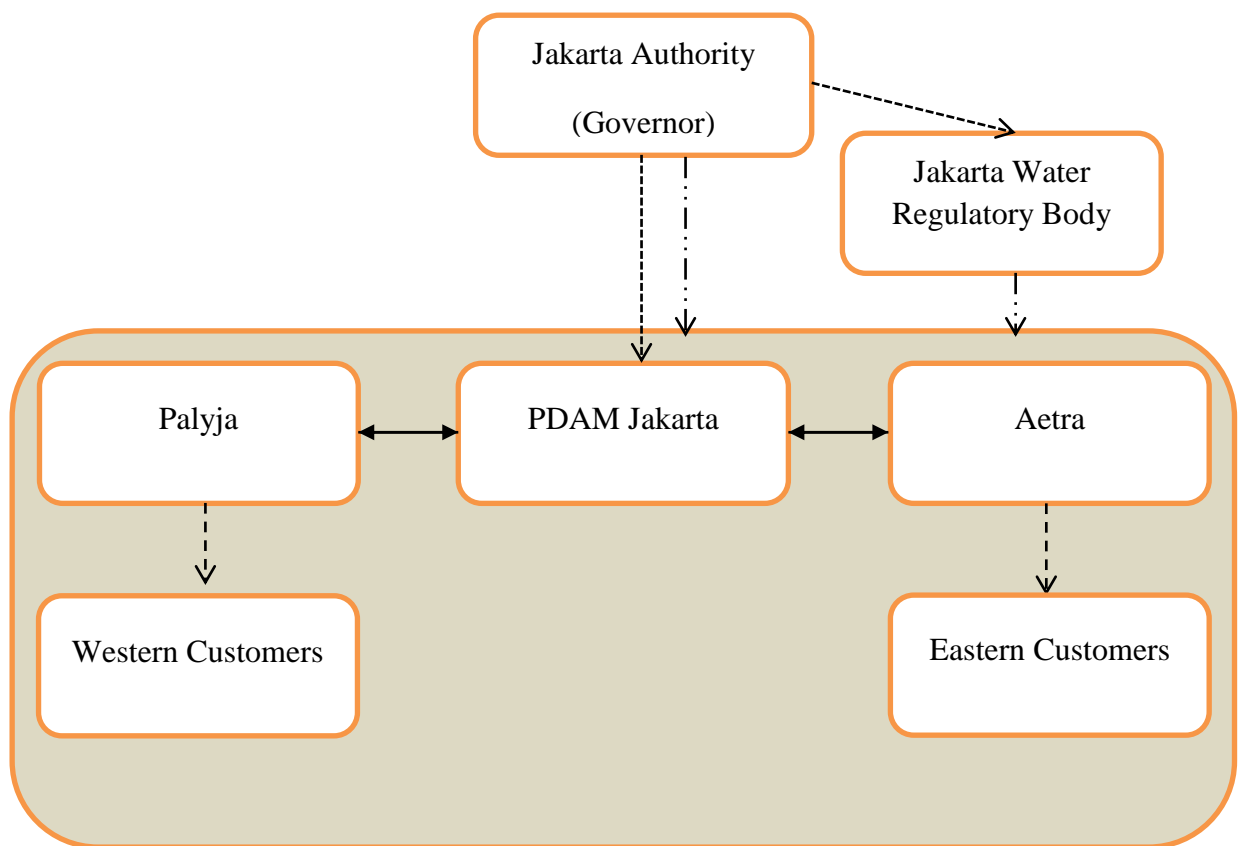
Nowadays, the water services company – the local government enterprise – established in Jakarta is in partnership collaboration with two private sector entities. The local government is known as PDAM Jaya and the two private sector entities are Palyja and Aetra. Information concerning the two company profiles from these private enterprises will be delivered to clearly portray the companies.

Presently, the westward part of Jakarta is organised by PT. Palyja, which is owned by Suez and Astratel, and the eastward half is being organised by PT. Aetra of Acuotico.¹²⁵ On November 2001, the government established the Jakarta Water Supply Regulatory Body (in short JWSRB). The mission is to maintain a balanced interest between the public, the cooperating parties and the government of Jakarta City to undertake water service provision in the DKI Jakarta Province. The vision is to establish the regulatory body as an independent, professional, efficient, and accountable institution, which functions as a mediator, a facilitator, and a regulator to undertake water service provision in the DKI Jakarta Province. The board members must be independent and impartial; this means it is publicly selected, no government officer and member of the related parties, and accountable to the Governor, but no government

¹²⁵ Nila Ardhanie, “Thirteen Years”, 1.

intervention. The board will work on collegiate decision making, and a working term of three years. The institutions serve as an oversight body to the cooperation agreement between public-private partnership parties: PAM Jaya, Palyja, and Aetra – formerly Thames PAM Jaya/TPJ. Therefore, the primary and first responsibility of JWSRB is to ensure that the cooperation between PAM and the operators is conducted in compliance with the Agreement.¹²⁶

Figure 3.4 New Governance: JWSRB as Oversight Body in Jakarta Water Provision



Source: Jakarta Water Regulatory Body¹²⁷

¹²⁶ *Ibid.*,

¹²⁷ The JWSRB was first established in 2001 with members directly appointed by the Governor for a term of office of 3 years ending in 2004. Beginning in 2005, the members were then selected through an open and accountable selection process for the subsequent three year term of office (2005-2008). www.jakartawater.org Retrieved on January 23, 2013.

In the first scheme of governance of Jakarta water, Jakarta Authority (Governor) directly gave the command and cooperated with the Jakarta Water Services Company (PDAM Jakarta). In the new governance, Jakarta Water Regulatory Body (JWRB) is integrated as an oversight body in the Jakarta Water provision. Jakarta Authority is in the line of command of JWRB. Thus, as the Jakarta Authority, JWRB will monitor all institutions and transactions that have been conducted among the institutions and customers. It is believed that the work of the Jakarta Water Regulatory Body will support the Jakarta Authority in providing water services and to be a better administrator. To handle these institutions and customers, the governance of Jakarta water might add another institution in order to help the water provision. However, the private sector entities – Palyja and Aetra – are also hopefully compelled to create a better Jakarta Water Services Company.

3.3.1 Palyja

PT PAM Lyonnaise Jaya¹²⁸ (“the Company”) has been present in Jakarta to improve clean water provision and services to the people in the western part of Jakarta. The Initial Cooperation Agreement was signed between the Company and Perusahaan Air Daerah Air Minum (“PDAM”) for a 25 year concession contract, which became effective on 1 February 1998. Following the socio-political and economic crisis that took place in Indonesia between 1998 and 2000, the contract was renegotiated and led to the Restated Cooperation Agreement, which was amended on 22 October 2001. The Restated Cooperation Agreement was then amended on 24 December 2004, by the Addendum covering the rebasing process for the period 2003-2007. This was then amended by the Second Addendum to the Cooperation Agreement dated 21 December 2006, as subsequently amended by the Third Addendum of the Amended and Restated Cooperation Agreement dated 28 October 2008, being the latest amendment to date. On

¹²⁸ PT PAM Lyonnaise Jaya incorporated at Sentral Senayan I, Lt.7, Jl. Asia Afrika No.8, 10270 Jakarta Pusat T. 021 572 4410, F. 021 572 4418.

25 July 2006 Suez Environment (SE) closed the sale of 49% of its shares in the Company to PT Astratel Nusantara (Astratel-30%) and Citigroup Financial Product Inc (Citigroup-19%).¹²⁹

Under the cooperation agreement, PALYJA is responsible for procurement of bulk water, operation of the water supply system, and billing and collection of water fees. To ensure the affordability of water to customers of all social economic classes, the agreement delinked the water tariffs charged to customers (water revenue) and the revenue received by PALYJA (water charge). The water revenue would vary depending on the customer category, while PALYJA would receive a flat water charge for every cubic metre of water billed.¹³⁰

In December 2010, Citigroup closed the sale of all its shares in the Company to PT Astratel Nusantara, therefore the final Company's shareholder arrangement as of today is SE 51% and Astratel 49%. The company is responsible for the production, distribution, operation and maintenance of the whole clean water infrastructure in the western part of Jakarta as well as customer service (meter reading, invoicing, and collection). The company is also responsible for establishing an investment plan every five years and related feasibility study for developing new infrastructure for the subsequent period. Suez Environment and its subsidiaries are committed to the daily challenge of protecting resources and ecosystems. The SE's group provides innovative solutions to millions of people and industries in the drinking water, wastewater treatment and waste management fields. Suez Environment is a world leader exclusively dedicated to water and waste management. PT Astratel Nusantara is part of the ASTRA Infrastructure Company. PT Astratel Nusantara is actively developing business in

¹²⁹ PT PAM Lyonnaise Jaya 2010 Annual Report www.palyja.co.id Retrieved on January 22, 2013.

