

Application of Economic Equilibrium Principles in Power Purchase Agreement between PT PLN and Public Private Partnership



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ABSTRACT: The purpose of this study was to analyze the implementation of cooperation between PT. PLN and private companies. The scope of his research is the provision of electricity infrastructure, which is one of the supporting sectors for economic growth. The government is currently promoting this policy to meet the increasing demand for electricity. PT. PLN as a State Owned Enterprise (BUMN) is the implementer of government policies in terms of electricity that is still unable to meet the availability of electricity. Based on this, the government provides opportunities for the private sector to participate in the business of providing electricity for the public interest by utilizing Renewable Energy (EBT). The findings of this study are that electricity is generated through power plants owned by private companies and the result is that electricity is sold to PT. The research was carried out in a normative juridical manner with data obtained from electricity and tariff regulations, literature books and journals, public-private cooperation contracts. The results of this study are the application of the principle of economic equilibrium in the Power Purchase Agreement contract between the Government, namely PT PLN (Persero) and the private partnership.

KEYWORDS: Economic Equilibrium Principle, Power Purchase Agreement, Renewable Energy Infrastructure.

A. INTRODUCTION

Electricity is a necessity that lately includes basic needs and needs that are strategic in supporting the realization of human goals to improve development, the availability of electricity must be ensured to be maintained so that human life in need of listrik can be fulfilled. But with the rapid growth of humans also resulted in the need for listrik power is increasing, even sometimes the available electricity supply is not enough. Electric power is one of the determining factors to achieve national development goals. Electricity development will obtain high priority and is an integrated part and national development so that it is harmonious, aligned, and in unison with the national development stage. This means that the electricity development target must always support every stage of encouraging economic improvement.¹ Because electric power is a basic / primary need for people's lives. In order to meet the needs of the listrik energy, PT. PLN (Persero) strives to the maximum to produce electricity which one solution is to reduce the use of renewable fuels in its production activities. Because of the renewable fuels that are increasingly reduced availability.

Government through PT. PLN (Persero) provides an opportunity to a Legal entity to produce electricity that utilizes renewable power. Providing opportunities to legal entities provided by the state, giving space to private business entities or Power Plant Developers (PPL) to take a role in the availability of electricity and PT. PLN (Persero) is obliged to buy the power it generates from renewable listrik power produced by a private business entity / Power Plant Developer. Low electricity infrastructure is one of the most significant obstacles hindering investment. The large cost of investment in the electricity sector that can not be borne by the government, this is the main reason for the delay in plant investment, the beginning of the government's initiation to cooperate with the private sector in infrastructure investment through the mechanism of Government Private Cooperation (PPP) or commonly referred to as public private partnership (PPP).

Electricity purchase conducted by the State through PT. PLN (Persero) with privately owned enterprises, contained in an agreement stipulated in regulation of the Minister of Energy and Minerals No. 10 of 2017 concerning the Fundamentals of electricity sale and purchase agreement. In Article 1 number (1) Regulation of the Minister of Energy and Minerals No. 10 of 2017 concerning the

¹ Bambang Purnomo, *Tenaga Listrik, Profil dan Anatomi Hasil Pembangunan Dua Puluh Lima Tahun*, (Jakarta : PT Gramedia Putaka Utama, 1994), Hal. 5.

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Principles of Electricity Sale and Purchase Agreement, namely: "The agreement on the sale and purchase of electric power hereinafter referred to as PJBL is an Isitrik power sale and purchase agreement between PT. PLN (Persero) as a buyer with a business entity as the seller." Related to the agreement to buy and sell electricity, potentially or open the opportunity of dissatisfaction of the parties who conduct legal relations of the electricity sale and purchase agreement by interested parties.

The main problem in this study is how the implementation of Power Purchase Agreements between PT. PLN (Persero) with Privately Owned Enterprises in applying the economic equilibrium principle?

B. LIBRARY REVIEW

Infrastructure plays an important role in improving economic growth because it provides long-term economic benefits that will be able to drive economic growth, productivity, and have a positive spillover impact. However, investment is not about how much it is worth, but rather how to manage investments effectively so as to bring benefits to the wider community.²

The theoretical basis of infrastructure's influence on growth is rooted in Growth Theory. Analyze the importance of infrastructure as a source of growth empirically, which is then followed by various other quantitative studies.³

Infrastructure is a diverse terminology, covering a variety of physical structures used as inputs in the production process. In general, infrastructure is divided into two types, 1) social infrastructure such as schools and hospitals; 2) Economic infrastructure.

