

# The New Meaning of State Control of Electricity and Its Impact on the Supply of Electricity in Indonesia

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The state exercises control over the branches of production, which are essential for the state and which control the lives of many people according to the Indonesian constitution. One of the most critical chapters of output for the country and which controls the livelihoods of many people is electricity. In the context of electricity supply, some power plants are built, operated, or owned by private business entities. What is the meaning of state control over the amount of electricity in the legislation in Indonesia? Why are private business entities involved in the supply of electricity in Indonesia? What is the impact of involving these private business entities in the availability of power in Indonesia? By using a socio-legal approach, the research stated that control over the supply of electricity has the meaning of the state making policies, taking care of, regulating, managing, and supervising for the maximum prosperity of the people. State control over the supply of electricity is not only meant by the state building, operating and owning it, but the state can provide it by cooperating with private business entities. The state collaborates with private businesses to produce electricity as an effort to realise people's welfare. Private business entities are involved in the business of supplying electricity, on the one hand, to provide power in sufficient quantities, reasonably and of sufficient quality, on the other to increase investment and the country's economy. Public-private partnership agreements are the basis for involving private business entities in the supply of electricity. The impact of it on the meaning of the context of electricity supply is the increasing number of private business entities involved in the supply of electricity, meaning the more amount of power.

**Key words:** *Electricity, state control, public-private partnerships.*

## Introduction

Energy infrastructure is closely related to national development, both in developed and developing countries (Burillo, Chester, Pincetl, & Fournier, 2019; Nepal & Paija, 2019; Ralph & Hancock, 2019). Building a reliable, affordable and sustainable energy infrastructure is one of the big challenges for developing and developed countries (Lee, Jung, & Lee, 2019). Electrical energy is very important for business activities. Although important, the level of sufficiency is often a problem, inadequate supply (Ateba, Prinsloo, & Gawlik, 2019). In developing countries, economic growth and population growth are driving energy demand (Nepal & Paija, 2019), which makes many governments work hard to fulfil it. Electricity has different characteristics, for example with thermal and gas networks, so it requires different treatments (Guelpa, Bisch, Verda, Chertkov, & Lund, 2019).

Indonesia's competitiveness index at the global level, as reported in The Global Competitiveness Index (Klaus, 2017) shows a low level. Indonesia is ranked 36th out of 137 countries, with a score of 4.7. Indonesia's competitiveness index ranked 41 out of 138 countries with a score of 4.5. The infrastructure sector, which ranks 52nd out of 137 countries with a score of 4.5, is a weak element in Indonesia's competitiveness. To improve the nation's competitiveness, especially in the aspect of infrastructure, the Government of Indonesia has established priority infrastructure programs. In 2015-2019 the Government committed to building 35,000 MW of electric power infrastructure, will create 24 new ports, 60 ferry ports, 15 new airports, 3,258 km of rail lines, 2,650 km of new roads, and 1,000 km of toll roads.

The infrastructure investment that's needed to achieve the infrastructure development target is Rp.5,519.4 trillion, government funding is approximately 40.14% or around Rp2,215.6 trillion, and the remaining 59.86% or Rp3,303.8 trillion is expected to be fulfilled by the private business entities. Electricity infrastructure, with a target of 35,000 MW is one of the foundation's concerns for the Government of Indonesia. The General Plan for Electricity Supply 2015-2019 stipulates that 42 GW will be built, consisting of 7 GW as a continuation of the 2011-2015 government program and 35 GW as the 2015-2019 government program. PT. PLN (Persero) will build 17.4 GW of transmission plants along 50 thousand km, and substations in 743 locations and the remaining 24.9 GW and 360 km of transmission will be offered to private business entities.

The involvement of private business entities in infrastructure development in the public interest has been carried out in many countries. Although still in its purest form, the participation of private business entities in infrastructure development has been carried out in the United States, Chile, Brazil, Costa Rica, and Mexico in the 19th century, and in the 20th century it was carried out in Argentina, Brazil, and Uruguay (Dhameja, 2008). However, the involvement of private business entities in the form of public-private partnerships was

pioneered by the British. The United Kingdom has led the way in this practice since the 1980s. Australia, Canada, and New Zealand, among many others, have followed their leads (Camm, 2005).

The government's plan to provide electricity by involving private business entities is a new study from the legal aspect. Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) expressly regulates the state controls production branches, which are essential for the state and which control the livelihoods of the public. Electricity is a necessary branch of production for the country, and controls the livelihoods of many people. The state controls the supply of electricity to realise people's welfare. The involvement of private business entities can potentially reduce state control of energy, which can hamper the achievement of efforts to recognise people's well-being. What is the meaning of state control over the supply of power in the legislation in Indonesia? Why are private business entities involved in the amount of electricity in Indonesia? What is the impact of involving these private business entities in the availability of electricity supply in Indonesia?