¹³⁰ "Proposed Loan Republic of Indonesia: West Jakarta Water Supply Development Project" (Report and Recommendation of the President to the Board of Directors, Asian Development Bank, 2007).

various infrastructure investment projects, such as toll roads, power plants, telecommunications and media, ports and logistics, clean water and others.¹³¹

3.3.2 Aetra

PT Aetra Air Jakarta¹³² received a concession for 25 years of operation based on the contract agreement with DKI Jakarta Regional Drinking Water Company (PAM Jaya). The concession was from 1 February 1998 to 31 January 2023. The contract stated that Aetra is responsible to manage, operate, maintain and invest in order to optimise, expand and improve clean water services in Aetra's operational area; namely, the eastern side of Ciliwung River covering part of North Jakarta, part of Central Jakarta, and the entire East Jakarta. The shareholders are Acuatico Pte Ltd with 95% of shares and Alberta Utilities with 5% of shares.¹³³

There is no share owned by any member of the Board of Directors or Board of Commissioners. Aetra does not have any subsidiary. The Aetra Company started as Thames PAM Jaya (TPJ), a subsidiary company of England-based RWE Thames Water. TPJ signed a 25-year contract agreement with PAM Jaya in June 1997, and started operating on 1 February 1998 to manage, operate, maintain and invest in order to optimise a clean water supply system for the residents of part of North Jakarta, part of Central Jakarta, and the entire East Jakarta with Ciliwung River as its border for the operational area. In 2007, Acuatico Ptd. Ltd. took over the ownership of Thames Water to continue the concession, and since 15 April 2008 TPJ changed its name to PT Aetra Air Jakarta.¹³⁴

Aetra's main product is clean water in the pipeline. Through a network of pipelines, Aetra supplies clean water to households and industries within its operational

¹³¹ *Ibid.*,

¹³² PT. Aetra Air Jakarta (Aetra) incorporated at Sampoerna Strategic Square South tower, 28th floor Jl. Jendral Sudirman kav. 45-46, Jakarta 12930, Indonesia.

¹³³ PT Aetra Air Jakarta Annual Report 2010. www.aetra.co.id Retrieved on January 22, 2013.

¹³⁴ *Ibid.*,

area. Currently, Aetra owns 5,893 km pipeline network with a capacity of 9,000 litres/second. It continually seeks to expand its network and operational technology in order to give added value to the customers.¹³⁵

3.4 Conclusion

History of the Jakarta Water Services Company began with the piped water supply network installation during the Dutch colonisation in the 1930s. It was shifted to the local government owned company (LGOC) in 1945. In addition, with the New Order to the management of Jakarta's network water supply in 1968, a regional water supply company now known as PAM Jaya was established. An indication was given of the fact that the water supply to Jakarta was no longer a 'national project', and a local government owned business was entrusted to bolster up the regional economic development, and raise benefits providing for the prosperity of the residents of Jakarta by means of the provision of clean water.

In 1997, the concession of the western area was granted to PAM Lyonnaise Jaya (Palyja), a Suez (formerly Ondo service) secondary company. In 1998, the formal water system was historically privatized and the management changed from PAM Jaya, the local government's water company, to two private sector entities: Thames Water Overseas and Suez Lyonnaise des Eaux. In the same year, on 1 February PAM Jaya was fully operational in the water services, in the area of business carried out by the two Private Partners having negotiated the revised Restated Agreement (Amended and Restated), the Cooperation Agreement 22 October 2001. The signing of the Cooperation Agreement Addendum agreement in 2001 was done in 2004 for the west region (PT Palyja) and 7 October 2005 signing of the agreement in 2001 Addendum Agreement for eastern region (PT TPJ). The Second Addendum to the Cooperation Agreement dated

¹³⁵ *Ibid.*,

21 December 2006, as subsequently amended by the Third Addendum of the Amended and Restated Cooperation Agreement dated 28 October 2008, being the latest amendment to date. In 2007, Acuatico Ptd. Ltd. took over the ownership of Thames Water to continue the concession, and since 15 April 2008 TPJ changed its name to PT Aetra Air Jakarta.

Chapter IV

Ownership of PDAM Jaya in Indonesia

4.1 Introduction

The various concepts of economic thought and the Islamic principles that may counter the non-Islamic economic system were described in chapter two. These principles might also be seen as an alternative and a solution to the economic problems that occur in several countries where Islamic principles are not applied. The perspective of capitalism, socialism, and Islam were elaborated upon to provide the necessary understanding. The comparison between the Islamic economic system and the non-Islamic economic system about the ownership of the water services company would therefore be equitable. The illustration of the ownership of the Jakarta Water Services Company along with its history were studied in chapter three in which several events that happened in the past were used as evidence to deliver the discussion objectively. At this point, the history of the ownership of PDAM Jaya before and after being privatised is expected to make the historical events clear as well as being useful and helpful for this work. Other things that were described in chapter three include the company profiles, such as PDAM Jaya, Palyja and Aetra. Finally, this chapter analyses the results of the interviews from different respondents with different institutions and roles as mentioned in Chapter One. However, before the ownership of PDAM Jaya in Indonesia is explained, the role of all the institutions involved in the Jakarta Water Services Company (PDAM Jaya) should be defined. All institutions with various duties will be defined demonstrably.

4.2 The Role of Institutions Involved in PDAM Jaya

In order to keep monitoring the performance of Jakarta Water Services Company (PDAM Jaya), the Jakarta Authority (Governor) decided on a new scheme for all the institutions involved in PDAM Jaya. First, the governance of Jakarta water was changed and Jakarta Water Regulatory Body was created. Jakarta Water Regulatory Body or known as (JWRB) is used as the oversight body of Jakarta Water provision. The role of Jakarta Authority (governor) and Jakarta Water Regulatory Body can be seen in Table 4.1:

Table 4.1 The Role of Jakarta Authority and JWRB in Jakarta Water Provision

Role	Jakarta Authority (Governor)	JWRB (Jakarta Water Regulatory Body)
Command	V	X
Monitor	V	V
Cooperate	X	X
Service	X	X

Source: PDAM Jaya

Jakarta Authority (Governor) plays its role in commanding PDAM Jaya and monitoring all institutions involved in the provision of water to Jakarta. Jakarta Water Regulatory Body or JWRB also monitors all the institutions as well. These two government sector entities are together expected to improve the performance of PDAM Jaya since JWRB is a new institution formed through a policy decision released by Jakarta Authority to help the work of Jakarta Authority in monitoring all the institutions.

There is a collaboration work between the public and private sectors in the provision of water to Jakarta. The public sector is, of course, the local government, and the private sector entities are Palyja and Aetra. As the institution in this Jakarta Water Services Company, each enterprise has a role that is elaborated upon in table 4.2 below:

Table 4.2 The Public and Private Sectors Role in Jakarta Water Provision

Role	PDAM Jaya	Palyja	Aetra
Command	X	X	X
Monitor	X	X	X
Cooperate	V	V	V
Service	X	V	V

Source: PDAM Jaya, Palyja, Aetra

In respect of the public and private sector's role in the provision of water to Jakarta, the role of PDAM Jaya is only in cooperating with both Palyja and Aetra. In addition, Palyja and Aetra not only cooperate with PDAM Jaya but also provide services to all the citizens of Jakarta. With the new scheme, where JWRB is used to help PDAM Jaya, Palyja and Aetra can be monitored for its performance in the provision of water to Jakarta.

4.3 Ownership Status of PDAM Jaya

Based on the profile of the State-Owned Jakarta Water Services Company – known as PDAM (*Perusahaan Daerah Air Minum*) Jaya – PDAM Jaya is fully owned by the local government province of the Special Capital City District of Jakarta, DKI

(*Daerah Khusus Ibukota*) Jakarta. However, the Indonesian Investment Coordinating Board (IICB) or known as *Badan Koordinasi Penanaman Modal*, which is located in Indonesia, considers not only the ownership of the water services company itself but also other aspects, as can be seen below:

“The government of Indonesia own all the projects created in Indonesia including the ownership of the tools and infrastructure. We made the contract with a period of time so after that it will come back to us. Well, the private company may possess 95:5 of the ownership. I don’t think we have an issue about the ownership.” (IICB)¹³⁶

The tools and infrastructure in Indonesia are truly owned by the government, which means it is a project of the government. The government project considers 100% ownership of the government yet for the management, it has operational cooperation. Thus, a partnership, which has been made for twenty-five or even thirty years, has been made. Ultimately, water assets will be fully owned by the government. From the assets of state-owned enterprise perspective, this matter is regulated by the list of investments; private ownership in every company in Indonesia may possess 95% and the other 5% nationally. If this is just a contract, then there will be no issue here since the tools and infrastructure in Indonesia are 100% fully owned by the government, without question. Once the contract finishes, everything will be officially owned by the government.

“We manage the agreement between the private sector and the government, such as PDAM Jaya, Palyja and Aetra. The ownership may reach 95%. This is the rule from the Indonesia Minister. The 95% is worth it if the private sector can contribute.” (Tamba P. Hutapea)¹³⁷

The Indonesian Investment Coordinating Board (IICB) administers the ownership of the private sector in water services management, such as Palyja and Aetra for a maximum 95%, which is the rule given by the Indonesian Minister. It is now being

¹³⁶ The interviewee is Tamba P. Hutapea as the head division of IICB for plan and investment in the interview with the author, 18 November 2012.

¹³⁷ *Ibid.*,

discussed, especially in the cooperation scheme between the Public and Private (Public Private Partnership) sectors because this scheme is a concession for twenty-five and thirty years and above to attract private sector investment in Indonesia and contribute to operational and management enhancements, especially for the water services division. The 95:5 of ownership should be fine and the private sector can deliver public infrastructure with the standard that is expected.

