Participation of a Foreign Investor for Supplying a Clean Water of Deli Serdang Regency of North Sumatera Province (Case Study: PT. Tirta Sumut, a Joint Venture Company)

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Abstract

The regional government of Deli Serdang enhances a chance to foreign investors to invest in clean water sector. It is adjusted to the Laws No. 25 of 2007 regarding Investment, providing a chance, protection (assurance) and legality for any foreign investors of joint venture company in clean water sector of Deli Serdang Regency. One of the interesting foreign investors is Water Fund Holland BV partnered with PDAM Tirtanadi of North Sumatra Province by establishing a joint venture named PT. Tirta Sumut producing clean water at Sei Ular Water Treatment Plant in capacity of 120 liters/second. The present study intends to find know the implementation of corporation partnership and how PT. Tirta Sumut commit to complete the main task of managing, operating and maintaining all the existing production systems at Sei Ular Water Treatment Plant (WTP) for 15 (fifteen) years. The method used in the study was a descriptive analysis intended to describe the problems and facts related to the implementation of such a joint venture. The collected data included primary and secondary ones. The data collection method used a field study by interview for collecting the primary data and library study for collecting the secondary data. The collected data were then analyzed descriptively. Based on the result of the study, it can be concluded that the implementation of such a company partnership between WFH BV and PDAM Tirtanadi for establishment of such a joint venture was successfully carried out and the produced clean water has been distributed to the regional customers of Lubuk Pakam by PDAM Tirtanadi Branch of Deli Serdang.

Keywords: foreign investors, joint venture, clean water.

Introduction

Water Fund Holland (WFH BV) is a private corporate of Dutch engaged in investment and treatment of clean water particularly for the municipal community of developing countries. The foreign investor of Dutch made a joint venture with PDAM Tirtanadi of North Sumatra Province by establishing PT. Tirta Sumut in 2002 based on the establishment decree No. 1 dated 27 November of 2002 by a Notary Masnur Sidabutar, SH. The joint venture with the composition of shareholding of WFH (51%) compared to that of PDAM Tirtanadi as of 49%. PT. Tirta Sumut is
located in Lubuk Pakam of Deli Serdang regency engaged in the main operational activity of Water Treatment Plant (WTP) of Sei Ular in capacity of 120 liters/second for producing and supplying the clean water of the customers of PDAM Tirtanadi in Lubuk Pakam and the surroundings in a REOT (Rehabilitation, Extension, Operation and Transfer) contract for 15 years since 1 October of 2005 ago. After completed the duration of 15 years, all the assets managed by PT. Tirta Sumut at the WTP Sei Ular would be return to PDAM Tirtanadi. The implementation of WTP Sei Ular by PT. Tirta Sumut was based on the joint venture contract with PDAM Tirtanadi No.07/SPJN/DIR/2002 and No.01/PK/TS/0201/2002 dated 28 November of 2002 approved by the Governor of North Sumatra Province

The participation of such a foreign investor was due to the chance offered by the Regencies Government of Deli Serdang according to the Laws No. 25 of 2007 regarding the investment that offered chance, protection (assurance) and legality for the foreign investor, namely a corporate joint venture in clean water sector of Lubuk Pakam of Deli Serdang Regency. Therefore, it is the foundation of the present study entitled Participation of Foreign Investor in supplying a clean water of Deli Serdang Regency of North Sumatra Province (a case study of corporate joint venture of PT. Tirta Sumut).

Theoretical Review

*Foreign investor* is meant to be an individual foreign or corporate that makes an investment in all the regions of Indonesia. In the Laws No.25 of 2007 regarding Investment, it is stated that investment is any form of investment, either by domestic or foreign investors to engage in business in all the regions of Indonesia. Considering the significant role that the investment played on the national economy, the developed and developing countries made effort optimally to make investment. In other side, viewed in term of investor, the chance of market in globalization made a larger investment in various countries. The objective has been obvious to find the profit, whereas the invested country expected the participation of investment in the national development.

