

## PRIVATIZATION OF NATIONAL ELECTRIC COMPANY

**Kurnia Indawati**

Master's Program in Legal and Development Science, Universtas Airlangga, Surabaya

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**ABSTRACT:** *Electricity is one branch of production that is important for the livelihood of the people and controlled by the state and used for the benefit and welfare of the people in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia. However, the emergence of problem of electricity in Indonesia related to privatization becomes controversial because it will affect the increase in electricity tariffs that will be a burden for the country and even the people. In this paper discuss about the privatization of national electricity companies in terms of elements of the law on electricity. Electrification privatization is caused by the influence of foreign parties who seek to profit from the national electricity that should be controlled by the state. Structure in electrification are parties having authority in making electricity policy at central and regional level. While the substance of the law in electricity is all regulations and policies that regulate the electricity. The legal culture in the electricity industry is matters related to the way officials or officials concerned implement the provisions and policies as regulated in the law of the electricity sector and how the businessmen in the electricity sector understand, obey and implement the provisions and policies in the field electrification.*

**KEYWORDS:** Electricity, Privatization, Legal Structure

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## INTRODUCTION

### Preliminary

In simple terms Article 33 of the 1945 Constitution means that the state must take care of what is contained within itself including safety, economic resilience and state property of certain group or personal domination, and control of important production branches including public facilities whose benefits are used for the benefit and welfare of the people. Therefore, as long as Article 33 of the 1945 Constitution is still listed in the constitution, so long as the government's involvement in managing the Indonesian economy is still needed. Mastery for production branches that are important for the livelihood of the people remain controlled by the state. [1] Power here in the broadest sense is the power in control, control, regulation and management.

In line with this, one of the important branches of production is electricity. It can't be denied, electricity today is a very important and difficult need to be separated from people's lives. Therefore, the supply of electricity that is good, affordable and evenly is the obligation and responsibility of the state in order to achieve the economic and social goals for the prosperity of the people.

However, the condition of electricity in Indonesia indicates there is an imbalance between *supply* and *demand*, the ability to PLN meet market needs with the huge demand of the market itself. As a result, many people do not enjoy electricity perfectly

yet, as seen in data showing electronics numbers in Indonesia of 58%. Therefore, the electricity sector in Indonesia must be restructured. [1]

Electricity needs in Indonesia each year increase in accordance with the national economic growth. But in reality so many problems occur in the management of the national electricity system. Those problems include the higher cost of electricity production than the electricity selling price, the uncertainty of the supply of primary energy sources, especially the supply of natural gas, the presence of fuel-fueled power stations as primary energy sources, and the geographical conditions of Indonesia consisting of many islands making it difficult transmission and distribution of electrical energy. [1]

The growth of demand for such electricity high making the issue of electricity supply by parties other than State Electricity Company (PLN) becomes very important. In other words, the role of the private sector is needed to participate in the supply of energy electricity in addition to PLN as one of the implementing activities power supply business in Indonesia. Of course things this is expected to be done without harming the interests the broader community especially in terms of setting tariffs can be placed on society in accordance with the ability economic and income levels. On the other hand, there are still many parties who question the participation of private parties in the business in the field of electricity. This is understandable considering the electricity is one of the *public goods* whose control by Article 33 The 1945 Constitution lies with the state as it concerns interests of the people. Among them it is argued that electricity is a vital commodity to boost and stimulate the economy as a whole, hence production, distribution, and electric transmission is not allowed to private. [1]

Begins from the various electrical problems that exist related to privatization, then there are many pros and cons on national electric vatization priat. Therefore, this paper will discuss theprivatization of the national power company in terms of legal elements of electricity offered are.

## **The Problem**

1. What is the history of the process of establishing the Electricity Law?
2. What are the elements of law in the Electricity?

## **DISCUSSION**

### **History and Establishment of Electricity Law**

At the time of the Dutch East Indies for the field of electricity applicable law is Ordonantie no. 190 of 1890 and has undergone several changes and the last with Ordonantie dated February 8, 1934 (Staatsblad year 1934 63) . For the field of electricity since the Dutch East Indies, the period of Japanese occupation even in the period of independence still apply the electrical regulations in the Dutch East Indies. New changes made since the issuance of Law no. 15 of 1985 on Electricity [1].