The objective is to attract the foreign investors, and, indeed, the contract has terms and conditions. It has been discussed if the Indonesian investment institution sees from the side of the concession, the flexibility during the agreement of ownership between the companies will be allowed. Unless, in the end, the tools and infrastructure will be replaced by private ownership. With this condition, the regulation of ownership should be strict like in the sector of industry where the rules are clearly stated. (Tamba P. Hutapea)¹³⁸

It is believed that the contract has been made for the economic purpose . The Indonesian Investment Coordinating Board (IICB) observes the contract thoroughly and the government itself declared inside its Millennium Development Goals (MDGs) that the projects with the private sector in providing water services for the public will be narrowed. Thus, market soundings will be created to keep maintaining the three projects of water; water filter, waste disposal, and waste management. The response from the foreign investors was interesting and fabulous. The Indonesian Investment Coordinating Board (IICB) or known as *Badan Koordinasi Penanaman Modal* considers not only the ownership of the water services company itself but also other aspects, such as the tools and infrastructure, Public Private Partnership (PPP), the contract objectives, and the government agreements. As is commonly understood, the tools and infrastructure are officially owned by the government under the Public Private Partnership (PPP) scheme. The contract objectives have terms and conditions that consider and permit flexibility in the agreement of ownership between the companies – from the side of concession. In

¹³⁸ The interviewee is Tamba P. Hutapea as the head division of IICB for plan and investment in the interview with the author, November 18, 2012.

addition, arguments have been appearing from the societal perspectives. Here are the comments from different points of view:

“We believe that PDAM DKI Jakarta is fully owned by the regional municipality of DKI Jakarta.” (Hartuti Kartika Sriwardhani)¹³⁹

The first view comes with the understanding that the ownership of the Jakarta Water Services Company is considered as a public sector. PDAM Jaya has clearly stated that the Jakarta Water Services Company is run by government. Thus, the ownership is officially possessed by the Jakarta government. Other comments, which are from society, have different thoughts. The second view comes with the understanding that the ownership of the Jakarta Water Services Company is considered as a public sector with private cooperation:

“ I think PDAM is one of the public sector entities in Indonesia where the management and supervision are under public municipality administration. So, this enterprise seems like slow in developing because the management is far from proper and professionalism. The development is not balanced with the needs and the demands. This complaint is headed to the cooperation with foreign investors to improve the tools and infrastructures for supporting the networks and its distributions.” (Rasminto)¹⁴⁰

“Perusahaan Daerah Air Minum (PDAM) is now owned and managed by a government municipality with the help of the private sector.” (Feriyanti)¹⁴¹

There are two arguments given by the respondents from society from the second point of view. The water services company is now owned and managed by the local government and cooperates with the private sector. Secondly, PDAM Jaya is one of the state owned enterprises that is possessed by the local government of DKI Jakarta where the management and supervision are officially owned by the local government. This is one of the problems why it is slow for a water services company in Jakarta to develop

¹³⁹ The interviewee is Hartuti Kartika Sriwardhani as the manager of system and technology development in the interview with the author, November, 18, 2012.

¹⁴⁰ Rasminto is the customer of PDAM Jaya in the interview with the author, 20 November 2012.

¹⁴¹ Feriyanti is the customer of PDAM Jaya in the interview with the author, 20 November 2012.

because the human resources that have been used are far from professional. Thus, the development and the necessity or the demand is not synchronised. This challenge resulted in PDAM Jaya contracting with foreign investors to enhance the tools and infrastructure to support the networks and distribution. However, the third view comes with the understanding that the ownership of the Jakarta Water Services Company is considered as a private sector:

“PDAM now becomes PT Persero, which is managed by the private sector like Aetra.” (Erika)¹⁴²

“Last time, PDAM was alone but now PDAM is administered by several private companies, such as Aetra, Palyja.” (Maimunah)

“The ownership of Perusahaan Daerah Air Minum (PDAM) Jakarta now has been taken over by France under PT PAM Lyonnaise Jaya (Palyja). DKI Jakarta government today has only got the rest of the assets, which is no more than 5%.” (Riyan Hidayat)

From the last group of points of view, it is believed that the ownership of PDAM Jaya has been changed from the government sector to the private sector, which are Palyja and Aetra. The private sector, such as PT PAM Lyonnaise Jaya (Palyja) and Aetra have taken over the ownership of water Services Company in Jakarta, Indonesia. The ownership of the government part is not more than 5%.

In Islām, everything is actually owned by Allāh. Allah is the Creator-Owner and Lord Sovereign of any creature in the Hereafter and earth like water. It is addressed to the common use and benefit of the society. In addition, people, as the ones who have the responsibility for their property, are therefore compelled to maintain it well. It is stated in the Qurān:

“Believe in Allāh and His Messenger and spend out of that in which He has made you successors. For those who have believed among you and spent, there will be a great reward.”¹⁴³

¹⁴² Erika is a customer of PDAM Jaya in the interview with the author, 20 November 2012.

Ownership can be defined as the right to exploit and utilise the resources and properties by Allāh in which the right is solely permitted in accordance with accepted ways. The right of ownership can be deserved by the owner as long as he utilises the reward blessed to him as well as it should be. In one condition, if he ceases to do so, and exploits and does not put the wealth into proper and productive utilisation, he will therefore be induced or even forced to give up that right of possession. Allāh the Almighty is the true owner of all creatures. Humans have been entrusted to organise everything as well as possible. So that in any condition, it is convenient for Allāh to take all the things back that we own.¹⁴⁴ However, the absolute ownership of property is not recognised in Islām. As mentioned in the Qurān:

*“To Allah belongs whatever is in the heavens and whatever is in the earth. Whether you show what is within yourselves or conceal it, Allah will bring you to account for it. Then He will forgive whom He wills and punish whom He wills, and Allah is over all things competent.”*¹⁴⁵

The water resources according to Islām are public property, state property or public domain. Islam imposes no restriction on trading water. Water, being a public property, cannot be transferred, but its uses can. Once in Islamic history, ‘Uthmān Ibn Affān, the third caliph, purchased Romat well from a Jew and he offered it as a public utility for Muslims. The Messenger of Allāh has said:¹⁴⁶

¹⁴³ Surah Al-Hadid verse 7.

¹⁴⁴ Yusuf, “Economic Justice”, 19.

¹⁴⁵ Surah Al-Baqarah verse 284.

¹⁴⁶ Muhammad bin Isma‘īl Al-Bukhary. Ṣahīh al-Jamī’, Cairo: maktabah as-Salafiyah. (3) 18. Ṣhahīh al-Jamī’, Muḥammad bin Isma‘īl al-Bukhary, 18 vol. III, Publisher: Maktabah as-Salafiyah: Kairo First Edition, 1400H, 1975M, 2778.

وأخرج البخاري عن أبي عبد الرحمن السلمي أن عثمان حيث حوَصر أشرف عليهم فقال: أنشدكم بالله ولا أنشد إلا أصحاب النبي صلى الله عليه وسلم أستم تعلمون أن رسول الله صلى الله عليه وسلم قال: من حفر بئر رومة فله الجنة. فحفرتها, أستم تعلمون أنه قال: من جهز جيش العسرة فله الجنة فجهزته قال: فصدقوه بما قال

Translation: When ‘Uthmān was circled (by the rebels), he looked upon them from above and said, "I ask you by Allāh, I ask nobody but the companions of the Prophet (SAW), don't you know that Allāh's Messenger said, 'Whoever will (buy and) dig the well of Ruma will be granted paradise,' and me (bought and) dug it? Don't you know that he said, 'Whoever equips the army of Usrā (Tabuk's Ghazwa) will be granted paradise,' and I equipped it?" They attested whatever he said. When ‘Umar founded his endowment he said, "Its administrator can eat from it." The management of the endowment can be taken over by the founder himself or any other person, in both cases are permissible.

عن أبي عبد الرحمن السلمي قال لما حصر عثمان أشرف عليهم فوق داره... ثم قال أذكركم بالله هل تعلمون أن بئر رومة لم يكن يشرب منها أحد إلا بشمن فابتعتها فجعلتها للغني والفقير وابن السبيل قالوا اللهم نعم وأشياء عددها

Translation: Ḥadīth Tirmidhī is equipped with a history: From the ‘Abdurrahmān as-Salmi said ‘Uthmān was besieged when he was looking at them from his house and then he said: I warned you people “do you not know that the well house no one can drink the water unless the purchase”. Then I bought it and gave it for the rich, poor and ibn sabil? They said: true. (Narrated Tirmidzy). This ḥadīth is hasan by at-Tirmidī.¹⁴⁷

He means Romat well, when ‘Uthmān heard this, he purchased half of it and offered it to Muslims; and people took water therefrom. When its owner saw that he had no chance to make use of the second half he sold it to ‘Uthmān who offered it as a whole to Muslims. Water, as the most important element that is seen as a social good should be treated as an economic good with a high scarcity value. In addition, Islām also has contracts with its procedure based on what Prophet Muḥammad has taught.

¹⁴⁷ First Edition, 1400H, 1975M, 2778. See: Sunan at-Tirmidī, Muḥammad bin Isa bin Sūrah at-Tirmidhī, vol. V, Publisher: Maktabah Mustafa al-al-Halby Baby Ed. Second, 625.

The contract in Islam has been defined and categorised with its principles. The basic precondition to create a valid contract agreement under Islamic teachings is associated with the legitimate status of the sides to agree the contract, the method that the contract is submitted, and, lastly, the subject and consideration of the recent contract parties looking forward to engage in a contract shall just carry out so if those concerned are officially able to do so – fundamentally, adults of sound decision. Both paper or direct verbal contracts can be accepted, with the proviso that the proposal and approval must be considered at the same meeting session, without any interference or venue altered in advance of immediate approval.¹⁴⁸ In addition, shari’ah determines that in the interests of fair and transparent dealing with the contracts between the parties, any unjustified enrichment arises out of uncertainty or undefined of the essential pillars of contract is prohibited.¹⁴⁹

“O you who have believed, fulfil [all] contracts.”¹⁵⁰

“O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice.”¹⁵¹

As has been explained in chapter II, *ijārah* actually implies a name for retribution, then, finally, became the term of a contract. Based on Islamic teachings, it is a bond according to a benefit that is meant, known as, being able to be delivered, is permissible with compensation. *Ijārah* is a term of Islamic *fiqh*. Lexically, its method is ‘to give something for rent’. In the Islamic jurisprudence, the word ‘*ijarah*’ is considered for two distinct situations. In the foremost portion, it implies ‘to employ the services of a person on wages given to him as a consideration for his hired services’.

