

Limitation of State Control Rights over Natural Resources in Renewable Energy Management

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Abstract

The concept of new energy management policy and renewable energy in maintaining national energy security through the first three properties, private property, namely ownership rights held by individuals or legal entities although it does not mean that it provides private ownership rights over certain natural resources but provides opportunities for individuals to manage natural resources to get certain benefits. Second, common property, namely ownership rights held by groups or can be referred to as "customary rights" in indigenous peoples in Indonesia. Third, state property, namely the right of ownership and control over natural resources is in the hands of the state, with the instrument of "right to control the state". Through government agencies, they can manage their own natural resources as well as SOEs. States can also grant authority to individuals or business entities or cooperatives or communities to manage natural resources.

Keywords: *Ideology Of Welfare State Constitution, Right To Privatization, Renewable Energy.*

Introduction

The implementation of New Energy and Renewable Energy abbreviated as (EBT) which is still minimal in use in Indonesia. Thus, there are two issues that want to be built to optimize the existence of EBT. The first issue that is developing today is the lack of competitive EBT with fossil energy sources for household and industrial fuel and electricity. This is because it still requires costs, the second issue is not optimal natural resources of renewable energy and renewable energy. Examples such as geothermal which are often constrained by special permits and forest sustainability. ¹This is because geothermal areas are often in forest conservation and protected areas. Another obstacle is

¹ Felix O, Soebagjo, Final Report, Review of Legal Aspects of Build Operate and Transfer Agreement, (Ministry of Justice of the Republic of Indonesia: BPHN, 1993/1994), p. 23.



the success of drilling (drilling success ratio) which rarely occurs and the cost is quite high. The existence of waterfalls and river surface water which turns out to require considerable costs.²

In view of the fair administration of natural resources, legal protection is given to the people and a good environment. Protection intended to provide balance in its use, both authorities on natural resources and people who are not directly involved in obtaining economic benefits from the use of these natural resources. Therefore, the use of natural resources for the welfare of the people should be based on moral, legal and religious values. Elevating the degree of public welfare based on its legitimacy, on the aspect of legitimacy through a written regulation. The interpretation of "controlled by the state" is that the state represented by the Government functions as a regulator as well as an operator of its shoes upholding human values based on the welfare of the people. The Indonesian Constitution is sublimely accompanied by physical and mental welfare (material / essential) in the sense that regional regulations related to new energy and renewable energy can be realized.³ So that the formulation of the problem taken is how the concept of regional new energy and renewable energy management policies in contributing to maintaining national energy security.

Based on the description above, it is known that important branches of production for the state, such as electrical energy, should continue to maintain the application of the principle of State Control Rights, namely electricity infrastructure, based on Article 33 Number (2) of the 1945 Constitution and its derivatives. The imbalance between the fulfillment of electrical energy needs and the development of electricity energy law, especially in the new and renewable energy sector, which is able to adapt to the challenges of globalization, but does not ignore the Indonesian State Constitution and the character of Indonesia is an interesting to be examined.

² Daryanto, 2007, *Energy : Problems and Their Use for Human Life*, Pustaka Widyatama, Yogyakarta, p. 9.

³ Sophia Chong dan Emily Poole, 2013, *Financing Infrastructure : A Spectrum of Country Approach*, Reserve Bank of Australia, hlm. 74.



Research Method

This research uses normative legal research methods or what is known as doctrinal legal research. Based on the doctrinal legal research method, the data collection technique used is a literature study. The type of approach used in this research is a statutory approach because this research examines and examines regulations regarding the settlement of theft crimes with elderly perpetrators and a conceptual approach that departs from views to doctrines that develop in legal science as a foothold for building legal arguments in resolving the legal issues at hand.⁴

The research source used as the main reference material in this research is secondary data in the form of legal materials, where the legal material itself is then further categorized into primary, secondary and tertiary legal materials.⁵ The research source used as the main reference material in this research is secondary data in the form of legal materials, where the legal material itself is then further categorized into primary, secondary and tertiary legal materials.⁶

A. New Renewable Energy Principles

In managing energy, including new renewable energy, must be carried out with the principles regulated under Article 2 of the Energy Law having their respective explanations as follows:

- a. The principle of expediency, namely in the effort of energy management must meet the needs of the community.
- b. The principle of Equitable Efficiency, namely in energy management must achieve equal access to energy at economical and affordable prices.
- c. The principle of Increasing Added Value, namely in energy management must achieve optimal economic value.