## **Method**

The approach used in this research is the socio-legal approach (Banakar & Travers, 2005; Blandy, 2014; Nalle, 2015); legal studies using the legal and social sciences approach. The study was conducted with a textual study of the laws and regulations governing electricity and cooperation between the government and agencies. In addition, a case study was used on the collaboration of the government and private business entities in the construction of the 2 X 1,000 MW Central Java Coal-Fired Power Plants in Batang, Central Java Province.

## **Result and Discussion**

### ***The Meaning of State Control in Electricity Sector***

State control of the electricity sector is stipulated in Article 33 paragraph (2) of the Constitution of Indonesia, which emphasises the state controls production branches which are important for the state and which control the livelihoods of the public. The chapters of production which must be controlled by the state include, (a) branches of production which are essential to the country and control the livelihoods of many people, (b) are essential to the state but do not control the livelihoods of many people, or (c) is not essential for the state but controls the lives of many people. The importance of the production branch for the country is determined by the laws that govern it (Constitutional Court of the Republic of Indonesia, 2004). Production sectors that are vital to the state and that affect the livelihood of a considerable part of the population are to be controlled by the state, at other times, could turn out to be unimportant to the state and no longer control the lives of many people. Thus, a branch of production is considered, or not for the state is determined by law-forming

institutions, namely the House of Representatives and the President, as well as institutions that have the authority to examine the Law on the 1945 Constitution, namely the Constitutional Court. The importance of the branch of production determined by the law can also be interpreted as the legislators forming a representation of the people. The law was also formed through a process that involved the community. The success of infrastructure planning is determined by public involvement, such as public hearings, making documents that can be accessed, also determined by legal planning and improving the communication process. (Schweizer & Bovet, 2016)

Electricity is a vital production sector for the state and controls the lives of many people. This affirmation is contained in the electricity law in Indonesia, namely the Law of the Republic of Indonesia Number 30 of 2009, as well as the previous electricity law, namely the Law of the Republic of Indonesia Number 20 of 2002 and Law Republic of Indonesia Number 15 of 1985. Electricity, including the production branch that controls the lives of many people, is contained in Law of the Republic of Indonesia Number 2 of 2012, which emphasises the development of electricity, including the public interest. In the form of general guidelines and list provisions (Kitay, 1987), the supply of electricity, includes the construction of power plants, transmissions, substations, networks, and distribution of electricity, including types of development for public use concerning the interests of the nation and state.

Electricity is an important basic need to pursue economic growth targets and improve the Human Development Index. The increase in HDI resulting from electricity development was highest compared to the construction of water and road infrastructure. Every 1% increase of households using electricity will increase HDI by 0.2%, while a 1% increase in water and road infrastructure will only increase HDI by 0.03% and 0.01%, respectively (Investment Coordinating Board, 2015). "Electricity has an vital role in accelerating the economic development of a country. This sector could play as an input of production and has a high multiplier effect to facilitate and stimulate the growth of other industrial areas. " Electricity is a fundamental prerequisite for increasing competitiveness through its role as a critical factor in driving efficiency and productivity improvement (Adam & Sambodo, 2015).

In-Law 15/1985, as the first law governing electricity in Indonesia, it is stated that the state controls the supply of electricity, the implementation of which is carried out by state-owned enterprises as holders of electricity. The state controls the term in Law 15/1985 in line with Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. State control over production branches that are important to the state and which control the livelihoods of the people is intended so that individuals or groups do not control the production branches. Which can result in the oppression of the people? In other words, the meaning of state control over electricity in Article 33 paragraph (2) of the 1945 NRI Constitution and Law 15/1985 is thoroughly carried out by the state. State control over electricity is implemented so that the

state has full authority and control over the supply of electricity. In its development, the meaning of state control over electricity has been given a new meaning by the Constitutional Court, that state control covers the policy functions and actions of administration, regulation, management, and supervision for the greatest prosperity of the people. The policy function and management actions are carried out through the government's authority to issue and revoke licensing, licensing, and concession facilities. The regulatory function by the state is carried out through legislative power by the DPR together with the Government, and regulation by the Government. The management function is carried out through the mechanism of share ownership and through direct involvement in the management of State-Owned Enterprises or State-Owned Legal Entities as an institutional instrument to realise the greatest prosperity of the people. The function of supervision by the state is carried out through the authority to supervise and control so that the implementation of control by the state over essential branches of production and which control the lives of many people is indeed carried out for the greatest prosperity of all people.