There are several roles of infrastructure in economic development and growth, 1) as a variable stock, infrastructure will drive increased output in the function of economic production. This happens because infrastructure acts as inputs / key production factors (necessary inputs) that directly affect the production process in an economy.

Although many studies analyze the relationship between infrastructure and economic growth, few study the effectiveness of the investment itself. There is a lot of empirical evidence that shows how infrastructure investment often operates undercapacity even though it has cost a little.

Electricity investment is also inevitably one of the drivers of economic growth as it increases the demand and supply of goods and services. Energy plays an important role in the production process which is generally only seen as a function of capital and labor. Energy is needed for industrial production processes, the work of equipment and services from all productive sectors of the economy.³

Many studies have shown a positive link between electricity availability and economic growth and labor absorption. Analysis of the relationship between Gross National Income (PNB) and energy consumption in America between 1947-1974 and found that an increase in PNB would increase energy consumption. However, the impact between energy consumption and GDP turns out to be causality on the contrary where energy consumption can also play a role in driving economic growth.

C. RESEARCH METHODS

Research methods as a tool to support the process of making legal writing will be realized when obtained data related to problems that will be discussed through predetermined methods. In drafting this legal writing the author uses research methods. This research is normatively juridical. The method of approach used in the writing of this law is normative juridical. The definition of juridical is an approach that refers to the prevailing laws and regulations.⁴ Normative is an approach that is done by researching library materials or secondary data.⁶ Normative legal research is legal research conducted by researching library materials or mere secondary data. The method of collecting legal materials or secondary data in this study was conducted by inventorying all kinds of laws and regulations related to the issues raised and by conducting literature studies. Legal materials or secondary data selected through literature studies, then systematically compiled so that a thorough picture of legal principles, legal rules, and legal provisions are then analyzed qualitatively and logically and the data obtained through research will be studied in depth as a comprehensive study, the results of the analysis will be presented descriptively analysis.

D. RESULTS AND DISCUSSION

The 35,000 MW Power Plant Program is believed to have a huge impact on economic activity throughout Indonesia. With construction sites reaching 210 locations throughout Indonesia, consisting of 59 locations in Sumatera, 34 locations in Java Island, 49 locations in Sulawesi, while in Kalimantan 34 locations, and in East Indonesia 34 locations, then in addition to having a positive impact on the field of industry and investment, will also open jobs to increase the uptake of domestic components. PLN's Rural

² Bottini, N., Coelho, M., & Kao, J. (n.d), *Infrastructure and Growth "Launch Version"*, London : LSE Growth Commission. ³ Hulten, C., *Infrastructure Capital and Economic Growth How Well You Use It May Be More Important Than How Much You Have It*, (1996), Massachusetts : NBER.

³ Ismail, N. W., & Mahyideen, J. M, *The Impact of Infrastructure on Trade and Economic Growth in Selected Economies in Asia*, (2015), Tokyo : Asian Development Bank Institute.

⁴ Soemitro, Ronny Hanitjo, *Metodologi Penelitian Hukum dan Jurimetri*, (Jakarta : Ghalia Indonesia, 1982), Hal. 20. ⁶ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta : Rajawali Pers, 2011), Hal. 35.

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Electricity Program is expected to provide justice for every Indonesian anywhere. This program is in line with the target of increasing the national electrification ratio by 97.4% in 2019. Therefore, the village electricity program is implemented in terms of planning the electrical system thoroughly. As part of its future planning, PLN has developed a strategy to develop New and Renewable Energy.

Indonesia has an abundance of renewable energy potential and has contributed to energy production of 12.32% in 2016. Therefore, PLN plans to increase the energy mix for New and Renewable Energy by 25% by 2025. The Company plans ebt development which includes geothermal development, wind power plant, as well as small-scale EBT plants spread in the form of hydropower, biomass, and biogas. PLN also encourages research and development of other EBT such as coal gasification, solar thermal power, ocean current, OTEC (ocean thermal energy conversion) and fuel cell. Therefore, the village electricity program is implemented in terms of planning the electrical system thoroughly. As part of its future planning, PLN has developed a strategy to develop New and Renewable Energy.

