

Disharmonize of the Provision of Electricity and the Impact on the Business

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Abstract. Electricity is very important for the business. Indonesia's state-owned power company, *Perusahaan Listrik Negara* (PLN) is not sufficient and even disrupted in electricity supply. There are regulations on electricity to ensure the supply of electricity. It also regulated the roles of business actors in providing electricity both at the national and regional levels. As an impact, there is disharmony on regulation concerning electricity for business as occurs in North Sumatra Province. This research raised a research question, how disharmony in the arrangement of electricity has an impact on the business world? This study reviewed 5 regulations covering national and provincial level regulations concerning electricity supply. This study conducted FGDs with 10 stakeholders including local governments. The research found that the Regulation of the Governor of North Sumatra Province which known as *Pergubsu* No. 28/2019 concerning the implementing Instructions of *Perda* No. 2/2018 concerning Electricity is disharmony with Ministerial regulation of Energy and Mineral Resources (*ESDM-Energi dan Sumber Daya Mineral*). It shown in terms of the size or capacity of a power plant which need an operating permit and an operation-worthy certificate. It affected the business condition in particular the legal uncertainty in licensing. As suggestion, province government needs to change and adjust its regulation concerning electricity supply with the updated regulation namely Law No. 11/2020 concerning Job Creation (Omnibus Law) and PP No. 25/2021 concerning the Implementation of the Sector of Energy and Mineral Resources.

Keywords: Disharmonized, Electricity, Business Sector

1 Introduction

Electricity having an important role in achieving the national development goal. It is needed to support production in various sectors especially business. Therefore, the electricity supply must be procured in order to ensure its function to achieve the main strategy of the national economy [1]. In Indonesia, Electricity demand is calculated for industrial, household, business, general and other sectors in 22 PLN marketing areas [2]. Due to this important function, electricity claimed as a branch of production that controls the lives of many people as stated in Article 33 of UUD 1945. Sumatra Island is divided into eight PLN electricity marketing areas namely Aceh, North Sumatra, Riau, West Sumatra, South Sumatra, Jambi, Bengkulu, Bangka Belitung, Lampung, and Batam [2]. According to the Ministry of Energy and Mineral Resources, it estimated that the total national electricity demand in 2025 could reach 450,101 GWh. Meanwhile, the total power generation capacity in Indonesia is currently 25,218 MW consisting of 21,768 MW (86.3%) owned by PLN and 3,450 MW (13.7%) belong to the private sector. Refer to the electricity demand growth in Indonesia during the last 10 years which shown

an average of 6-9%, it indicated that would be a gap between supply and demand in the electricity sector [3].

In 2020, PLN has been improved and able to store 1,346 Megawatts (MW) of reserve power. In March, PLN of North Sumatra Province has a total capable power capacity of 3,056 MW [4]. The peak load reaches 1,831 MW, with a power of 143 MW sent to Aceh. Furthermore, PLN continues to increase the total supply of 6,229 MW until 2028. Most of the electricity supply from New and Renewable Energy (EBT) sources [4]. There is a total of 6,229 MW gradually until 2028. 6229 MW of it consists of several commercially operated generators (COD) in 2020. They are: (1) PLTA-*Pembangkit Listrik Tenaga Air* (Hydro Power Plant) Hasang 13 MW, (2) PLTMG-*Pembangkit Listrik Tenaga Mesin Gas* (Gas Engine Power Plant) Sumbagut 2 Peaker 240 MW, (3) PLTP-*Pembangkit Listrik Tenaga Panas Bumi* (Geothermal Power Plant) Sorik Merapi Unit 2 with a capacity of 45 MW [4].

The construction of this electricity supply infrastructure shows that the availability of electricity by PLN is insufficient and often disrupted [5]. To ensure the electricity supply, Indonesia has regulations concerning Electricity. Law concerning electricity states the need of electricity being part of living for many people. Therefore the development of electricity infrastructure is a must and conform to some principles namely benefit, equitable efficiency, sustainability, economic optimization in the use of energy resources, relying on one's own abilities, the rules of healthy business, security and safety, preservation of environmental functions, and regional autonomy [6].

Law No. 30/2009 concerning electricity mentions the role of local governments and communities in increasing electricity supply both capital and technology intensive. North Sumatra is the fourth province with the largest population in Indonesia after West Java, East Java and Central Java. There are 14,799,361 people as of in September 2020 [7]. Electricity supply is very important in business operating in North Sumatra. It is required to move facilities and infrastructure either directly or indirectly in production. Ensuring the supply of electricity is priority. There are many business actors who work on this to ensure the availability of electricity from PLN especially when it is disrupted. In North Sumatera Province, efforts made by the business group in the form to ensure the electricity supply for their own need known as generator sets or *Genset*. Based on the interviews and FGDs found that there is a licensing problem for the business of supplying electricity for its own need [8]. It can be seen from the disharmony of existing regulations at the provincial level. This paper will discuss a research question, namely what is the disharmony in the regulation concerning electricity supply related with business sector in North Sumatra Province?