State-owned enterprises exercise state control over electricity. The state-owned enterprise (BUMN) that is intended is the Perusahaan Umum Listrik Negara, as stipulated in the Government Regulation of the Republic of Indonesia Number 17 of 1990. Besides, it also affirmed that the State Electricity Company organises the supply of electricity, which includes generation, transmission and distribution activities up to the point of use. In other words, the business field of the State Electricity General Corporation covers all areas of the electricity supply business. State control of electricity is carried out by the State Electricity Company, which based on Government Regulation of the Republic of Indonesia Number 23 of 1994 changed to PT. PLN (Persero). As the holder of an electricity business authority, PT. PLN (Persero) was established with the aim of (a) providing electricity for the public interest, (b) seeking to supply the electricity in sufficient quantity and quality to increase the welfare and prosperity of the people fairly and evenly and encourage economic activity.

### ***Involvement of Private Business Entities in the Electricity Supply in Indonesia***

Public-private partnership can be interpreted as "A long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance"(World Bank, 2014). Public-private partnership is "a cooperation agreement or contract, between a government agency and a business entity / private party (Yescombe, 2007), where (a) the private party carries out a part of the government function for a specific time, (b) the private party receives compensation for implementation of these functions, both directly and indirectly, (c) the private party is responsible for risks arising from the application of these functions, and (d) government facilities, land or other assets can be surrendered or used by the private party. Therefore, it can be stated that public-private

partnership is a form of a collaborative agreement between the government and the private sector based on the principle of mutual benefit and risk sharing, by using each other's expertise to realise an increasingly quality public infrastructure (I.B.R. Supancana, 2015).

Public-private partnership in the provision of infrastructure in Indonesia has been initiated since 1993 and was strengthened in 2005. The government's desire to involve private business entities in infrastructure development can be seen from the "white paper" document and the Indonesia Infrastructure Summit 2005. The White Paper document was produced from studies funded by the consulting company Norplan ( USA) in 1993, and a 1996 study by Coopers and Lybrand on a policy framework and strategy for building electricity by the private sector. The Indonesia Infrastructure Summit 2005 was held as a means to socialise, promote and invite the involvement of the private sector to work together in providing the infrastructure through the Public-Private Partnership scheme (Adam & Sambodo, 2015). Infrastructure development using the Public-Private Partnership scheme is a change in the fundamental mindset compared to the previous era of infrastructure development models. Infrastructure development requires joint-collaboration between the central government, regional governments, state-owned enterprises, regionally-owned enterprises, and private businesses. In the government's view, the involvement of the private sector is significant because the government's ability to fund infrastructure development is relatively limited.

Presidential Regulation Number 67 of 2005 concerning Government Cooperation with Business Entities in the Provision of Infrastructure is a form of the Indonesian government's response to create an investment climate to encourage business entities to participate in infrastructure development. Article 3 of Presidential Regulation Number 67 of 2005 explicitly states the objectives of cooperation between the government and business entities, namely:

- a) Sufficient funding needs sustainably in the provision of infrastructure through the mobilisation of private funds
- b) Increase the quantity, quality, and efficiency of services through fair competition
- c) Improving the quality of management and maintenance in the provision of infrastructure
- d) Encourage the use of the principle of the user paying for the service received or in some instances taking into account the user's ability to pay

Public-Private Partnership is the right choice, especially for infrastructure that has a high level of financial return, including power generation, so that the government can focus more on building infrastructure that is commercially not viable but socio-economically very much needed by the community. Indonesia will experience difficulties in building infrastructure if it only uses government funds. The percentage of the use of government funds in infrastructure development is approximately 4% -5% of Gross Domestic Product. Public-Private Partnership is needed, among other reasons, due to limited government funds,

infrastructure that is already inadequate both in terms of quantity and quality, and expertise (technology) owned by the private sector.

In the field of electricity supply, the involvement of private business entities has been regulated in Government Regulation of the Republic of Indonesia Number 17 of 1990 (PP 17/90), although it has not yet been in the form of cooperation between the government and private business entities. In Government Regulation 17/90, it is regulated to provide electricity, PT. PLN (Persero) can cooperate with other business entities. The formulation of other business entities in PP 17/90 can be interpreted as a private business entity. In its development, the regulation on the involvement of private business entities in supplying electricity is more clearly regulated in Law 30/2009. Article 4 of Law 30/2009 regulates that the implementation of electricity supply businesses by the government and regional governments is carried out by state-owned and regionally-owned enterprises. Private business entities, cooperatives, and non-governmental organisations can participate in the business of providing electricity. There are several forms of public-private partnership namely (a) build and transfer, (b) build, operate, Transfer / BOT, (c) Build, Operate, Leasehold, and Transfer / BOLT, (d) Build, Transfer, and Operate / BTO, (e) Renovate, Operate, and Transfer, (f) Renovate, Operate, Leasehold and Transfer (ROLT), and (g) Build, Transfer, Leasehold (BTL).