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PLN is a service to the community in providing electricity and serving the public interest but in the provision of electricity while fostering profits. PLN strives to seek profit in accordance with the principles of limited liability companies, in addition to carrying out its responsibilities as an electricity operator for the public. The involvement of private parties in the provision of electricity for the public interest as long as it is within the limits of state control. "Private parties can participate through Engineering, Procurement, and Construction (EPC) projects offered by PT PLN (Persero), or through the Independent Power Producer (IPP) scheme, Private Government Cooperation (KPS), or with other schemes such as Build, Lease and Transfer.⁵

PLN is a service to the community in providing electricity and serving the public interest but in the provision of electricity while fostering profits. PLN strives to seek profit in accordance with the principles of limited liability companies, in addition to carrying out its responsibilities as an electricity operator for the public benefit. In determining the implementation of the electricity sale and purchase agreement, PT. PLN (Persero) will determine the parties or Independent Power Produce (IPP) that will establish a trading relationship with it. In the series of stages or conditions determined by PT. PLN (Persero) must be fulfilled by Independent Power Produce (IPP). Independent Power Produce(IPP)'s overall process of reviewing and approval of electricity connection and approval consists of several components and basic activity stages that must be passed by Independent Power Produce (IPP). Power Purchase Agreement is a contract of sale and purchase, so the arrangement can be found in the Civil Code ("KUHPer").

Parties to the Power Purchase Agreement, the parties to the Power Purchase Agreement are PT PLN (Persero) as the buyer and the Independent Power Producer agency as the seller. The object of the agreement in the Power Purchase Agreement is the electricity generated from the generation by the IPP. The maximum term of the Power Purchase Agreement is 30 years. The rights and obligations of the parties in the Power Purchase Agreement are: Buyer is buying electricity & paying according to the agreed price. Seller is selling electric power and receiving payment for the sale. While the right to purchase plant installation options by PT PLN (Persero) in the Power Purchase Agreement determines that PT PLN (Persero) can exercise such rights at any time from the date of the agreement begins until the agreement expires.

Disparity in electricity availability between islands, between villages, and between users both households and industries becomes the biggest challenge in the provision of electricity that supports community and industrial activities. One of the efforts to increase the supply of electricity is to open the sector to the private sector. According to electricity law No. 30/2009, PT PLN is no longer a monopoly in the provision of electricity, thus opening the opportunity for greater private involvement. Theoretically, an increasingly liberal market structure would provide an advantage for consumers in greater supply and competition rates. However, although the electricity market is increasingly open, the provision of electricity mandated by the Law as a government obligation makes PT PLN still an off taker with the determination of fixed tariffs by the government with the approval of the House of Representatives.

The dominant role of PT PLN in the electricity sector is in addition to the extension of the government's hand due to three things. First, the characteristics of this sector are capital-intensive and technology-intensive making it difficult to attract private investors. Second, non-technical issues contribute to slowing plant investment such as world oil fluctuations and environmental issues that force governments to build infrastructure with more cutting-edge technology, environmentally friendly and utilize alternative energy

⁵ Pembelian Listrik PLN ke Swasta Meningkatkan Pesat <https://lokadata.id/artikel/pembelian-listrik-pln-ke-swasta-meningkatpesat>, Diakses Tanggal 10 November 2020, Jam 23.00 WIB.

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sources. Third, the Electricity Act that is not familiar to investors' assumptions resulted in for decades PLN serving customers must face obstacles in downstream infrastructure development and become a monopoly naturally for more than 40 years.⁶

Efforts to expand the private role continued after the 2002 Law failed. In 2009, the government finally revised the Electricity Law in 1985 to Electricity Law No. 30 of 2009. There is a fundamental difference between the two, namely the expansion of the role of local government and BUMD as an extension of the government's hand in the fulfillment of public electricity previously controlled by PLN. However, PLN still has the first right of refusal for this sector. In the Electricity Law 2009, actually unbundling efforts (broken down industrial structure) electricity sector impliedly remains, namely by providing the widest opportunity for STATE-OWNED ENTERPRISES, BUMD private business entities, cooperatives and nongovernmental organizations for the type of generation, transmission and distribution and delegation of authority to local governments to member permits and tariff determinations. With this implied effort, it still provides justification that the fulfillment of electricity needs is the responsibility of the government.