2 Research Method

This research was conducted with an empirical legal approach. There are five regulations were reviewed both national and provincial levels; namely (1) Law No. 30/2009 concerning Electricity (2) Law No. 11/2020 concerning Job Creation. (3) PP No. 25/2021 concerning the Implementation of the Sector of Energy and Mineral Resources which is an arrangement regarding the implementation of electricity supply business for public interest and for its own interests. (4) Regulation of the Minister of Energy and Mineral Resources (ESDM) Number 38/2018 concerning procedures for accreditation and certification of electricity, (5) Regional Regulation of the province of North Sumatra No. 2/2018 concerning Electricity; and (5) *Pergubsu* No. 28/2019 concerning Guidelines for Implementing *Perda* No. 2 of 2018

concerning Electricity. Furthermore, this study also conducted interviews and FGDs with 10 stakeholders regarding electricity in North Sumatra Province.

3 Results and Discussion

Law No. 12/2011 concerning the Formation of Legislations explains the position of local regulation in Indonesia legislation. Article 7 paragraph (1) states that it is as one of the legal sources. Furthermore, Article 1 paragraph (3) of UUD 1945 which also described in the explanation of Law No. 12/2011 shows that local government is given the authority to make policies. The regulations in the context of implementing regional autonomy and assistance tasks as well as accommodating special regional conditions and/or further elaboration of higher laws and regulations. Furthermore, Law No. 23/2014 concerning Regional Government as amended several times, the latest is Law No. 9/2015. It explains that local government is the administration of government affairs both the executive and local People's Representative Council due to the principle of autonomy.

3.1 Regional Authority in Electricity Supply Business for Own Interest

Article 33 paragraph (2) of the 1945 Constitution states “Production branches which are important for the state and which control the livelihoods of the public shall be controlled by the state”, moreover Article 33 paragraph (3) of the 1945 Constitution states “contained therein controlled by the state and used for the greatest prosperity of the people”. It explain further that these articles mean that the economy is based on economic democracy, prosperity for all people. Therefore the production branches which are important to the state and which control the lives of the people must be controlled by the state. Otherwise, the reins of production will fall into the hands of those in power and the people are oppressed by many. Companies could operate a production process which does not control the lives of many people. Even, it can be in someone's. The land, water and the natural resources contained in the earth are the main points of the people's prosperity. Therefore, it must be controlled by the state and used for the greatest prosperity of the people. Based on Article 33 of the 1945 Constitution, electricity is one of the livelihoods of many people, therefore Law No. 30/2009 concerning Electricity states that the electricity supply business is controlled by the state and implemented by the Government and local Governments [9].

Granting the widest possible autonomy to the regions is directed at accelerating the realization of community welfare by improving services, empowerment, and community participation and the formation of local regulations. The government provides ample opportunity for every citizen to fight for their rights collectively, and to achieve the ideals of the nation's struggle, to create a just and prosperous society [10]. The development of a region can be done by making a policy that specifically regulates something in the region. This policy can be in the form of a Local Regulation or a Governor Regulation aimed at the interests of the region without giving special benefits to either party [11].

In 2020, the Indonesian Government legalized Law No. 11/2020 concerning Job Creation then PP No. 25/2021 concerning the implementation on Energy and Mineral Resources. These both regulation change and remove several articles which stated in Law No. 30/2009 concerning Electricity. The consideration states that as an effort to fulfill the rights of citizens to work and a decent living for humanity through Job Creation [12]. One effort made by the Indonesian

government is the adjustment of various regulatory aspects related to the convenience, protection and empowerment of cooperatives and micro, small and medium enterprises, enhancing the investment ecosystem, and accelerating national strategic projects, including improving the protection and welfare of workers. Adjustment of the settings means here is having improvement. Efforts to change regulations aim to support the realization of synchronization in guaranteeing the acceleration of Job Creation in the form of a comprehensive unification [12].