Joint ventures are jointly owned businesses by two (or more) independent companies that perform their functions separately in all other aspects but incorporate all resources in one particular activity. From an economic point of view a joint venture is an agreement between two or more parties to engage in an activity. Often a joint venture is made when the companies go through complementary technology to create goods or services that will reinforce each other's position. (Hartono, Sunaryati, 1972). This joint venture is a permanent joint venture, which is a joint venture of foreign capital owners and owners of national capital that establishes a new legal entity. In this research, the new legal entity is PT. Tirta Sumut.

The Clean Water Sector, according to the government is one of the sectors that is part of the 2015 Millennium Development Goals (MDGs 2015) development goals through the development of facilities and clean water infrastructure to halve the proportion of the population without safe and sustainable access to clean water covering piped water supply and no piped from raw water sources, processing buildings, conduits to the community, including management / processing of the system as a whole (Minister of Public Work Regulation No.18 / PRT / M / 2007). The water produced by PT. Tirta Sumut is then supplied / sold to PDAM Tirtanadi Branch of Lubuk Pakam. The capacity of water production at WTP Sei Ular PT. Tirta Sumut is of 120 liters / second.

What is meant by the clean water is that used to daily life with a certain health quality but it can be drunk as cooking (Hadi Siswanto, 2003).
What it is meant that drinking water is that processed with or processed that meet health requirements and can be directly drunk (Permenkes No.492 / Menkes / Per / IV / 2010).

Lubuk Pakam is a capital of Deli Serdang Regency which is the location of the study, with the total area of 31.19 km² and the total of population 91,981 inhabitants (in 2015) has 7 Kelurahan. The total population of Lubuk Pakam who has enjoyed the clean water service from the piping system is of approximately 6.5%.

**Method of Study**

It is a descriptive research intended to describe a state or phenomenon as it is. It is a descriptive study on the problems or the current facts found related to implementation of the joint venture activity of foreign investors Water Fund Holland (WFH) BV with PDAM Tirtanadi. The descriptive study can use a quantitative approach, qualitative approach and qualitative narrative description. The data included primary and secondary data obtained from PT. Tirta Sumut and of the literature study. The data included 2016 data collected by interview technique.

The study was carried out in January 2017, focusing on the description of the increase in capacity of the water production along with the quality and continuity of WTP Sei Ular Lubuk Pakam production and the effort to serve the community or local customers particularly of Lubuk Pakam of Deli Serdang Regency then also coverage the management, operation and maintenance of all the existing production systems of WTP Sei Ular Lubuk Pakam for 15 years (five teen years since the operational time of 1 October 2005 based on a contract with PDAM Tirtanadi No.07/ SPJN/DIR/02 and No.01/PK/TS/02-01/2002.

**Results**

Public-Private partnership cooperation between PDAM Tirtanadi and Water Fund Holland (WFH) BV can be seen in Figure 1 below:

**Figure 1.** Government and private partnership between PDAM Tirtanadi and Water Fund Holland BV.
The main task of PT. Tirta Sumut is managing, operating and maintaining all the existing production systems at WTP Sei Ular for 15 (fifteen) years since its operation on October 1, 2005 under the Cooperation Agreement with PDAM Tirtanadi No.07 / SPJN / DIR / 02 and No.01 / PK / TS / 02-01 / 2002. Processing raw water and supplying clean water in bulk water form to PDAM Tirtanadi Deli Serdang Branch (Lubuk Pakam and Perbaungan) with the quality fulfilling the requirements in accordance with the provisions (Decree of the Minister of Health No.907 / Menkes / SK / VII / 2002) in an average production amount of 120 liters / second.