The monetary crisis in Indonesia that occurred in 1997 had a broad impact on the national economy, which resulted in the end of Soeharto's government in 1998 and entered the reform period. Several important situations are changing, involving changes in the strategic environment, among others, the spirit of regional autonomy, globalization, human rights,

intellectual property rights, democratization and the environment. These changes are anticipated by the Government in various policies. In the field of legislation, for the field of electricity issued Law no. 20 of 2002 on Electricity, replacing the Act No.15 Year 1985. In testing of Law no. 20 of 2002, the Constitutional Court provides a ruling that this law is contradictory to the 1945 Constitution and is declared null and void; therefore Law no. 15 of 1985 was declared to be valid again, and the Government was asked to submit a new draft of electricity law. So that now apply Law no. 30 Year 2009 on Electricity [1].

The making of the law can't be released from the demands of democracy and the development of the global economy. In fact many product laws are created as part of the assistance program provided by IMF, World Bank, or other multilateral assistance [1]. The three US-based agencies are the most government consultants in drafting 72 laws that the National Intelligence Agency (BIN) allegedly infiltrated foreign interests. The three institutions are the World Bank, the International Monetary Fund (IMF), and the United States Agency for International Development (USAID). [2]

Under the auspices of the *Washington Consensus*, the IMF, together with the World Bank and ADB, drafted a series of reform programs such as energy and power sector reform, water resources sector reform, estate crops and forestry reform, mineral resource sector reform, and so on. Together with other donors, IMF to intervene in the process of economic and political decision-making, including legislation, on the pretext necessity of Indonesia to maintain economic stability to support market confidence. The political history of Indonesian law then traced the birth of a number of legal products 'liberal' trillionth as Law No. 22 of 2001 on Oil and Gas (Oil and Gas), Law No. 20 Year 2002 on Electricity, the Law No. 19 of 2003 on State Enterprises, Law No. 7 of 2004 on Water Resources (SDA), Law No. 19 of 2004 on Stipulation of Perpu No. 1 of 2004 on amendment to Law No. 41 of 1999 on Forestry into Law No. 18 of 2004 on Plantations and Law No. 25 Year 2007 on Investment (PM Law). [2]

Fever liberalization manifest in product legislation in Indonesia is from implementation of neoliberal economic agenda that has started since middle of 90s, among others through a package of liberalization, deregulation and de-bureaucratization. However, its massive implementation has found its momentum after Indonesia has been hit by a severe economic crisis and has invited institutions such as the IMF to restore the national economy. As a condition for disbursement and loan, the Indonesian government required to implement structural adjustment programs (structural adjustment program) through signing Letter of Intent (L o I), which is one of the points of the agreement is the liberalization of governance of strategic sectors in the field of natural resources. [2]

Why is the IMF involved? There are only two simple answers, first since the time of President Soekarno, precisely on February 21, 1967, Indonesia became a member of the IMF. Second, in times of crisis only one thing is needed to restore international trust. Through the IMF, which consists of 183 countries, the trust will be achieved again. The beliefs that make Indonesia obedient to all IMF advice, one of which is the privatization of a number of public assets. This privatization process is not only in line with the swift criticism of management but also the easiest way to earn money. In Soeharto's terms then 'if we can't get help from other countries, we can sell 160 state-owned enterprises to pay off foreign debt'. Enthusiastically Tanri Abeng who was then Minister of "BUMN" announced the government's plan to sell 12 companies countries to get Rp 15 trillion [1]. This privatization then gradually spread to sectors directly related to the livelihood of the people, such as electricity.

So we can see that the intervention of foreign parties in the national electricity is still very large. They are involved as consultants, by lending the government to programs in the fields of politics, economics, education, health and people's welfare. Hence, they can infiltrate foreign interests in the drafting of laws in these fields, especially in the field of electricity.

## **Legal Elements**

### **a. Legal Structure**

The legal structure in electricity is the parties related to the implementation of the regulation concerning the electricity, including the supervision, the executor, and the institution having authority in making the policy on electricity. Structure in electricity is Ministry of ESDM, Director General of Electricity, PT PLN Persero (Perusahaan Listrik Negara Persero), and Central and Regional Government which have authority in making electricity policy in central and regional.

The Ministry of ESDM authorizes the Directorate General of Electricity and Energy Utilization to realize a sustainable and environmentally sound electricity industry through the utilization of optimal energy resources, universal service with high quality, reliable, so as to provide maximum benefits for the welfare of the people. Realization of efficient, clean, reliable, and affordable energy supply and utilization within the framework of sustainable development. Directorate General of Electricity and Energy Utilization has the task of formulating and implementing technical policies and standardization in the field of electricity and energy utilization.

In performing the duties as intended, the Directorate General of Electricity and Energy Utilization performs the functions of:

- 1) Preparation of Ministry's policy formulation in the field of electricity and energy utilization;
- 2) Implementation of energy and electricity utilization policies;
- 3) Preparation of standards, norms, guidance, criteria, and procedures in the field of electricity and energy utilization;
- 4) Provision of technical guidance and evaluation;
- 5) Implementation of administration of Directorate General of Electricity and utilization of Energy.