In the research of infrastructure development contracts between the Government and Private Sector, researchers used the legal theory of doctrine Economic Equilibrium. The main focus in this study was the contract issue itself. The emergence of the legal doctrine of Economic Equilibrium is a "Critical Legal Studies" and a movement of "Legal Realism" over the doctrine of Pacta Sunt Servanda.⁷ The criticism of doctrine Pacta Sunt Servanda by "Critical Legal Studies" which for researchers is a movement on the thinking of the law, is in line with the framework of thinking (legal framework) namely: the theory of legal system, theory of law change and legal characteristics, which is seen macro in the context of law and the development of a nation (State) and legal and economic development as a grand theory in the shell of thinking (legal framework). The economic equilibrium problem in investment contracts can be seen from professor Dr. Klaus Berger's argument, in his paper on "Renegotiation and Adaptation Clauses in Investment Contract, Revisited".⁸ He sees that with the clause as a stabilization clause where if the Government changes the law will affect the economic equilibrium. Based on the legal doctrine of economic equilibrium, justice which is an embodiment of ideas in the law, must be rationalized or concreted. Aristotle sought to build his philosophical morals in his book "Ethics", based on a thorough rationality.⁹

Before the power purchase agreement stage must go through the auction stage / *aanwijzing* where PT PLN and the Business Entity must agree rks and its terms. Where Private Business Entities must meet the requirements of auction documents sea diesel engines with the required capacity remote area pltd both administratively and technically. After the collection of lalalng documents, there is a stage of auction announcement that is the next stage of the collection of auction documents, which contains the news of the event (BA) Explanation of the Auction. After the announcement of the winner of the diesel engine rental auction, one of the private business entities that won the diesel engine rental auction to meet the needs of the pltd area. Furthermore, the agreement to sign a cooperation contract between PT PLN and a Private Business Entity with a maximum period of 30 Years, if there is a change in the articles before the contract is completed. The two sides agreed to renegotiate with the addendum.

Often PT PLN seems to force IPP Private Enterprises to sign at a price that has not been fully agreed by private enterprises. Because it is considered to use the selling price of electricity that is considered to be detrimental to the developer (IPP). Electricity tariff is set on Candy No. 12 of 2017 on The Utilization of Renewable Energy for Electricity Supply. In this rule the price of electricity purchased by PT Perusahaan Listrik Negara (Persero) is only 85% of the cost of local production. Developers worry about this, because it's too low so it won't give you an advantage. Sometimes in the Power Purchase Agreement is declared the purchase of electricity under 10 mw with a contract period of 25 years since the handover or commercial operation date (COD) with the boot scheme (build, own, operate and divert). In the first 20 years, if the IPP is unable to provide electricity as promised will be fined (deliver or pay) and the seller will get paid according to the electricity agreement (take or pay). The remaining five years PLN buys electricity only the amount needed (take and pay). Affirmed in the letter, electricity transactions using rupiah currency.

So in this case IPP Private Business Entity is more harmed than power purchase agreement. Ideally while waiting for new regulations from the government so that thousands or even tens of MW projects can be realized and cooperate with dozens of private sectors that both build Indonesia's infrastructure in terms of electricity. PT PLN and IPP can reserve at least 30% of Java's electricity and 50% outside Java. In order to realize the dream, the principle of economic balance can be applied in the Power Purchase Agreement so as to realize the great goal of electricity program of 35,000 MW.

This program requires the involvement of many parties ranging from internal PLN, private parties, and the government. In addition, the 35,000 MW program also requires supervision and security from the legal side in order for its implementation to take

⁶ F. Tumiwa, Analisis Ekonom, *KONTAN*, (2012, Februari 20), Hal. 27.

⁷ K.M. Sharma, FROM "SANCTITY" TO "FAIRNESS": AN UNEASY TRANSITION IN THE LAW OF CONTRACTS?, P18 N.Y.L. Sch. J. Int'l & Comp. L. 95 (1999).

⁸ Klaus Peter Berger, *Renegotiation and Adaptation of International Investment Contracts: The Role of Contract Drafters and Arbitrators*, 36 Vand. J. Transnat'l L. 1461 (2003).

⁹ Hans Kelsen, *What Is Justice? Justice, Law, And Politics In the Mirror Of Science, Collected Essays*, Berkeley and Los Angeles: University of California Press, 1957, hal.110.