The selling price is based on the contract with PDAM Tirtanadi No.07 / SPJN / DIR / 02 and No.01 / PK / TS / 02-01 / 2002. It is calculated based on the formula containing:

a). Fixed operation cost.
b) Fixed Operating Expenses
c). Volumetric Rate

The selling price of water is determined significantly by some factors;

a). Price index level of consumer
b) The market price of chemicals and basic electricity tariffs.
c). Fluctuation of clean water production

The cooperation is carried out with PWN (Water Company of North Holland) in the form of Twinning Program between PT. Tirta Sumut, PWN and Tirtanadi PDAM and Twinning South-South Exchange PWN, PT. Tirta Sumut, Tirtanadi PDAM and Tirta Siak PDAM Pekanbaru fully supported by VNG International:

1. The application of the best operating Practice in production (processing and laboratory).
2. The assistance of capacity building in improving the performance of Plant.
3. Assistance of work equipment in improving the Plant work.
4. Supported by PWN as a facilitator.
5. Technical visit for employees of PT. Tirta Sumut in PWN Netherlands.
6. Capacity building between PDAM Tirta Siak Pekanbaru with PDAM Tirtanadi and PT. Tirta Sumut.

In the Contract of Cooperation Agreement No.07 / SPJN / DIR / 02 and No.01 / PK / TS / XI / 02-01 / 2002, it is stated that the legal aspects of the agreement are as follows:

The "applicable law" in the agreement shall be the Law of all matters which have the force of law in the Republic of Indonesia, which may be issued and enforced at any time including the decree of the President or Government of the Republic of Indonesia.

That agreement is above and interpreted in accordance with the law of the Republic of Indonesia. The parties to the contract disclaim any matter contained in the provisions of Clause 1266 of the Civil Code relating to the Agreement while releasing the right is required to cancel this agreement as well as the judicial approval and to claim any damages in accordance with the agreement;

"Legal Amendments" means any form of change, deletion, amendment or addition to the applicable Law (including the Tax Law), official regulations, guidelines, licenses or guidelines of government authority (whether or not possessing a legal force shall be adhered to and which are generally exercised by persons in the same situation), any amendments to the adjustment, enforcement or exercise of any
such proceedings issued by a court, tribunal, or other competent authority or PDAM;

The Uncitral rules means the provisions of resolution 31/98 approved by the General Council of the United Nations on 15 December 1975 under the heading" Arbitration Rules of the United Nations Commission in International Trade Law "including amendments or modifications to those rules;

In order to ensure the implementation of the partnership runs well within the planned timeframe, there are several clauses which can be used as collateral for the investor (in this case Water Fund Holland BV) as described below:

1. Risk Allocation
   PT. Tirta Sumut as the operator / operator of WTP Sei Ular is guaranteed in the form of water treatment risk management factor of 2% of total electricity, chemical and raw water cost calculated in monthly water price formula. This risk factor is intended to cover the possibility of production failure in quality and quantity caused by PLN's electricity supply. This risk allocation is an operational guarantee to the WTP operator.

2. Guarantee Return on investment
   Structure of the calculation of the price of clean water produced by PT. Tirta Sumat at WTP Sei Ular, among others, is the price component to cover the investment cost (Fixed Investment Cost) which has been realized during the implementation of rehabilitation project and uprating of WTP Sei Ular from 80 liter / second to 120 liter / second conducted by PT. Tirta Sumut with the approval of PDAM Tirtanadi. With the imposition of such investment cost components and payment commitments according to the agreed formula of calculation as well as timely payment, will guarantee the return on investment that has been issued by the investor company.

3. Monthly Payment Guarantee
   PDAM Tirtanadi will receive invoice from PT. Tirta Sumut as a WTP operator every month for 5 (five) days after the end of each month. PDAM Tirtanadi must pay to PT. Tirta Sumut worth the intended bill no later than 14 days after receipt of the invoice. As a guarantee for PT. Tirta Sumut, declared in the agreement a delay of 8% per annum for repayments that have matured but not done before the deadline. Interest will be calculated on a daily basis and combined with the remaining monthly interest from the due date until the amount is fully earned by the recipient. The imposition of such delay is to ensure that PDAM Tirtanadi will pay the bill in a timely manner to PT. Tirta Sumut, where the bill is in the form of the costs required to produce clean water according to the applicable standards.