PT PLN (Persero) is a State Owned Enterprise (BUMN) which is authorized by the Government and assigned solely for the purpose of carrying out electricity supply business for the public interest, and is given the task to carry out electric power business work. PLN has a mission to:

- a) Running the electrical business and other related fields, oriented towards customer satisfaction, company members and shareholders.
- b) Making electricity as a medium to improve the quality of community life.
- c) Keeping electrical power into driving economic activity.

d) Conducting business activities that are environmentally sound.

According to Law Number 30 Year 2009 on Electricity explained that the Central Government, hereinafter referred to as the Government, the President of the Republic of Indonesia which holding power of the government of the Republic of Indonesia as stipulated in the Constitution of the Republic of Indonesia 1945 and the local government is the governor, regent, or mayor, regional apparatus as the organizing element of the Regional Government. Government and local governments in accordance with their authority to set policy, regulation, supervision, and carry out electricity supply business. The central government and regional governments shall undertake electricity supply business which is carried out by state-owned enterprises and regional-owned enterprises.

## b. Substance Law

The substance of the law in electricity is all regulations and policies that regulate electricity, such as:

- Of the 1945 Constitution of the Republic of Indonesia
- Law Number 30 Year 2009 regarding Power,
- Law of the Republic of Indonesia Number 19 Year 2003 on State-Owned Enterprises
- Government Regulation Number 62 Year 2012 concerning Power Supporting Service Business,
- Regulation of the Minister of Energy and Mineral Resources Number 35 Year 2013 on Procedures for Electricity Licensing,

In the 1945 Constitution, article 33 paragraph (2) explained that *c production branches that are important for the state and which affect the livelihood of the people controlled by the state*. Whereas in paragraph (3) it is mentioned that *the Earth and the water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people*.

Interpretation of Article 33 of the 1945 Constitution in several Decisions of the Constitutional Court is very clear, such as the verdict of the Triggering of the Electricity Law completely canceled and the Decision on the Testing of Oil and Gas Law which canceled 5 paragraphs, as opposed to the provisions in Article 33 of the 1945 Constitution. The term of control by state control in Article 33 paragraph (3) of the 1945 Constitution, is not merely a matter of ownership. Ownership is a civil concept, while the mastery is the concept of state governance. In the mastering concept is covered supervision, ownership, management and so forth. It is state policy. The important thing is to determine how the policy regarding technical mastery is dependent to the commodity. Whether a commodity is important to the state or controls the lives of the people or not depends on the conditions, the situation and the development of the times. So it can change. For example oil and gas if someday there is a substitute far more efficient and environmentally friendly oil and gas may not be considered important to the country or no longer affect the livelihood of many people. Next is how to master it. The important thing is the way that does not change the status of master itself. For example



ownership, possession is one form of mastery, but not necessarily 100 percent, it could be 25 percent if 25 percent are in a position to master. Conversely, although 49 percent but determining the director alone can't, means not in power. So the concept of mastering is obvious [1].

Control over natural resources and are included in it along with the other natural resources that are in the territory of the Homeland can be interpreted owned, regulated, managed and distributed by the state or government with all agency managers are used for the prosperity and welfare of the whole of the Indonesian people. Some interpret the term is an affirmation of the meaning of economic democracy, that is, the economy is organized for the sake of social welfare for the people. It is the people's interests that are not the interests of the individual, even though the rights of one's citizens are respected. According to Professor Sri Edi Swasono, a populist economist from the University of Indonesia, in terms of imperativism of a Constitution, the "groans" must be accompanied by "possession". Because, if not accompanied by affirmations have, then pengusaan country will not run effectively, especially in the current globalization era [1]. So basically the 1945 Constitution does not reject the existence of privatization but still with certain restrictions and the state remains a priority scale in order to realize the national economic goals that prosper the people.

State as regulator, facilitator, and the operators in the control of natural resources and natural riches contained therein. State privatization opportunities. Production branches that control the livelihood of the people that should be utilized as widely as possible for the welfare of the people can turn into a dominion by a profit-oriented corporation and it will be miserable to the people.