¹⁴⁸ Rayner, “The Theory”, 5.

¹⁴⁹ Sarker, “Islamic Business, 5.

¹⁵⁰ Šūrah Al-Māidah Verse 1.

¹⁵¹ Šūrah Al-Baqarah Verse 282.

The employer is known as *musta'jir* while the employee is called *ājir*. In this case, PDAM Jaya is *musta'jir* and the employees are the private sector entities that work for PDAM Jaya in giving water service to all the customers.¹⁵²

Ijārah is thus a sale of benefits, or usufruct, especially for hard-wearing possessions. The action of referring is also prepared and marked by the exactness or firmness of purpose of what may or may not be appropriate for *ijārah* to the prevailing custom, which is also relevant to the mode of payment, whether it be a fixed regular payment or an amount paid as a rent, as well as how they are dealing with it. Consideration in *ijārah* is normally required to be paid within an identified portion of time, be it a week, month or year, as the benefit of *ijārah* generally materialises upon a period of time. However, custom may alter this and firmly decide that the benefit of *ijārah* be purchased up front. Custom also determines the means how the usufruct is acquired in *ijārah*. A lessee is thus anticipated to stay in certain places and utilise it for common objectives of existence and not outside the renowned expectancies of suitable consumption for that goal.¹⁵³

Since *ijārah* is various in sale, it is legal in everything that can lawfully be purchased or sold, and the rules of shariah that are appropriate for sale are also in most cases applied to *ijārah*. The *fuqahā'* have, however, fundamentally separated two things, that is to say the person, and the *waqf* property, which cannot be purchased but can be made the legal subject matter of *ijārah*. Furthermore, since *ijārah* is various in sales, anything that can be purchased at a price (*thaman*) in sales can also be served as consideration in *ijārah*. However, the administration system at PDAM Jaya falls into *ijārah* from the Islamic perspective.¹⁵⁴

One of Muslim scholars, Sheikh 'Abdurrahmān Al-Baghdadiy, views water as if it is drilled, in that water might be sold but limited even though the well always keeps

¹⁵² Zuhaili, "al-Fiqh", 57.

¹⁵³ *Ibid.*,

¹⁵⁴ *Ibid.*,

flowing. In addition, any relationship with a water spring is owned by society, groups of communities. Neither the company nor the private sector is allowed to own it. Water is strictly not permitted to be possessed by an individual, company, or foreign entity.¹⁵⁵ In fact, the connection between the water services company and several homes in Jakarta has been created. As the city water authority, PDAM Jaya has installed the water system built in Jatiluhur Reservoir drilling, which is located on the outside of Jakarta. Therefore, the water can be sold but it is limited.¹⁵⁶

As a matter of fact, water is a basic need and an obligation for the community to benefit from and take advantage from using a machine or even foreign sector. When the government has a disability in providing high technology tools, renting it from the private sector might be necessary. According to the attraction of foreign investors, which has been promoted by the Indonesian Investment Coordinating Board (IICB), Sheikh thinks that the government should have the ability. The government budget is great but for certain developing countries where the natural resources are very limited, it is allowed to attract foreign investors. However, for developed countries, the tools and infrastructure should be fulfilled.

Lastly, the privatisation of PDAM Jaya is allowed in Islām. As has been mentioned above, water is a state property and being a public property is not transferable but its uses are permitted. As a matter of fact, Uthmān Ibn ‘Affān had bought the well as the source of water but then he decided to give it to the public and Allāh the Almighty granted him that he will be an inhabitant of paradise. However, Islām has contracts for any transactions and businesses made. Everything should strictly be under shari’ah law. According to the explanation given by Sheikh Abdurrahmān, water itself is permissible to be sold but has certain limits even though the well will

¹⁵⁵ Sheikh ‘Abdurahmān Al-Baghdadiy is a Muslim scholar who was interviewed by the author, November 24, 2012

¹⁵⁶ <http://www.expat.or.id/info/watertreatment.html> Retrieved on March 20th, 2013.

always keep running, and, for certain cases like a water spring, it should be owned by society or groups of communities. A company or the private sector entity is forbidden to possess it, and, with no exceptions, ownership by an individual, company or foreign sector is prohibited. Water is a basic need for human beings and an obligation for society or government to benefit therefrom. Even foreign enterprises may take advantage of it when needed. However, privatisation of PDAM Jaya is allowed when the government is unable to provide water for the citizens. The government is also required to solve the problem by renting the high technology tools or hiring highly qualified human resources from other countries. In fact, before asking for help from other countries, it is an obligation for the government to have the ability in providing water as the vital need for human life.

4.4 Performance PDAM Jaya Before And After Being Privatised

There have been developments regarding the performance PDAM Jaya before and after the contract partnership, as shown in Table 4.2 below:

Table 4.3 Before and Following Privatisation of PDAM Jaya

Commentary	1997	2011
Water Sold	199.334.481	297.819.232
Number of Connections	460.641	802.636
Clean Water Production	466.399.018	439.476.295
UfW	57,06%	43,50%
Services Coverage	49,00%	61,36%

*UfW: Unaccounted for Water

Source: PDAM Jaya

There are certain significant changes in the commentary concerning before and after privatisation of PDAM Jaya. For instance, the water sold in 1997 increased in 2011 from 199.334.481 to 297.819.232 and the number of connections was larger, almost twice that of 2011 from 460.641 to 802.636. The service coverage from 49.00% to 61.36% also indicates an improvement. Moreover, the Indonesian Investment Coordinating Board (IICB) has its own argument regarding the management of the water services company in Jakarta. The management did not meet the standard requirements of a national enterprise. PDAM Jaya was unable to cover the whole Jakarta municipality. The water quality was also an issue that could not reach international standards and was probably high cost. After the Jakarta Water Services Company was privatised, for instance, it was expected that the international quality tools and infrastructure would be acquired from the private company. If it comes from France, then the management and the system will be hopefully like what has been done in France. That is what the Indonesia Investment Coordinating Board (IICB) expected. It should be international, either the management or the water, the quality should be equal and, in the future, the quality has to be improved from time to time. However, the society also has its point of view that needs to be concerned, as described below:

“The PDAM Jaya performance before being privatised is not better than before being privatised. The system of management and the service is not acceptable. The water service provision is limited and sometimes disappointing. Water is often smelly; in the dry season, water that comes out is frequently dirty and coloured. From the management of administration, the history of the bills and debt is not computerised. The data entry is not recorded well so sometimes the bill that has been paid is asked for twice as a debt. The solution is everything should be noted because the bill papers are easily lost so it’s not convenient for customers to show the real facts. However, after being privatised, the service and management of water is getting better and is becoming more transparent, and the management of administration is clearer and stricter so it is no longer inconvenient, even though at times it is unfair.” (Erika)¹⁵⁷

¹⁵⁷ Erika is the customer of PDAM Jaya in the interview with the author, November 20, 2012.

Erika believes that the PDAM Jaya performance after being privatised is not better than before being privatised. The management system and the service are poor. The role of the water services company in providing clean water is sometimes disappointing. The water is often smelly, and, in the dry season, the water that comes out is frequently coloured and polluted. In the management sector, the administration, payment process, and debt management are not computerised, the bills are not recorded properly, and it occasionally happens that a bill that has been paid is requested again as a debt. The solution is that everything must be written as evidence, however, it might be lost so it is difficult for customers to provide genuine evidence. After being privatised, the service and management of the water improved, and the company is more transparent, the management of administration is more obvious and strict so it is acceptable for all society, even if sometimes it seems unjust. There are plenty of customers who feel unsatisfied with the services offered.

There was a report saying that PDAM Jaya had failed to encourage its private associates to perform more powerfully. As is stated below:

"We agree with the body's evaluation that both of our partners have been inefficient, but we do not agree with the opinion of one of its members that we are being too soft." (PDAM Jaya director Haryadi Priyohutomo)¹⁵⁸

Since 1998, PDAM Jaya has conferred the management of the city's water drainage Palyja and Aetra. Palyja channels water to the western part of the city while the eastern city is taken care by Aetra. Every five years, the institution estimates the providers' accomplishment in a conference well-known as a rebasing deal or communication. As a part of the study, the regulatory body, with the support of the State Development Controller (BPKP), decides whether their performance has been acceptable. In respect of the five objectives, the administrators plan to broaden the water

¹⁵⁸ "We're not soft', city water company says", The Jakarta Post. Retrieved March 20th, 2013.

pipe networks annually. According to data given by PDAM Jaya, both organisers failed to meet the goals. As an example, Palyja intended to provide 264,000 metres of pipe, but only managed 79,216 metres. In addition, Aetra was expected to increase 121,216 metres, but only reached 53,033 metres.¹⁵⁹

“I think the quality of PDAM Jaya before or after being privatised is just the same. It is fair enough” (Maimunah)¹⁶⁰

“I don’t really know how good the performance before or after PDAM Jaya being privatized is, yet many PDAM Jaya customers are dissatisfied with the service given” (Riyan Hidayat)

Riyan Hidayat thinks that the performance before and after being privatised could not offer satisfaction.

“The performance PDAM Jaya before and after being privatized is not so good yet, where the water gathered is in a small amount and take a long time, especially in the night.” (Feriyanti)

PDAM Jaya has the water treatment facility and the water will be cleaned before it is being distributed. Due to a poorly maintained water network system, the water can be badly polluted when it is delivered to the households. PDAM Jaya has also clearly stated that their water is not potable, which means it needs to be boiled before using it for drinking or cooking purposes. Customers will receive the water bills monthly from PDAM Jaya based on a meter reading, usually in the front yard or at the point of entry into the houses of Jakarta citizens. That is why it is recommended for people in Jakarta to have a well, so the water from PDAM Jaya is used for household needs while the water from a well may be used for garden uses. Several families tend to own a well as a backup to the PDAM supplies. This is a good idea, but in some areas where wells are

¹⁵⁹ *Ibid.*,

¹⁶⁰ Maimunah is the customer of PDAM Jaya in the interview with the author, 20 November 2012.

totally restricted, another option, such as gathering water into a bath might also be a solution.¹⁶¹

As a matter of fact, Feriyanti views that the amount of water is – at times – low and occasionally takes a moment to get on, especially at night.