⁴ David Tan, "Legal Research Methods: Exploring and Reviewing Methodologies in Conducting Legal Research," *Nusantara: Journal of Social Sciences* 8, no. 8 (2021): 2463–2478.

⁵ Abdurrahman Alhakim and Egia Ginting, "Analysis of the Formation of the Job Creation Law at the Planning and Preparation Stages Based on the Law on the Formation of Laws and Regulations," *In Combines-Conference On Management, Business, Innovation, Education And Social Sciences* 1, no. 1 (2021): 284–96.

⁶ Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (November 30, 2022): 289, <https://doi.org/10.37253/jjr.v24i2.7280>.



- d. The principle of sustainability, namely in energy management must ensure the supply and utilization of energy for present and future generations.
- e. The principle of Community Welfare, namely in energy management must achieve the greatest possible welfare of the community.
- f. The principle of Environmental Function Conservation, namely in energy management must ensure better quality of environmental functions.
- g. The principle of National Resilience, namely in terms of energy management must achieve national capabilities in energy management.
- h. The principle of Integration, namely in energy management must achieve integrated energy management between sectors.

Furthermore, this is in line with the mandate of Article 33 Number (2) of the 1945 Constitution, namely that energy must be used as much as possible for the benefit of the people, nation and state. This then provides affirmation as well as a mandate from the constitution to the state to control all energy resources with the aim of being used as wisely as possible for the prosperity and welfare of all Indonesian people. Based on Article 1 Number (7) of the Energy Law, the definition of renewable energy is energy derived from renewable energy sources. The definition of renewable energy sources based on Article 1 Number (6) of the Energy Law is: "energy sources produced from sustainable energy resources if managed properly, including geothermal, wind, bioenergy, sunlight, streams and waterfalls, as well as movements and temperature differences in the ocean layer."

Renewable energy sources are environmentally friendly energy sources because they do not produce environmental pollution, excluding one of the causes of climate change and global warming because the energy produced comes from sustainable natural processes such as wind, water, sunlight, geothermal, and biofuels.⁷

Through the principles in conducting energy exploitation and management as stated in the Energy Law, it is hoped that the direction of national energy exploitation, development, and management can realize equitable energy development. Energy justice

⁷ Abubakar Lubis, "Renewable Energy in Sustainable Development", Journal of Environmental Engineering, Vol. 8 Number 2 May 2007, p. 161.



is to provide equal access to energy to all Indonesian people through infrastructure development in the ESDM sector and optimizing the potential of local energy sources at affordable and sustainable prices.

B. Right to Control the State

Independence is the freedom to realize the promise of statehood contained in paragraph 4 of the Preamble to the 1945 Constitution. In the context of the objectives of the State of Indonesia, stated in the preamble of the 1945 Constitution, namely advancing general welfare and educating the life of the nation. Based on this philosophical view, the basis of the Indonesian economic system was established, namely based on Article 33 of the 1945 Constitution. The article became the basis for the political direction of the State Tenure Rights (HMN) law in relation to natural resources. However, in reality the formulation of the article is still contentious with many interpretations.⁸

Literally, the meaning of "power" in the Big Indonesian Dictionary (KBBI) is the ability or ability to do something, or in another sense authority over something, or to determine, rule, represent, manage, and so on. While the meaning of "Master" is to rule over something or hold power over something.⁹

Then Aminuddin Ilmar said that:¹⁰

"controlled by the State is an ability or ability existing in the State based on the authority possessed or existing on it to determine something can be in the form of government, representing, or managing branches of production which are important to the State and which control the livelihoods of the people."