Article 3 of Law No. 11/2020 concerning Job Creation states that changes to the existing arrangements in Law No. 30/2009 become: (1) The supply of electricity is controlled by the state, the implementation of which is carried out by the National and local Government based on the principle of local autonomy in accordance with the norms, standards, procedures and criteria stipulated by the National Government. (2) For the provision of electricity as stated on the previous paragraph, both National and Local Governments in accordance with their respective authorities shall determine policies, regulate, supervise and carry out electricity supply businesses. The existence of Article 3 of Law No. 11 of 2021 provides a basis for local governments to make further arrangements related to electricity.

Table 1. The authority of the Local (Provincial) Government in the Electricity sector before and after the legalized of Law No 11/2020 concerning Job Creation

Law No. 30/2009 Article 5	Law No. 11/2020 concerning Job Creation Article 42 point 4
<ul style="list-style-type: none"> a. Stipulation of provincial regulations in the electricity sector; b. Establishment of a general provincial electricity plan; c. Stipulating the electricity supply business license for business entities whose business areas are cross regencies/municipalities; d. Stipulating operating permits whose installation facilities cover cross-regencies/municipalities; e. Determination of electricity tariffs for consumers from the electricity supply business license holder stipulated by the Provincial Government; f. Stipulation of approval for the sale price of electricity and lease of electricity networks for business entities that sell electricity and/or lease electricity networks to business entities whose licenses are stipulated by the Provincial Government; g. Stipulation of approval for the sale of excess electricity from the holder of an operating license whose license is stipulated by the Provincial Government; h. Stipulating permits for the use of electric power networks for the purposes of telecommunications, multimedia, and 	<ul style="list-style-type: none"> a. Stipulation of provincial regulations in the electricity sector; b. Establishment of a general provincial electricity plan; c. Guidance and supervision of business entities in the electricity sector whose Business Licenses are stipulated by the Provincial Government in accordance with the norms, standards, procedures and criteria stipulated by the National Government; d. The appointment of electricity inspectors for provinces; and e. Stipulation of administrative sanctions to business entities whose Business Licenses are stipulated by the provincial Local Government in accordance with the norms, standards, procedures and criteria stipulated by the National Government.

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- information technology on networks owned by electricity supply business license holders or operating licenses stipulated by the Provincial Government;
- i. Guidance and supervision of business entities in the electricity sector whose license is stipulated by the Provincial Government;
 - j. The appointment of electricity inspectors for provinces; and
 - k. To impose administrative sanctions on business entities whose licenses are stipulated by the Provincial Government.
1. The authority of the district/city Government in the electricity sector includes:
 1. Stipulating district/city regional regulations in the electricity sector;
 2. Establishment of a general plan for electrification of the regency/municipality area;
 3. Stipulating the electricity supply business license for a business entity whose business area is in a regency/city;
 4. Stipulation of an operating license whose installation facilities are within the district/city;
 5. Determination of the electricity tariff for consumers from the electricity supply business license holder stipulated by the district/city government;
 6. Stipulation of approval for the sale price of electricity and lease of electricity networks for business entities that sell electricity and/or lease electricity networks to business entities whose licenses are stipulated by the district/city government;
 7. Stipulation of electricity support services business license for business entities whose majority of shares are owned by domestic investors;
 8. The stipulation of the approval for the sale of excess electricity from the operating permit holder whose license
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- is stipulated by the regency/city government;
9. Stipulating permits for the use of electric power networks for the purposes of telecommunications, multimedia, and information technology on networks owned by electricity supply business license holders or operating licenses stipulated by district/city governments;
 10. Guidance and supervision of business entities in the electricity sector whose licenses are stipulated by the regency/city government;
 11. The appointment of electricity inspectors for districts/cities; and
 12. To impose administrative sanctions on business entities whose licenses are stipulated by the local government.
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3.2 Disharmony of Electricity Arrangements in North Sumatra and its Impact

North Sumatra province is the fourth most populous province in Indonesia after West Java, East Java and Central Java. According to the statistic in 2020 via Population Census, the state population on September 2020 was 14,799,361 people. Meanwhile, the previous population census in 2010 reached 12,982,204 people. The population density in 2010 was 177 people per km², then in 2020 it increased to 203 people per km². The population growth rate during the 2000-2010 period was 1.22 percent per year, and in 2010-2020 it was 1.28 percent per year. Based on data from the Central Statistics Agency in North Sumatra Province, it is stated that the number of large and medium industries is 1,256 companies and 140,608 small macro industries [7].