“PDAM Jaya is the company with no competitors nor competition itself so the performance is not measured well. Thus, the result and progress of the management that is applied cannot be seen. Moreover, the number of obstacles is not well-maintained both internal and external, and also the human resources with the infrastructures. This can be viewed from the service quality, which is more stagnant even without any significant progress for the company that by right should be giving the service into the public such as PLN for electricity and Pertamina for oil and gas.” (Rasminto)¹⁶²

Rasminto is concerned that the Jakarta Water Services company is a company that has no competitors. Without competition, the rivalry cannot be measured so any management patterns that are implemented are not created equally. Because of the number of problems, which are solved slowly internally and externally in both human resources and infrastructure, it can be seen from the service quality that it is stagnant and that no significant changes have been achieved by the public company which, should be giving the public a suitable service, as, for example, Indonesia Power or National Energy Enterprise known as (PLN) and Pertamina, oil and gas enterprise.

In the world of economics, natural monopoly has been known for ages and economists have been analysing natural monopolies for more than 150 years. It has derived to natural monopoly companies due to the current situation. Natural monopoly companies force society to face a variety of economic performance problems, such as excessive prices, production inefficiencies, costly duplication of facilities, poor service

¹⁶¹ *Ibid.*,

¹⁶² Rasminto is the customer of PDAM Jaya in the interview with the author, 20 November 2012.

quality and have a potentially undesirable impact on distribution. Water utilities are a potential sector for companies to form natural monopolies.¹⁶³

In Islām, every individual, man and woman, Muslim and non-Muslim are entitled under shari'ah law to the ownership, possession, enjoyment, and transfer of property, a right which must be respected and safeguarded by his fellow men and the State.¹⁶⁴

*Say, [O Muḥammad], "If your fathers, your sons, your brothers, your wives, your relatives, wealth which you have obtained, commerce wherein you fear a decline, and dwellings with which you are pleased are more beloved to you than Allāh and His Messenger and jihad in His cause, then wait until Allāh executes His command. And Allāh does not guide the defiantly disobedient people.".*¹⁶⁵

Ownership has been conceptualised in Islām and is one of the features of the Islamic teachings. It is the rightful possession given by Allāh the Almighty and only a small portion has been vested in human beings so people may accomplish the obligations in this world by necessarily taking action as a trustee. It can be inferred that there is no absolute ownership in the idea of ownership and treasure in Islam as with conventional economics. Ownership of an abundance of valuable possessions is a challenge for people to remember that approval has been conferred by Allāh the Almighty.

In the Islamic teachings, the policy that occurred as a result of God's divine message to the Prophet was according to the principle that no one could monopolise water for themselves alone. The aim was to ensure access to water for the greatest number. This gives the answer to the question why, based on Islamic principles, water resources are a public good (belonging either to the Government or in the public

¹⁶³ Skapa Stanislav. (2012). Investment Characteristics of Natural Monopoly Companies. Journal of Competitiveness, (4)1, P. 36-43.

¹⁶⁴ Kamali., Muḥammad Hāshim. (1989). The Limits of Power in an Islamic State. Pakistan: Islamic Research Institute. (28) P.344.

¹⁶⁵ Ṣūrah At-Tawbah verse 24.

domain). To utilise water, first a concession or licence should be obtained from the public administration, and then an opinion must also be requested from the same administration following the price or water sales or irrigation rights. The sale of water or of irrigation rights results in the legal tradition being more or less favourable, albeit only once authority of the holder has been acquired to commercialise water.¹⁶⁶

Everything that Allāh has provided for humankind and all other beings is just for the purpose of benefit and service. Islam allows lawful ownership by individuals, albeit there is a moral responsibility that all society share the right to distribute wealth. According to the Islamic teachings, private and individual ownership is limited and unrestricted. Furthermore, all the means of production are not placed in private ownership as common ownership of particular things of public utility exist in close proximity with it in an Islamic state. The right to nationalise particular things, which are under private ownership, for the importance of the community is also owned by an Islamic state. The estate of the deceased in the midst of a fairly large number of heirs is distributed by the restricted authority of private ownership by act of inheritance. In this way through a small number of hands, it averts the concentration of wealth and thus prevents class-conflict.

Islām, on the other hand, generally concentrates on the protection of water from pollution, proper distribution, prevention of waste and the conscious use of it. Basically, in Islam, water should be available for all. It is not permitted to prevent someone from using water. Islām, through the security of life, ensures security of ownership of property to every human being.¹⁶⁷ Public ownership is the ownership that belongs to all people, not private or state. No form of public ownership should be controlled individually, either by individuals or companies. Management of public ownership

¹⁶⁶ François Facchini.(2007). Islām and Private Property. 1 Workshop of the European Network on the Economics of Religion (ENER) in Granada, Spain, 16 – 17 November 2007 JEL Classification : KOO, N23

¹⁶⁷ Hussein, Human Rights”, 104.

represented by the state and the income is returned to the people as owners. This is stated in the ḥadīth: ¹⁶⁸

عن ابن عباس قال قال رسول الله صلى الله عليه وسلم المسلمون شركاء في ثلاث في الماء والكالا والنار
وئمنه حرام

From Ibnu 'Abbas, Rasūlullāh SAW said, "Muslims are united in three things: water, pasture, and fire. Price (sale and purchase) is haram".

Based on this prophetic narration, preventing someone from using water is considered as unlawful in shari'ah. However, there are exceptions from this general ruling, for example, if someone owns water on their personal property then it is allowed to prevent people from using that water.¹⁶⁹ Based on this, the water (sea, rivers, lakes, etc.), pasture (forest), and fire (fuel oil, coal, gas, electricity, and other energy sources) belong together, and therefore, included in public ownership. The word 'association (shurokā)' shows that it should not be held in private or privatised. However, a person or a company may have the rights to prevent others from using the water when it is owned by himself or that company because the water already belongs to his personal or a company property. In this case, the privatisation becomes the right of PDAM Jaya in order to fulfil what society needs.

According to the data given by PDAM Jaya, the performance of PDAM Jaya after being privatised resulted in the development in certain aspects, such as the amount of water sold and number of connections, and also the service coverage that can cover more than before PDAM Jaya was privatised. On the other hand, the Indonesian Investment Coordinating Board (IICB) considers that PDAM Jaya, before being

¹⁶⁸ Muḥammad Nāshiruddīn Ibn Majah. *Shahīh Sunan Ibn Majah*. (II). (Riyāḍ, Maktabah al-Ma'ārif, Riyāḍ, First Edition, 1997M.), 265.

¹⁶⁹ Al-Manāwī, 'Abdul Ra'ūf. (1970). *Fa'id al-Qādir Sharh Jamī' al-sagīr*, Beirut: Dar al-Ma'rifah, vol. 6, 271.

privatised, had several limitations as a national enterprise. The limitations are, for instance, the requirement to be a national company and the water quality. Having cooperation with an international company made PDAM Jaya international, which is what IICB expected.

From the societal perspective, most of the respondents found that the development is stagnant, such as complaints of dissatisfaction and the water quality; as has been explained above, these two factors are what the customers complained about the most. The customers have every right to voice their complaints since it is based on their experience throughout the year. Other customers may have their own thoughts regarding the performance for PDAM Jaya before and after being privatised. Ultimately, Allah has created all the creatures just for the people to take the benefit from it and Islām focuses on the moral responsibility of all wealth for the society and also the protection of water. An Islamic state owns the right to nationalise essential sectors that cater to the need of a lot of people like water and the water itself should be protected from pollution and prevention of waste and should be used responsibly.

4.5 The Risk and Benefit of Jakarta Water Service Company Privatisation

Jakarta Water Services Company (PDAM Jaya) prefers to focus on the challenges and the benefits of the water services company privatisation rather than the risk and benefit. The challenges and the benefits are shown in Table 4.3 below:

Table 4.4 The Challenges and Benefits of the Jakarta Water Services Company

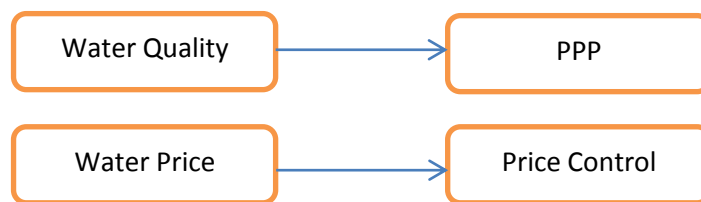
The Challenge	The Benefit
<ul style="list-style-type: none"> - The dependence on spring water from outside Jakarta (Jatiluhur Reservoir), the lack of spring water and the limitation of water distribution due to the high level of UFW. 	<ul style="list-style-type: none"> - Having the authority as an institution that provides water services to meet the needs of the entire DKI Jakarta based on Regional Law No. 13 1992 paragraph 6: “Struggling all the efforts that relate with water supply and distribution, which is healthy and meet the appropriate requirements and the good service for society by following on the enterprise economics principles”.
<ul style="list-style-type: none"> - The limited service area as a result of a few pipe distribution investments, plenty of consumer complaints, and the imbalance between the consumers’ with subsidised tariff and the non-subsidised tariff. 	<ul style="list-style-type: none"> - Reaching the goals that are already set so PDAM Jaya can be an independent enterprise (Self-Financing) for Operational cost necessary (Opex) and Investment cost (Capex) to enhance the service to the whole community.