Basically, state control over such an important and strategic branch of production is not reserved for the state, officials, or administrators of the State. The state in this case is only an organization of power that is mandated by the people through law to use an important branch of production, to realize social justice for all Indonesian people. The concept of state control in relation to the national economy is contained based on Article

⁸ Aminuddin Ilmar, 2012, *State Control Rights in the Privatization of SOEs*, Kencana, Jakarta, p. 48.

⁹ Suparjo, 2014, "The Manifestation of the Rights of the Indonesian Nation and the Right to Control the State in Agrarian Law Politics After the 1945 Proclamation to Post-1998 Reformation (Amartya K. Sen Justice Theory Study)", Dissertation, Law Study Program, University of Indonesia, Jakarta, p. 37.

¹⁰ *Ibid.*



33 Number (2) of the 1945 Constitution which stipulates that "the branches of production that are important for the state and that control the livelihoods of many people are controlled by the state." According to Sovereignty Theory, HMN is a derivative of Sovereignty Theory. According to Jean Bodin, sovereignty is the main characteristic for every country, state power being the most important compared to other powers. The theory of controlling the state, as a derivative of the theory of sovereignty, holds control over the entire territory of the state concerned including its contents. Based on this sovereignty, the property or enjoyment to which citizens are entitled can be determined depending on the discretion of the holder of sovereignty or the state.

Control by the State is not in the sense of having (*eigensdaad*), because if the right of state control is interpreted as *eigensdaad* then there will be no guarantee for the achievement of the goal of the right to control, which is the greatest prosperity of the people. According to Bagir Manan, in terms of control by the state, "the state only carries out management (*bestuursdaad*) and management (*beheersdaad*)", which gives authority to the state to regulate, manage and maintain including supervising. Thus, the right to control to manage it is not a kind of civil right, but an obligation (*corpus*) to maintain and manage, which in the context of the state is called a public obligation (*publiek verplichting* or public responsibility).

C. Limitation of state control rights in renewable energy management

Achmad Sodiki gave the view that HMN as a Private Right is that the state cannot directly engage in dealing with third parties or private companies. Therefore, State-Owned Enterprises (SOEs) were appointed to cooperate with the private sector. The choice of SOEs to deal with the private sector is solely so that the position of the state is not in an equal position with private corporations. In essence, the state must have a higher position than its cooperation partners, so that the correction and regulatory functions owned by the state can be carried out properly.¹¹

¹¹ Achmad Sodiki, in the Workshop on Systematic Research Results of STPN, on November 27, 2014 at the National Land College, Yogyakarta.



In accordance with the above, especially by Cohen and Reich, the right of control/ownership of natural resources, is a legal relationship between people with respect to natural resources that are entitled. Tenure rights or property rights as private rights are usually conceptualized as rights that serve the private function of property rights related to individual freedom, autonomy and satisfaction (preference stastifaication).

The achievement of this goal is possible if the right of control includes 3 (three) authorities, namely: control, exclusion, and alienation. These three characteristics are even referred to as the "trinity of rights essential to private property" and should be enjoyed by the widest possible rights holders. But over time, private property has not only been seen as an institution that serves the interests of private individuals, but also those that are in the public interest. Private property not only has a private function, but also has a public function: the fulfillment of the basic needs of citizens and the facilitation of goals related to welfare and public order.

Conclusion

welfare state ideology become fundamental concept of new energy management policy and renewable energy in maintaining national energy security through the first three properties, private property, namely ownership rights held by individuals or legal entities although it does not mean that it provides private ownership rights over certain natural resources but provides opportunities for individuals to manage natural resources to get certain benefits. Second, common property, namely ownership rights held by groups or can be referred to as "customary rights" in indigenous peoples in Indonesia. Third, state property, namely the right of ownership and control over natural resources is in the hands of the state, with the instrument of "right to control the state". Through government agencies, they can manage their own natural resources, States can also grant authority to individuals or business entities or cooperatives or communities to manage natural resources.



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