Furthermore, in 2018, the number of large and medium-sized industrial businesses in North Sumatra was recorded at 1,256 companies, which means that it has decreased by 204 companies or around 13.97 percent when compared to in 2017, amounting to 1,460 companies [7]. The largest number of companies is in Deli Serdang, Medan and Asahan districts. In 2018, the output value of large and medium industries reached IDR 271.23 trillion with added value based on market prices of IDR 89.61 trillion. The biggest added value in 2018 was in the food, beverage and tobacco industry, namely IDR 47.95 trillion and the basic metal industry of IDR 16.62 trillion. The smallest added value in the same year was in the textile, apparel and leather industry, amounting to IDR 741.59 billion, and metal goods, machinery and equipment of IDR 1.47 trillion. In 2018, the number of micro and small industrial businesses in North Sumatera there are as many as 140,608 companies [7]. The largest number of companies are in Medan, Deli Serdang, and Langkat districts. As consequences, there is an increased demand for electrical supply in North Sumatra to operate the productions. There will have an impact on various areas of life including conflicts of interest in the future. It needs a regulation concerning the electricity supply for business sectors in North Sumatra Province.

There is a study which examines the effect of periodic blackouts and the use of *Gensets* on micro-business activities in one sub-district in Medan City. It shows that partially periodic

blackouts have a significant negative effect on the income of micro and small businesses in Medan Baru sub-district. Furthermore, the use of generators has an effect a significant negative effect on the income of micro and small businesses in Medan Baru sub-district. This study uses a partial test, to show whether all the independent variables (periodic blackouts; and the use of generators) that are included in the model have a joint influence on the dependent variable (micro-business activities) [13].

Regulations regarding the business of supplying electricity for its own needs are still needed, without diminishing the role of PLN which continues to improve in providing energy needs by continuing to make electricity innovations. Electricity demand in Indonesia is calculated per sector in 22 PLN electricity marketing areas, namely the industrial, household, business, general and other sectors. Sumatra Island is divided into eight PLN electricity marketing areas which include Aceh, North Sumatra, Riau, West Sumatra, South Sumatra, Jambi, Bengkulu, Bangka Belitung, Lampung, Batam [2]. In the midst of the problem of limited supply of electrical energy and other problems that can cause power outages at any time, people can use electricity supply business instruments for their own interests as regulated in the Electricity Law [8].

Law No. 30/2009 regulates the affirmation that Electricity development aims to ensure the availability of electricity in sufficient quantity, good quality, and at a reasonable price in order to improve people's welfare and prosperity in a just and equitable manner and to realize sustainable development. To fulfill this, it is then emphasized regarding the control and exploitation carried out by the government and local governments based on the principle of local autonomy. In terms of exploitation, private enterprises, cooperatives and non-governmental organizations can participate in the electricity supply business. Furthermore, it regulates the electricity supply business, which is the provision of electricity, which includes generation, transmission, distribution and sale of electricity to consumers. The electricity supply business is then classified for public interest and self-interest. In terms of providing electricity for its own purposes, it includes: a) electric power generation; b) electric power generation and distribution of electric power; or c) electric power generation, electric power transmission, and electric power distribution [14].

The electricity supply business can be carried out after obtaining a license in the form of: Electricity supply business license; and operating permits issued by the government or local governments in accordance with their respective authorities. Regarding the mandatory operating license for power plants with a certain capacity as regulated by a ministerial regulation. In the implementation of every electricity business activity, it is obligatory to comply with the provisions of electricity safety. One of them is related to electric power installations that operate must have an operation-worthy certificate.

Based on the above, Law No. 30/2009 on Electricity is one of the bases in electricity regulation, which includes a division of authority with local governments, one of which is to issue business and operating licenses for electricity supply business activities which are then regulated by local regulations. In its development, then Law No 30/2009 was amended several provisions in Law No. 11/2020 concerning Job Creation and must be synchronized by the regulations before it.

There are problems faced by the industrial community regarding licensing for the business of supplying electricity for their own interests, namely the disharmony of the regulations between the Governor Regulation of North Sumatra province namely *Pergub* No. 28/2019 with the Minister of Energy and Mineral Resources Regulation No. 12/2019, especially regarding the capacity required to have a certificate of operation-worthy (SLO-*Sertifikat Laik Operasi*). Before the removal of the operating permit provisions in Law No. 30/2009, between Governor

Regulation No. 28/2019 and Regulation from the Minister of Energy and Mineral Resources No. 12/2019 had several impacts.