Source: PDAM Jaya

It is believed that the challenges of Jakarta Water Services Company are the dependence on spring water and the limited service area. In addition, the benefits are that the authority is an institution that is legally owned and an independent enterprise (Self-Financing) to meet the necessary operational cost (Opex) and investment cost (Capex). Furthermore, it is not only PDAM Jaya that describes the challenges and benefits. The Indonesian Investment Coordinating Board (IICB), known as BKPM, considers that in order to give the best service to the public, the “transfer of technology” may be the first reason why agreement to this partnership contract has been made. Other things that need to be considered are capital, high technology and knowledge. Those are the criteria to ensure the private sector is professional. When the management is managed privately, the cost can be reduced and will be more efficient because of the experience of the countries of origin. The private sector might cover the affordable bills that society needs and the gap between the cost and production with the tariff given for

society would not be tremendous. The subsidy from the government is not as much as what people need. This raises the question of whether public goods should be at a price that is affordable to the community. If the gap between the cost and production is high, the supply of production and the demand from the citizens will probably be more extensive. This is the reason why foreign investors were invited to operate and cooperate with state-owned enterprises and also to provide an affordable tariff resulting in less cost in providing services to society.

Figure 4.1 Water Problems Countered by IICB and PDAM Jaya



Source: IICB and PDAM Jaya

The customers have been facing water-related problems such as water quality and price quality whereas IICB and PDAM have countered these matters by PPP and creating policy like price control respectively. The Public Private Partnership (PPP) scheme was introduced to emphasise that the government role still exists. The price of water is still quite high just because of the business cooperated with private companies just started but the government promises will control the affordable price for Jakarta residents.

From the human resources perspective, the Indonesian Investment Coordinating Board (IICB) views the accumulation of knowledge from the Private Sector as the selling point. Foreign firms have a lot of experience because they have run businesses for hundreds of years, and it is widely believed that the foreign enterprises started before we did. That can be seen as a guarantee of the accumulated knowledge, transfer of know-how, transfer of management, and in the future our human resources will

follow their steps and also have similar professional experience in running state-owned enterprises. This is what the Indonesian Investment Coordinating Board expected.

The Indonesian Investment Coordinating Board (IICB) sees the risk, as if the water services company had already been in the international community, the risk would be the sentiment about the ownership that says that the foreign sector own our public utilities, which is incorrect. As is commonly understood, allowing private companies to run the Jakarta Water Services Company would be based on the concession of the contract. Consequently, everything will revert to the government, both the management and the ownership itself. As can be seen, the image should be made positively because the society has a perspective of selling the ownership of the state-owned enterprise, which is, of course, unacceptable. Water is a vital good, perhaps the government must organise independently without any intervention or role from the private sector because water is fundamental and a sensitive issue. The substance of water refers to the organiser, the standardisation, such as high quality, potable, drinking water; these are the things that should be of concern, because the water that foreign people consume is the same as that of our citizens.

“The price may be higher but the complaints are less.” (Maimunah)¹⁷⁰

Maimunah sees that privatisation of the Jakarta Water Services Company led to an increase in the water bill. It is believed that when the water services company is cooperating with the private sector, the price of water is higher than when the local government runs the enterprise.

“The benefit of this privatisation is reducing the previous weak points and targets while improving professionalism of company service. In addition, the risk is non-existent as long as the rules and policies of privatisation still support the nation and society.” (Erika)¹⁷¹

¹⁷⁰ Maimunah is the customer of PDAM Jaya in the interview with the author, 20 November 2012.

¹⁷¹ Erika is the customer of PDAM Jaya in the interview with the author, 20 November 2012

Erika found that even though the cost of water usage is more than previously, the complaints are high. The risk will be none if regulations and policies support the nation and society.

“There is no benefit at all, but the risk is big, which is that the profit that has been earned will be delivered abroad by the foreign enterprise without giving any profits for the regional government.” (Riyan Hidayat)¹⁷²

Riyan Hidayat is afraid that the profit obtained from this water services company will be delivered to the countries of origin of the private companies without being shared equally with the local government.

“The benefit of this privatisation is that the PDAM Jaya services will become better because the management is done by one side. Furthermore, fulfilling the customer needs for water consumption should be well-managed. The risk from this privatisation, in my opinion, is whether the service given to customers will improve over time. (Feriyanti)¹⁷³

Feriyanti thinks that the benefit that can be approached from the privatisation is the improvement in professionalism, both the services and the enterprises. It is hoped that these improvements might lead to a new system, which has a higher quality of administration. Another benefit from this cooperation is that the services of the Jakarta Water Services Company will be more transparent because the management is administered by several institutions. In addition, the consumers' need for water will be fulfilled appropriately. The other benefit is that the administration will be properly organised, more efficient and the goals are more to the target because the monitoring that is being done should meet the management policy as the terms and conditions.

The benefit of the privatisation of PDAM is from the management perspective will be more to target and efficient because the operation should be based on the management policies. The administration can be focus more on the achievements of the target. The risk of this privatisation of PDAM is monopoly practices which in fact wouldn't be worth it for long period, because water is the

¹⁷² Riyan Hidayat is the customer of PDAM Jaya in the interview with the author, 20 November 2012.

¹⁷³ Feriyanti is the customer of PDAM Jaya in the interview with the author, 20 November 2012.

asset or the basic need for now on and for the future will be a luxurious good. It is possible to be the target marketing. For instance, to press the government of Jakarta's governor to increase the tariff. (Rasminto)¹⁷⁴

Rasminto believes that the risk of privatisation of the Jakarta Water Services Company or PDAM Jaya is monopoly practice, which, in fact, is more harmful to the enterprise for long periods. In fact, water is not only an asset, but also a basic need in both the short and long term. There will be a scarcity of water, at that time, and without a doubt it will be expensive. Thus, the possibility for water to be the target of business in economics is now truly understood. For instance, the policy for the water bill increment was made by local government.

Certainly, from an Islamic perspective, private ownership is allowed but in the hands of the state, not all the means of production, distribution and exchange are entirely regulated. Although the public ownership of various means of production, which are the public utility to the people, is established by Islam, it acknowledges the rights of private ownership as the primary key of the means of production and distribution. Islam, unlike Socialism, allows economic freedom to every person who can earn wealth, have it and enjoy it without restraint within particular limits provided he obeys Islamic teachings in the method of reaching the goals, and obtaining, owning and spending it.¹⁷⁵

Water services companies in Islam belong to a state property rights. It is also essentially a common property, but the right of management is that of the government authority. The private sector is not allowed to take part in administering water services companies. Being associated with the lives of many people, in this case, the water sector belongs to the state. In addition, if the property is then unclaimed or not in the claim of who owns it and its management, it becomes the property of the state. The

¹⁷⁴ Rasminto is the customer of PDAM Jaya in the interview with the author, 20 November 2012.

¹⁷⁵ Chaudry, "Fundamentals Of", 205

government has the right to manage the property because it is a representation of the people's interests. Nevertheless, state property rights can be transferred to the property of the individual if the state policy requires that. The transfer is based on Islamic rules, the use of the results obtained in use for the benefit of the Ummah.

Sheikh ‘Abduraḥmān Al-Baghdadiy¹⁷⁶ has his own perspective on looking at this matter. It is realised that the benefit of this privatisation to the state is to open an opportunity for foreign investors. The shareholdings are a very large amount to permit the private sector to administer. The private companies in Indonesia will take responsibility for the situation any time. The state is, in other words, irresponsible for letting this happen. Giving this responsibility may avoid big cost and energy. This is the fact of the irresponsibility of government. If the state is unable to provide what society needs, it is advisable to let the private sector take over the nation. One thing should be explained here; there is a plenty of water with considerable capacity for public needs. Water can be accommodated in a reservoir, which may be piped to the citizens’ houses, while the production and the cleaning should be well-managed. In the past, the environment was not polluted. The cost of this kind of system cost is inexpensive and chemical treatment is not necessary.

The risk of privatisation is unexpected. In Islam, when people need water, there is no way to avoid it and that is why the wells were created. Those wells were built at disclosed locations in the middle of citizens’ houses to let people obtain water easily. It was not inside the house like today, in the modern world. If water is sold, it is acceptable but in the history of Islam, it was often found that the water was sold. The society used to do good deeds competitively. Doing a charity was a habit and water was not sold, but it was gathered in one place and taken from a *waqf* project. Finally, the risk is *muḍarat* and the government is paralysed when the private sector applies an

¹⁷⁶ Sheikh ‘Abduraḥmān Al-Baghdadiy is a Muslim scholar who was interviewed by the author, November 24, 2012.

increment that may harm the community. Complaints from the consumers, such as the quality of water and broken pipes, should be listened to and the problem should be solved as best as is possible.

Once in the Islamic period, water flowed by the kindness of caliphate Harun Ar-Rashīd's wife. It took a lot of funds from her savings. Even though she is the wife of the caliphate, she herself covered the cost of building the water services network that cost a hundred thousand *dirhām*, which was a very big cost at that time. Since then a good system of water services is no longer available. However, in the modern world where high technology tools are straightforward to obtain, it is convenient to collect water and clean it. Therefore, it is unnecessary for the government to sell the water even if the privatisation should be done, the cooperation and management should be convenient. Today, people lack Islamic knowledge as a result of the influence of capitalism. Thus, society needs to be well-educated in the Islamic way. The fact should follow Islamic principles.