4. Assurance of Material Supply
   From the provision of raw materials in the form of water to be processed at WTP Sei Ular, it has been arranged and stated in the contract agreement that the PDAM Tirtanadi will ensure the availability of raw water including water resources protection through the government of North Sumatra Province. In addition, PDAM Tirtanadi will cooperate with authorized government officials to ensure that the quality of raw water will be adequate for water preparation / treatment.

5. Legal Assurance Guarantee
   Contract of cooperation agreement between WFH through PT. Tirta Sumut with PDAM Tirtanadi regulating the existence of legal certainty regarding the
implementation of cooperation for 15 (fifteen) years has been approved by the Governor of North Sumatra. As it is known that the period of cooperation between PT. Tirta Sumut with PDAM Tirtanadi is effective from October 2005 to October 2020 to come. Before the implementation of such cooperation, PDAM Tirtanadi has conducted joint operation with PDAM Tirta Deli Serdang Regency since July 17, 1999 s / d July 17, 2024. Therefore, it is expected before the joint operation is completed, the cooperation between PT. Tirta Sumut with PDAM Tirtanadi has been completed before if there is no agreement to continue the cooperation. On the other hand, it will behave differently if it turns out that the joint operation expires before the planned period (25 years), it will result in the end of cooperation between PT. Tirta Sumut with PDAM Tirtanadi.

With the end of cooperation between PT. Tirta Sumut with PDAM Tirtanadi before the planned period (15 years) and PT. Tirta Sumut will not get its investment return through monthly payment from PDAM Tirtanadi. Therefore, the contract of agreement governs if this happens then it becomes the liability of PDAM Tirtanadi to be able to make payments on the remaining value of unpaid investments through monthly payments. Payment is made at once to PT. Tirta Sumut. The quantitative data in the year 2016 obtained are as follows:
- Installed production capacity = 120 liter / second.
- Production capacity used = 145 liter / second.
- Average selling price of water to PDAM Tirtanadi Rp. 1.650 / m3.
- Average cost of water = Rp. 1.500 / m3.
- Average sale of clean water = 325,000 m3 / month.
- Amount of investment WFH and PDAM Tirtanadi of Rp. 8.5 billion.
- Amount of PT. Tirta Sumut employees of 15 persons

**Conclusion**

The Foreign investor of Dutch Water Fund Holland BV in partnership with PDAM Tirtanadi North Sumatra Province by establishing joint venture PT. Tirta Sumut with total investment of Rp. 8.5 billion, of which 51% WFHBV shares and 49% of PDAM Tirtanadi's shares have been able to increase production capacity from 80 liters / second to 120 liters / second. Even in the realization of mutual agreement can be uprated production capacity to 145 liters / second. Thus PT. Tirta Sumut can increase the supply of clean water to residents of Lubuk Pakam and Penyabungan which is channeled through PDAM Deli Serdang Branch. Service coverage increased from + 6.5% to + 11.8%.

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And then PT. Tirta Sumut got profit due to the average selling price of water to PDAM Tirtanadi Deli Serdang Branch (Rp 1650 / m3) was higher than the average basic cost of water (Rp 1,500 / m3), so that it could cover the operational cost. The profit obtained by PT. Tirta Sumut could make a gradual return on investment in accordance with the predetermined obligation.
PDAM Tirtanadi also benefited due to the clean water purchased from PT. Tirta Sumut (an average of Rp 1,650 / m³) can be resold on the purchase price. Besides, PDAM Tirtanadi can pay a routine obligation every month.

Both investors of foreign and domestic investors have a high commitment to comply with the provisions stipulated in the cooperation agreement No.07 / SPJN / DIR / 2002 and No.1 / PK / TS / 02-01 / 2002 dated November 28, 2002 approved by the Governor of North Sumatra, by which it can be concluded that the implementation of clean water supply cooperation by establishing a joint venture company PT. Tirta Sumut has been carried out successfully and the produced water can be distributed to the local customers of Lubuk Pakam City by PDAM Tirtanadi Deli Serdang Branch.

References
Undang-Undang No.25 Tahun 2007 tentang Penanaman Modal.