First, for businesses to supply electricity for their own interests with a power generation capacity above 200 kVA, installation facilities in the provincial area can be implemented after obtaining an operating permit (Article 13 paragraph (1) *Pergub Sumut* No. 28/2019), while in a Ministerial Regulation ESDM No. 12/2019 stipulates that an operating license is only required for businesses to supply electricity for their own interests with a total power generation capacity of more than 500 kVA in one electric power installation system (Article 2 paragraph (1)). This ESDM Ministerial Regulation confirms that an operating license is not required for the business of supplying electricity for its own interests if the total power generation capacity is up to 500 kVA in 1 electrical installation system, which is required to only submit a report once to the minister through the Director General or the governor before doing business. The provision of electricity for its own interests (vide Article 13 paragraph (1) of the Minister of Energy and Mineral Resources Regulation No. 12/2019). This has changed since the abolition of the Operating Permit through Law No. 11/2020 concerning Job Creation.

Second, there is legal confusion that arises because Article 15 of North Sumatra Governor Regulation No. 2018 requires the completeness of data in the form of a business license, in other words, both are mutually conditional.

Third, it violates the principle of legal certainty, so that in practice it can lead to collusion, gratification, bribery, and other criminal acts due to changes in nomenclature to Business Licensing. The practice of corruption is prone to occur in the licensing service sector [15]. The anti-corruption agency, the Corruption Eradication Commission (KPK-*Komisi Pemberantasan Korupsi*) aims at the integrity of the private sector in North Sumatra, in this case transparency and public accountability, particularly in one-stop integrated services, and strengthening corporate integrity at the sub-national level. One of the challenges identified was the issue related to licensing regarding the business of providing electricity for self-interest which is known as the popular language is the generator set (generator). The bureaucracy in business licensing that is not conducive and makes it difficult for the public is feared that it will have an impact on corruption [16].

KPK concerns to the sector of Licensing and Commerce, because it has direct contact with the community. KPK encourages improvements in licensing and trading systems in order to obtain benefits: first, ease of licensing in doing business and investment. Second, increasing employment and economic growth, and third, the emphasis on economic costs on basic commodities. The government, including local governments, must evaluate the licensing sector as a barrier to investment.

There are some substantial point regulated in *Pergub* No. 28/2019 concerning implementation of electricity supply which does not suit with the latest situation. Now, Indonesia has Law No. 11/2020 on Job Creation which has changed some points in Law No. 30/2009 [12]. First, Article 1 point 11 is abolished, point 11 initially defines an Operating Permit: "An operating license is a permit to supply electricity for one's own interests" (abolished). Article 19 which regulates Operating Permits in terms of supplying electricity for self-interest is also amended. It related with the changing of Business Licensing nomenclature. Second, Article 22 undergoes an amendment which essentially states that the Business License to supply electricity for its own interests is required for power plants with a certain capacity, this capacity will be regulated in a Government Regulation (*PP-Peraturan Pemerintah*). PP No. 25/2021, Article 27 states that the Electricity Supply Business for its own interests with a total power generation capacity of more than 500 kW. Changed from previously using units of kVA (kilo Volt Ampere) to kW (kilo Watt). 1kVA is 0.8 KW, so if the old regulations say, for

example, 500 kVA means the same as 400 KW ($500 \times 0.8 = 400$). Five hundred kilowatts connected in 1 (one) Electric Power Installation system are required to obtain an Electricity Supply Business Permit for its own use. Third, changes related to Electricity Safety (K2), Certificate of Acceptability for Operations, and administrative sanctions, criminal sanctions, and additional sanctions in the form of fines. All of these changes must be accommodated so that there is harmonization between laws and regulations from the national to local levels so as to reduce adverse impacts on the development goals of the Indonesian government.

4 Conclusion

Implementing *Perda* No. 2/2018 concerning Electricity is currently disharmony with the Regulation of the Minister of Energy and Mineral Resources in terms of the size or capacity of power plants that are required to have an operating permit, and an operation-worthy certificate. Furthermore, after the enactment of Law No 11/2020 concerning Job Creation, namely the regulation in article 42 which states that there is a change in Law No. 30/2009 concerning Electricity. Furthermore, several articles of this amendment have been regulated in PP No. 25/2021 concerning the Implementation of the Energy and Mineral Resources Sector. The disharmony of the existing regulations is *Perda* No. 2 of 2018 concerning Electricity with the Regulation of the Minister of Energy and Mineral Resources which has an impact on the business world regarding legal uncertainty in licensing. *Pergub* No. 28/2019 as the Implementing Instructions of *Perda* No. 2/2018 concerning Electricity is disharmony with the Minister of Energy and Mineral Resources Regulation in terms of the size or capacity of power plants that are required to have an operating permit, and an operation-worthy certificate.

The research suggestion is that the North Sumatra Governor Regulation must be amended and adjusted to the latest regulations including Law No. 11/2020 concerning Job Creation so that it provides benefits and legal certainty for the community.

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