PDAM Jaya sees that the risks are the lack of spring water, the limitation of water distribution, the service area, the numerous complaints of consumers, and the imbalance between the consumers with subsidised tariff and those who are non-subsidised. In addition, PDAM Jaya prefers to elaborate on the benefit, which is the goals that are already set that can make PDAM Jaya an independent enterprise (self-financing) rather than explaining about the risks. IICB views that the benefit of the professionalism that is owned by the private sector may improve PDAM Jaya's performance as a national enterprise while the risk concerns the sentiment that foreign investors own our public utilities, which is incorrect. Society thinks that no risks will harm the citizens if the regulations and policies are created equally and professionally. In Islam, private ownership itself is permitted as long as the state is able to take care of all the means of production.

4.6 Conclusion

The institutions involved in the provision of water to Jakarta are PDAM Jaya as the government sector, IICB as the gate between the public and private sectors in Indonesia, the JWRB as the additional institution to help PDAM Jaya in monitoring the work of all institutions, Palyja and Aetra as the private sector entities that not only cooperate with PDAM Jaya but also provide services to all the Jakarta citizens. In conclusion, privatisation is permissible in Islām. As a public and state property, water is not transferrable but its uses can be. As a matter of fact, the purchase of a well by Othman Ibn Affan in Islamic history is the reason why privatisation is permitted and the contracts in Islam should be fulfilled with Islamic principles because any transactions and businesses are compulsory under shari'ah law. According to the explanation given by Sheikh 'Abdurrahmān, the government sector is forbidden to own the water but it is an obligation for society to benefit from it with the government's support. However, the risk and benefits that occur in the history of PDAM Jaya should be seen as a challenge to be a better company. There are also several developments in the performance of PDAM Jaya but the complaints also need to be considered. Islam allows an Islamic state to own the rights to nationalise particular industries in a country that involve many people's lives like water. It should be protected well and used wisely based on Islamic teachings.

Chapter V

Conclusion and Recommendations

5.1 Conclusion

As one of the most substantial elements that is essential for life itself, water can be seen as a social good in every state from around the world. Water networks have been created to simplify people's life and are of great concern as a basic human right. Water should be taken care of economically with a high scarcity value for certain factors, such as the recent rise in the cost of services and (wasteful water) and rapid urbanization. Fixing the price for water in urban and sewerage systems has resulted in the wasteful utilization, over-usage, and inharmonious environmental consequences, aside from being a heavy drain on public funds. On the other hand, pricing water too high has serious repercussions for equity, health and other unexpected aspects.

Following the historical wave of the state-owned asset sales around the world, privatization is still among the top priorities and has become a global phenomenon. It has been conceptualised in both the narrow and broad senses. Privatization in the narrow sense represents the sale of state-owned enterprises (SOEs) to the private sector. This general definition of privatization has been advocated by the World Bank and International Monetary Fund and it particularly refers to denationalisation, or the sale of state property to the private sector, including the direct sale of the whole and or parts of SOEs to private agents. In the broad sense, it is defined as any shift of activities or the production of goods and services function from the public to the private sector including outsourcing, contracting-out, franchising, privatisation of public finance, liberalization and the sale of state property to the private sector.

Indonesia has been chosen as the object for studying privatisation for several reasons. First, as is commonly understood, the large SOEs have been established for

historical and economic purposes. From the historical point of view, the size, scale and scope of SOEs have grown from time to time since the independence of Indonesia in 1945 and those SOEs have become a central part of the development strategy in this country. From the economic point of view, SOEs also play an important role in several substantial industries, such as electricity, cement, telecommunications, banks and insurance, finance, transport, agriculture, consulting services, construction, energy, aircraft, ships and ports.

Second, Indonesia represents an interesting research context since it is an example of a developing economy in transition. Since the early stages of the independence of Indonesia, SOEs have had objectives in their strategic roles for economic and political development. “Sectors of production which are important and affect the life of the people shall be controlled by the state.” was mandated by the Indonesian constitution. Various reforms of SOEs at times have changed the implementation of the roles of SOEs. Third, privatisation was also given considerable emphasis in the International Monetary Fund post-crisis recovery programme between 1997 and 2003. In this situation, there have been some resultant sales of minority shareholdings to private sector investors. As a consequence, in Indonesia there are some entities that are fully owned by the state and others whose ownership has been partially altered to private sector investors.

Due to the current situation, the water services company had been privatised for sixteen years in 2012. The people in Jakarta are suffering from low services but high prices and also poor quality of water and environmental deterioration. A just and transparent renegotiation of the contract with the private operators has been demanded by society. This should be taken care of by PDAM Jaya because more protests should be expected. With all these protests, rallies and petitions, the message from the citizens of Jakarta has been clear: the water service in Jakarta should be re-municipalised, to

save the water system from financial ruin and the water service from a profit-oriented private sector. Re-municipalisation has been a global trend and international solidarity is needed to protect citizens of the world from a privatised and inaccessible water service.

The water services company in Indonesia has been privatised for sixteen years with the aim of better management and some improvements. In fact, unimproved services, high prices, bad quality of water and environmental deterioration are the complaints given by society. Water services, which play an important role, should be saved from financial ruin and the profit-oriented private sector. Another issue is the increment of water bills in Indonesia, which have steadily increased since the water services were privatised.

In respect of the problems and the objectives of this research, the problems of the study are the risks and benefits of water services privatisation in Indonesia and the Islamic principles on water services ownership, and how to face water services privatisation based on the Islamic economic system. The objectives are to describe the concept of ownership in Islam, to discuss the risks and benefits of water services privatisation in Indonesia, to elaborate upon the Islamic economic principles on the ownership of water from various scholars, and, lastly, to analyse the water services privatisation in Indonesia from an Islamic perspective.

To understand the basis of a water services company in Islam itself, the concept of ownership in respect of a water services company should be described from different perspectives, such as capitalism and socialism for a comparison. The Islamic economic system has its own concepts of the economy including, in this case, ownership. It might also be seen as an alternative and a solution to the economic problems that happen in many countries nowadays where, unfortunately, Islamic principles are not implemented. That is why it is necessary to elaborate upon the views of capitalism, socialism, and

Islam to ensure a high level of understanding to facilitate an equitable comparison between the Islamic economic system and the non-Islamic economic systems pertaining to the ownership of the water services company.

In respect of the perspective of capitalism, it has been explained that this system aims to control the market for commodities to push up prices. Controlling the market is acknowledged as the basis of its intention. Capitalism also covers individual capitalists, partnership, and companies from the uncertainty and variability of markets. As an example, monopolies, oligopolies, cartels, licences, copyrights, and patents, savings and capital accumulations, exchanges, and money, financial self-interests, and the profit motives, the freedoms of economic progresses, and a harmony of the material self-interests of all the individuals. Capitalism is not concerned about whether a water services company is run by the government or private, as long as it gives more benefit, the ownership is not the priority and it is not the main issue to be dealt with in this system. Water, as a very important good, might even be monopolised because, as mentioned, freedom is the nature of this political system on a basis of the cultural influence of reason.

Socialism is the common ownership. It is also a democratic leadership of the social means of production of public goods. State ownership is typical of most economic resources of socialism. In this system, water as a commodity that is very important is compulsorily managed by government. Public companies should be able to administer it as a common good. Private companies are still permitted but not to regulate an essential commodity like water. However, a water services company – which includes water itself as one of its natural resources, its operational administration involving large capital, the organisation of all workers – will definitely be administered by the government. There is no way for private companies to take part in the business of

essential commodities with big capital encompassing many employees. The government has all the authorisation.

In capitalism, people believe in taking control of the market for goods like water. That is the nature of capitalism. Water can even be monopolised as one of the practices of capitalism nowadays while socialism, as has been explained above, is defined as the common ownership, and also a general leadership of the social means of production of the public properties. Public companies must be able to administer water as a common good. Private companies are still permissible but not to regulate substantial commodities like water and other natural riches. In Islam, every person, Muslim or non-Muslim is compelled under Islamic principles to the ownership, asset, easement, and turnover of property, a right which has an honour and is maintained by his fellow beings and also the state. A water services company in Islam is included as among the property rights of a government. It is also fundamentally a general property, but the validity of management is that of the state authority. The private sector is not permitted to participate in managing a water services company. Services involving the lives of many people, in this case, the water sector, belong to the country.

The discussion regarding the ownership of the Jakarta Water Services Company should be considered in relation to its history, which helps picture this phenomenon. Several events that occurred in the past were used as evidence to present this study objectively. At this time, the history of the ownership of PDAM Jaya both before and following privatisation is actually supposed to clarify historical events that are also useful and helpful for this work. Among the things described are the private company profiles of Palyja and Aetra.

Jakarta Water Services Company, known as PDAM Jaya, is a city-owned water operator in Jakarta, Indonesia. To provide water services to the community in Jakarta and to monitor the environment are its aims. In order to protect the environment and

keep it clean and hygienic, it is the responsibility of PDAM Jaya to keep it well-maintained. Several events have occurred since PDAM Jaya began its operational works and management.

The construction of a piped-water supply system was established by the Dutch colonization and after the independence, the service was altered to LGOC, the local state-owned enterprise called “Perusahaan Daerah Air Minum” (PDAM Jaya or PAM Jaya). In 1960, PDAM Jaya faced inability as the management company, and, in the end, the installation of piped-water supply network was done by the Dutch colonization and after independence, the service was shifted to LGOC, the local government owned company, or known as *Perusahaan Daerah Air Minum* (PDAM Jaya or PAM Jaya). The “New Order” *Orde Baru* was officially implemented in 1965 as a new political concept in the middle of the chaos that happened along with the rise of the anti-communist regime, President Suharto. This New Order regime made new municipal water supply management goals. Finally in 1968, a regional water supply company known as PAM Jaya was firmly established.