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place smoothly. PLN's Rural Electricity Program is expected to provide justice for every Indonesian anywhere. This program is in line with the target of increasing the national electrification ratio by 97.4% in 2019. As part of its future planning, PLN has developed a strategy to develop New and Renewable Energy. Indonesia has an abundance of renewable energy potential and has contributed to energy production of 12.32% in 2016. Therefore, PLN plans to increase the energy mix for New and Renewable Energy by 25% by 2025.

The 35,000 MW power plant project is the main solution that has been taken by the government. To realize the project, the Company spearheaded its implementation. To realize the project, a very large investment fund above Rp1,100 trillion is needed. To maintain financial capability, the Company in addition to carrying out its own development of the plant also involves private parties or independent power producers (IPP). Until the end of fiscal year 2016, a number of important events that color the realization process of the 35,000 MW electricity project have occurred.

Among other things, on February 26, 2016, the government issued Presidential Regulation (Perpres) No. 4/2016 on Acceleration of Electricity Infrastructure Development. In the regulation, the Central Government assigns PLN by providing support in the form of guarantors, acceleration of licensing and non-licensing, provision of primary energy, spatial planning, land supply and settlement of obstacles and problems, as well as the resolution of legal problems faced in the entire 35,000 MW Project.

On June 1, 2016, six Mobile Power Plant (PLTMG) plants have ground breaking using Gas Engine Power Plant (PLTMG) with a total capacity of 350 MW. This plant will strengthen sumatra's regional electricity system. This is the President's first visit in a series of progress reviews of the 35,000 MW program. The composition of the realization of the 35,000 MW program consists of projects that are still in the planning process of 5,824 MW or 16.32%, in the procurement process of 10,410 MW or 29.16%, in the construction preparation process of 8,664 MW or 24.27%, in the construction process of 10,090 MW or 28.27% and those that have been operating (COD/SLO) of 706.5 MW or 1.98%.

CONCLUSION

Implementation of Electricity Sale and Purchase Agreement between PT. PLN (Persero) With Private Business Entities there are several stages, as follows:

- 1) The first stage is the filing stage conducted by Independent Power Produce (IPP) to complete the licensing requirements.
- 2) The second phase of the study is conducted by the IPP which includes system feasibility studies and environmental studies of diesel power plants.
- 3) The third stage is the Independent Power Produce (IPP) stage to apply in the form of proposals / applications that include documents in the form of requirements in terms of licensing and reports on the results of feasibility studies and environmental studies.
- 4) The fourth stage is the process of weaving DPT by PT. PLN (Persero) and in this process is an Independent Power Produce (IPP) qualification process that includes administrative qualifications, technical qualifications and financial qualifications.
- 5) The fifth stage is the signing of an electricity sale and purchase agreement between PT. PLN (Persero) with private business entities.
- 6) The sixth stage is the development stage of energy listic levers.
- 7) The seventh stage is a test of generating capability conducted by pt. PLN (Persero) to ensure the operational feasibility of the defector in determining its components is a component that must be adjusted to the level of components used by PT. PLN (Persero).
- 8) The eighth stage is commissioning which is the stage that must be done after the connection equipment between pt's systems. PLN (Persero) with Independent Power Produce (IPP) has been installed and ready to operate.
- 9) The ninth stage is comercial of date (COD) is the date of the generator.

Ideally while waiting for new regulations from the government so that thousands or even tens of MW projects can be realized and cooperate with dozens of private sectors that both build Indonesia's infrastructure in terms of electricity. PT PLN and IPP can reserve at least 30% of Java's electricity and 50% outside Java. In order to realize the dream, the principle of economic balance can be applied in the Power Purchase Agreement so as to realize the great goal of electricity program of 35,000 MW.

This program requires the involvement of many parties ranging from internal PLN, private parties, and the government. In addition, the 35,000 MW program also requires supervision and security from the legal side in order for its implementation to take place smoothly. PLN's Rural Electricity Program is expected to provide justice for every Indonesian anywhere. This program is in line with the target of increasing the national electrification ratio by 97.4% in 2019. As part of its future planning, PLN has developed a strategy to develop New and Renewable Energy. Indonesia has an abundance of renewable energy potential and has contributed to energy production of 12.32% in 2016. Therefore, PLN plans to increase the energy mix for New and Renewable Energy by 25% by 2025.

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