The regulation on the privatization of electricity has actually been changed since the issuance of Law Number 20 of 2004 in lieu of Law Number 15 Year 1985 on Electricity. However, in its development, Law No. 20 of 2004 is not accepted by the public because it is considered contradictory to the 1945 Constitution article 33 paragraph (2) and make Law Number 15 Year 1985 valid again. Then, access privatization of the electricity supply business for public interest reopened by the Government through Presidential Decree Number 37 Year 1992 concerning Electricity Supply Business by Private Privatization is confirmed by presence Law Number 30 Year 2009 on Electricity which provides the widest opportunity to the private sector, whether in the form of business entities, cooperatives, and self-supporting communities to participate in any type of power supply business for the public interest.

In accordance with Article 4 of Law No. 30 of 2009, the business of providing electricity for public purposes may be carried out by State-Owned Enterprises, Regional Government Enterprises, cooperatives, private and public self-reliant, which include the business of generation, transmission, distribution, electric power and integrated power supply business.

Article - another chapter which opens the faucet against the swasta is:

### **Article 10**

Paragraph (1) *Power supply business for the interest general as referred to in Article 9 letter a covers the type of business:*

- a) *power generation;*
- b) *electric power transmission;*
- c) *power distribution; and / or*
- d) *sales of electric power.*

*Paragraph (2) Power supply business for the benefit of d dimaksud common as in paragraph (1) **may** done in an integrated manner.*

### **Article 11**

*Paragraph (2) The state-owned enterprises as referred to in paragraph (1) shall be given **the first priority** to undertake the business of providing electricity for the public interest.*

*Paragraph (3) For regions that have not received services electric power, Government or local government according to the authority given chance regionally owned business entities, private business entities, or cooperatives as providers of supply business integrated power.*

*Paragraph (4) In the absence of a regional-owned enterprise, private enterprise or cooperative that may provide electricity in the territory, the Government **shall** assign a state-owned enterprise to provide electricity.*

Viewing from the article can be considered that the state facilitates electricity by using the system of *unbundling* (segregation of business) or release the electricity business to other parties. Each type of power supply business, whether power plant, electricity transmission, power distribution, electricity sales, or integrated, is carried out by one business entity for each business type and business area. This provision is exempted for PLN, as State-owned enterprises (BUMN). Regulation terté but opens the opportunity for the private sector to be able to sell directly PLN power through cooperation schemes with PLN. The *unbundling* system will eliminate state control of the business operations of electricity from upstream to downstream. This will change the electricity that was originally infrastructure into a commodity traded. Do not let the provisions of the constitution spelled out "Earth and water and all the natural wealth contained in it is controlled by the state and sold at international prices, controlled by the state and sold with citizen with international prices for the greatest prosperity of state officials.

### **c. Cultural Law**

The legal culture in the electricity industry is matters related to the way officials or officials concerned implement the provisions and policies as regulated in the law of the electricity sector and how the businessmen in the electricity sector understand, obey and implement the provisions and policies in the field electrification.

Seeing the cases of corruption that are rampant lately, we can see how the legal culture in Indonesia today. In connection with electricity, the case that occurred in Dahlan Iskan is one example of how our officials in implementing the policies and provisions that have been regulated in the field of electricity. By looking at the case of Dahlan Iskan, we can understand how the dangers faced by an official when his policy is pro against the

people. Dahlan Iskan made the policy of making electrical substations with the aim to overcome the electricity crisis. Electric substation project started in 2011 and should be completed in 2013. While Dahlan Iskan himself became President Director of PLN until 2011 because former President SBY asked him to become minister of BUMN. Dahlan only made the policy and signed the substation project approval, but he did not have time to supervise until the end of the project.

## CONCLUSSION AND RECOMMENDATION

1. From the history of electricity in Indonesia, it can be seen that foreign intervention in the national electricity sector is still very large. They are involved as consultants, by lending the government to programs in the fields of politics, economics, education, health and people's welfare. Hence, they can infiltrate foreign interests in the drafting of laws in these fields, especially in the field of electricity.
2. Structure in electricity is Ministry of ESDM, Director General of Electricity, PT PLN Persero (Perusahaan Listrik Negara Persero), and Central and Regional Government which have authority in making electricity policy in central and regional. While the substance of the law in electricity is all regulations and policies that regulate the electricity. The legal culture in the electricity industry is matters related to the way officials or officials concerned implement the provisions and policies as regulated in the law of the electricity sector and how the businessmen in the electricity sector understand, obey and implement the provisions and policies in the field electrification.
3. The role of the government as a *regulator* should be maximized by pursuing and pursuing a policy strategy that allows electricity problems to be handled properly.
4. Policy This privatization of electricity is really only triggered by the wishes of the capitalist countries who want to re-master the natural resources and explore politically developing countries like Indonesia. So the privatization of national electricity will bring more harm to the people and to benefit the capitalists, the entrepreneurs.

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