In the history of Jakarta Water Services Company, the formal water system, was privatised, and the management changed from PDAM Jaya as the state-owned enterprise in 1998 to two private companies, Thames Water Overseas and Suez Lyonnaise des Eaux, Ondeo. The Jakarta water system was then divided into two service areas; the western sector was operated by Ondeo, through the locally established enterprise PAM Lyonnaise Jaya (Palyja) and the eastern sector was operated by RWE Thames through PT. Thames PAM Jaya (TPJ). The boundary between the western and eastern sector is the Ciliwung River. At the same time, the idea of privatisation of public services was introduced by the World Bank, as a *Public Private Partnership* (PPP). In 1998, the idea was taken up in Indonesia, and its application resulted in an agreement

between the Jakarta Government – through PDAM Jaya – with two private investors: Thames in the UK and Suez of France together with their local partners.

Before July 2006, the ownership of the private water supplier company was Suez Environment (majority) and PT. Kekar Pola and PT. Bangun Tjipta Sarana. After July 2006, the ownership was Suez Environment (having majority holdings), PT Astratel Nusantara (Astra International subsidiary, of which Jardine Fleming is one of the majority), and Citigroup Financial Products. In 2011, Astratel requisitioned Citigroup share. In the eastern area, prior to 2007 the concessionaire was PT Thames PAM Jaya (“TPJ”), owned by Thames UK with the majority shares and PT. Tera Meta Phora. In 2007, Acuatico Pte. Ltd (majority, 95%) and PT. Alberta Utilities (5%), requisitioned the company, and the name of TPJ was changed into Aetra Air Jakarta or in short Aetra. The Aquatico was officially possessed by the Indonesian financial institution. In 2011, Acuatico resold its shares to a Philippines-based company with little publicity.

In the new governance, Jakarta Water Regulatory Body (JWRB) is integrated as an oversight body in the provision of water to Jakarta. The authority is given by Jakarta Authority to JWRB. Jakarta Water Regulatory Body will monitor all institutions and transactions that have been done between the institution and the customer. However, there are two other additional institutions that come from the foreign sector in order to help the Jakarta Water Services Company. The foreign sectors are Palyja and Aetra. PT PAM Lyonnaise Jaya (Palyja) has been present in Jakarta to enhance the quality of clean water provision and services to the Jakarta people in the western area while PT Aetra Air Jakarta (Aetra) is in charge of the eastern area. The Ciliwung River is used as the border for operational areas. Both institutions have responsibilities to manage, operate and maintain the Jakarta Water Services Company.

The ownership of the Jakarta Water Services Company has been explored from several perspectives. The first view comes with the understanding that PDAM Jaya is considered as public sector. PDAM Jaya itself has clearly stated that it is run by the government. That is why the ownership is officially possessed by Jakarta government. The second one considers PDAM Jaya from two perspectives. First, PDAM Jaya is public sector with help from private cooperation so it is now owned and managed by local government and cooperates with the private sector. Second, PDAM Jaya is one of the state owned enterprises that is possessed by the local government of *Daerah Khusus Ibukota* (DKI) Jakarta in which the management and supervision are officially owned by the local government. However, the third view comes with the understanding that the ownership of the Jakarta Water Services Company is considered as private sector. In other words, it is believed that the ownership of PDAM Jaya has been changed from the government sector to private sector, which are Palyja and Aetra.

As is commonly understood, Islām has the concept of ownership where everything is actually owned by Allāh. Allāh is the Creator-Owner and Lord Sovereign of all creatures in the Hereafter and earth alike, for example, water, which is for the common use and benefit of the society. In addition, people, as the ones who have the responsibility for their property, are compelled to maintain them from any harmful actions. In conclusion, the privatisation of PDAM is allowed in Islam. As has been mentioned above, water is a state property and being a public property is not transferable albeit its uses are permissible. As a matter of fact, Uthmān Ibn ‘Affān had bought the well as a source of water but then he decided to give it to the public and Allāh the Almighty granted him that he will be an inhabitant of the paradise.

Islām has contracts for any activities and transactions made, which should all be strictly in accordance with shariah law. It is permitted for water itself to be sold but it has certain limits and a company is forbidden to own as is a private company or sector

because water is a basic need for human beings and an obligation for the society or government to provide. Even foreign companies may take advantage from it when needed. However, privatisation is also required to solve the problem by renting the high technology tools and infrastructure or hiring qualified human resources from other states for the people.

Ultimately, Allāh as the Creator of all creatures encourages people to benefit from everything and Islām focuses on the moral responsibility of all wealth for the society and also the protection of water itself. The rights to nationalise essential sectors – which involve a lot of people’s lives like water – are owned by an Islamic state. Water should also be protected from any harm and damage caused by pollution or waste and should be used conscientiously. The state also has the right to administer the property because it is a representation of the people’s interests. Nevertheless, the nation’s property rights can be transferred to the property of the individual or private company when needed and should be supported by government policies, in addition, the transfer must be based on Islamic rules.

5.2 Recommendations

Water is one of the most substantial elements on earth. All of the people, plants, animals and other creatures must have water to stay alive. If there was no water, there would be no life in this world. Apart from drinking it, there are many other uses – cooking, washing things, keeping houses and society clean, swimming, keeping plants and animals alive and also watering gardens and parks. Water is also essential for the manufacture of products and the growth of farm crops and farm stock. Water that is produced by the Jakarta Water Services Company is not potable water. Unfortunately, people cannot use it for drinking since it is not potable, and, therefore, not safe to consume. It is important that the water which people consume for any purposes is clean

water. The water must be clear (not cloudy) and free of any bacteria or chemicals that may harm people. People might get diseases if they consume contaminated or polluted water.

The Jakarta Water Service Company should pay attention to the quality of the water. There are millions people who drink water in Jakarta every day. It is a tremendous responsibility to take care of water because it involves many people's lives. Disease-causing germs and chemicals can get into water supplies in their own way and when this happens, the water is no longer clean to consume. In the history of epidemics caused by water, it is known that there have been many incidents when thousands of people have died because disease-causing germs have spread through society by a contaminated water supply. This can be stopped by every water services company, including PDAM Jaya, which operates in *Daerah Khusus Ibukota* (DKI) Jakarta, Indonesia, by providing potable water. Water should be routinely checked to make sure that it is neither polluted nor contaminated. This is one of the actions of water treatment.

Regarding the privatisation scheme, it is recommended that the government take care of the policies that have been agreed between the two parties. In addition, there are many ways to solve the problem of the water needs for the community for Jakarta government, such as renting the high technology tools and infrastructure from developed countries that have been successful in fulfilling the need for water of its society. Another way is to hire highly qualified human resources from other countries and acquire the technical knowledge, such as how to distribute the water or management systems like administration from others. PDAM Jaya can also create an exchange programme for its officers. PDAM Jaya officers may learn how to make a water system that works well with a great system, while other countries may learn how to solve PDAM Jaya's problem in giving services to the people of Jakarta. However, the

government should have the responsibility to provide good water for consumption that is free of bacteria or any chemical that may harm society.

The privatisation is an open opportunity for foreign investors. It can be inferred that there might be risk because the shareholding covers a very big amount and the Indonesian government lets the private sector manage it. The private sector, which is responsible in this matter will, therefore, have a bargaining position since water is one of the most important elements in our life. The water itself should be made available for people to enjoy at any time and piped directly to the homes of the citizens, but with certain limits created by the government through particular policies. In this case, when people in Jakarta need water, there is no way to avoid it and this is why the wells were created in the past. Those wells were built in open places in strategic locations in the middle of citizens' houses to let them take the water conveniently. The water is being sold today and even though there are some wells, they are created inside the house so it is not accessible for people from outside. When the private sector applies an increment that may harm the society, the government seems paralysed and the complaints from consumers, such as the quality of water and cases of broken pipe and other complaints should be noted and taken care of properly as best as the government is able. However, if there is no other choice for the government to avoid foreign roles, at least the policies that have been agreed should be observed and monitored.

Nowadays, in the modern world, where high technology tools are easy to find, it is convenient to gather clean water for community service. It is recommended that the government provides clean water for travellers or for society itself to let them drink when they need it. In this case, for PDAM Jaya, the private sector may take our natural resources, such as oil or sea resources, for example, or anything else, and in return provide water services free of charge – both the management and the administration. There are many ways to provide the needs of Indonesian citizens rather than charging

them since Indonesia is rich in natural resources. It is believed that if Indonesia really pays attention to all the natural resources from the production until distribution, there would be no charge for basic needs such as water, electricity, gas or any other important natural resources.

In Islām, water service companies belong to the state property rights. It is also fundamentally a common property, but the right of administration and management is that of the state authority. The private sector, by any means, is not allowed to participate in the making of the policy of water services company. As is commonly understood, the water sector is associated with the lives of a lot of people; accordingly, the water sector must belong to the government. In addition, if there is any unclaimed property or not in the claim that possesses it and the management, it can be concluded that the property goes to the government.

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Feriyanto, (Customer PDAM) Personal communication, 20 November 2013. 13:00. East Jakarta.

Hartuti Kartika Sriwardhani, (Manager of System and Technology Development PDAM), Personal communication, 18 November 2012. 13:00. Central Jakarta.

Maimunah, (Customer PDAM) Personal communication, 20 November 2013. 12:00. North Jakarta.

Rasminto, (Customer PDAM) Personal communication, 20 November 2013. 10:00. West Jakarta.

Riyan Hidayat, (Customer PDAM) Personal communication, 20 November 2013. 16:00. Central Jakarta.

Syeikh ‘Abdurrahmān al-Baghdadiy, (Muslim Scholar) Personal communication, 24 November 2012. 19:00. Bogor

Tamba P. Hutapea, (Head Division of IICB for Plan and Investment), 18 November 2012. 13:00. South Jakarta