The pilot project for supplying electricity with a Public-Private Partnership scheme in Indonesia is the construction of a 2 X 1,000 MW Central Java steam power plant. Central Java Coal-Fired Power Plants (CJPP) 2 X 1,000 MW is the first large-scale government and private partnership showcase project with an investment of more than Rp 54 trillion, as well as the first Public-Private Partnership project implemented under Presidential Regulation No. 67 of 2005 concerning Government Cooperation with Business Entities in the Provision of Infrastructure (Suhadi, 2018). Agreement and agreement documents signed regarding the Central Java PLTU KPS Project include:

- a) Power Purchase Agreement between PT. PLN (Persero) and the private electricity developer PT. Bhimasena Power Indonesia
- b) Guarantee Agreement between the Minister of Finance of the Republic of Indonesia and IIGF as a guarantor with the private electricity developer PT.BPI
- c) Regress Agreement (Resource Agreement) between the Minister of Finance of the Republic of Indonesia as a guarantor with PT. PLN (Persero)
- d) Regress Agreement (Resource Agreement) between PT. PII (Persero) as a guarantor with PT. PLN (Persero)
- e) Sponsor Agreement for project development between J-Power, Ithocu, and Adaro

The construction of the CJPP 2 X 1,000 MW as a pilot project of ublic-Private Partnership obtained government guarantees using a joint guarantee scheme between the Government

and Indonesia Infrastructure Guarantee Fund based on Presidential Regulation No. 78 of 2010 concerning Infrastructure Guarantees in the Government Cooperation Project with Business Entities conducted through the Infrastructure Guarantee Business Entity.

### ***The Impact of the New Meaning on State Control in the Electricity Sector on the Supply of Electricity by the Private Sector***

The ability of a state to meet electricity infrastructure needs is determined by the national context, resources, business patterns, industrial strategies, the level of affordability and types of electricity infrastructure, so as to produce different patterns and ways (Gregory & Sovacool, 2019). Indonesian legislation still places control of electricity in the state. The power of electricity by the state comes from and is derived from the conception of Indonesian people's sovereignty over all sources of Indonesia's natural wealth. The control of electricity by the state includes the policy functions and actions of administration, regulation, management, and supervision of the business of providing electricity for the greatest prosperity of the people. In this context, the involvement of private business entities is carried out, as an effort to provide adequate, equitable, and quality electricity. Electricity infrastructure development, in addition to being built by involving private business entities, is also built by integrating policies centrally and decentralised. Electricity infrastructure can be managed in a centralised or decentralised way. However, a more likely way is a simultaneous combination of centralised design and decentralisation. For example, power plants can be built through centralised and decentralised policies (Funcke & Bauknecht, 2016).

Public-private partnership in infrastructure development in Indonesia is known as government and business cooperation based on Presidential Regulation Number 67 the Year 2005, Presidential Regulation Number 13 of 2010 and Presidential Regulation Number 56 of 2011, and currently governed by Presidential Regulation Number 38 of 2015. Until 2017, the project of electricity supply, build under the new Public and Private Cooperation scheme is 1 CJPP 2 X 1,000 MW, which is currently under construction and planned to operate in 2020. The number of private business entities that collaborate with the government is still small, meaning that state policy involving the private sector in the supply of electricity is not yet optimal. The National Legal Development Agency (I.B.R. Supancana, 2015) reports that cooperation between the government and the private sector in the supply of electricity still faces obstacles, both in terms of regulations, government commitment, and coordination between agencies. From the aspect of the law, for example, existing laws have not been able to protect the elements of land acquisition, licensing, relations with the community, or investment protection.



## **Conclusion**

Electricity is an essential branch of production for the state, which controls the lives of many people and is principally controlled by the state. State control over electricity does not mean that the state has a monopoly over all electricity supply businesses, but also provides a space for participation to private business entities, through the form of Public-Private Partnership in infrastructure development. Regulations regulating cooperation between the government and private business entities are sufficiently available, but in their implementation, the level of involvement of the private sector in the business of providing electricity is still low. The construction of the CJPP 2 X 1,000 M.W as a pilot project for the construction of power plants under the PPP scheme is still under construction and not yet operational. The success story of the CJPP 2 X 1,000 M.W power plant development is likely to trigger the involvement of private business entities in electricity infrastructure development in Indonesia.

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