**Sulaiman[a] and Ade Arif Firmansyah[b]**

[a]Faculty of Law Syiah Kuala University
e-mail: sulaiman.fh@unsyiah.ac.id
[b]Faculty of Law Lampung University
e-mail: ade.firmansyah@fh.unila.ac.id

# RECONSTRUCTION OF ENERGY MANAGEMENT LAW BASED ON INDONESIA'S LEGAL SYSTEM

**Abstract**

There are two things that became an important part of studies in Indonesian law related to energy management. The first, related to the management of natural resources. Second, the energy sector is also related to other sectors, that is: forestry, water resources, marine and fisheries, agriculture and plantations, as well as land. Ideally, all of the energy management law must reflect to the state ideology, as natural resources energy must be managed for the greater prosperity of the people. Energy should not be administered arbitrarily because in addition to the utilization, the existence of natural resources should not be separated from the philosophical orientation of indonesian legislation, Pancasila and The 1945 Constitution. However, the reality of energy legislation indicated of authority compete between sectors and alignments to society is not optimal. This is due to the legal nature of the energy sector which is liberal and still-exploitation oriented and pro-capitalist. By using socio-legal approach, this paper describes the reconstruction of law oriented to the Indonesian legal system in energy management based on Pancasila and the 1945 Constitution as the foundation and soul of the energy sector law.

Keywords: Reconstruction of law, energy management, the Indonesian legal system.

## 1. Introduction

The energy that discussed in this article, is not limited to energy stipulated in the Law 30/2007 on Energy, but broader, encompassing the sectors of Energy and Mineral Resources. In addition to the Energy Act, this energy context contain Law 22/2001 on Oil and Gas, Law 21/2014 on Geothermal, Law 4/2009 on Energy and Coal Mining, and Law 30/2009 on Electricity. All of the laws is that the energy sector is a gift from the Creator as well as a resource that can be harnessed for development.

The discussion in energy context above are possible, given that the concept offered by Article 1 paragraph 1, 2, 3, and 17 of Energy Act itself widely portrayed. Energy that is meant is "the ability to do work that can be heat, light, mechanical, chemical, and electromagnetic". The energy source itself is "something that can generate energy, either directly or through conversion or transformation process". In addition, energy resources is "natural resource that can be used either as a source of energy and energy". Energy management itself is determined, as "the organization of the provision, exploitation and utilization of energy and the provision of strategic reserves and conservation of energy resources".

Based on description above, it is meant energy includes energy sector. When speaking about sector, the association with other sectors may not be neglect. Associated with the presence of energy as a power source, then there are at least six interrelated sectors namely, forestry, water resources, marine and fisheries, agriculture and farming, land, and energy and mineral resources. [1]

Understanding the energy in the context of resources, then there are two things that are directly related. First, about how the resource was discovered, exploited and utilized. Second, traffic control resource relationship was discovered, exploited and utilized. The second thing is very important thing to do first thing. The existence of energy as a natural resource in this context, and then discovered the settings through Article 33 of the Constitution of the Republic of Indonesia Year 1945 (Indonesia Constitution of 1945).

There are three things that specified in Article 33. First, Indonesia's economy is based on familial and economic democracy (paragraph (1) and paragraph (4)). Second, the production branch concerning the livelihood of the people controlled by the state (paragraph (2)). Third, natural resources controlled by the state for the welfare of the people (paragraph (3)). [2]

The third paragraph, confirming the position of the utilization of natural resources, which in the context of Indonesia known as the state right to control the management of natural resources. This setting can be read in the context of the desire of state that want to care the people. [3] This text can be called "moral reading"[4], which confirms the heart of the constitution. [5]

The assertion is the desire of achievement the goals of the welfare state, which is responsible for economic and prosperity. [6] This arrangement is called as affirmation of human-oriented economic system by Mubyarto. [7]

Imperatively is then contained in the law of the energy sector and mineral resources, but in fact, the law is too liberal[8], shows the competition between sectors and therefore cause a conflict of authority overlaps with the regulations and licensing[9], pull

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[1] Yance Arizona (2014), *Konstitusionalisme Agraria*, STPN Press, Yogyakarta, hlm. 166.

[2] RM. A.B. Kusuma (2004), *Lahirnya Undang-Undang Dasar 1945, Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha2 Persiapan Kemerdekaan*, Badan Penerbit FH UI, Jakarta, hlm. 313 dst.

[3] Satjipto Rahardjo (2008), *Negara Indonesia yang Membahagiakan Rakyatnya*, Genta Press, Yogyakarta, hlm. 91-93.

[4] Ronald Dworkin (1996), *Freedom's Law The Moral Reading of the Maerican Constitution*, Oxford University Press, Oxford, hlm. 2-4.

[5] Ronald M. Dworkin (2013), "Apakah Hukum Sebuah Sistem Aturan?" dalam HLA. Hart dkk, *Filsafat Hukum Suatu Pengantar*, Penerjemah Yudi Santoso, Merkid Press, Yogyakarta, hlm. 59-60.

[6] Jimly Asshiddiqie (2002), *Konsolidasi Naskah UUD 1945 setelah Perubahan Keempat*, Pusat Studi HTN FH UI, Jakarta, hlm. 57-58.

[7] Mubyarto (1988), *Sistem dan Moral Ekonomi Indonesia*, Pustaka LP3ES, Jakarta, hlm. 41-43.

[8] Andang Bachtiar, "Menuju Kebijakan Energi Bebas Kepentingan", Kompas, 7 Juli 2015; Marwan Batubara, "Menggungat Liberalisasi Gas", Kompas, 8 Januari 2014; Hindra Liu, "Kebijakan Energi Nasional Jangka Panjang Disiapkan", Kompas, 7 Maret 2012; Maxensius Tri Sambodo, "Konsistensi Kebijakan Energi Nasional", Kompas, 18 Desember 2007.

[9] Otong Rosadi (2010), *Inkorporasi Prinsip Keadilan Sosial dalam Pembentukan Undang-Undang Kehutanan dan Undang-Undang Pertambangan Periode 1967-2009*, Disertasi, PDIH UI, Jakarta.

authorities and regional governments[10], as well as the exploitative character and alignments on financiers. [11]

Based on the description, this article would like to answer the state right to control the natural resources. Associated with energy management must be socially justice, offered legal reforms within the framework of the Indonesian legal system. Thus legal reforms that would establish social justice orientation in energy management.

## 2. Method

The approach used in this paper is a socio-legal, which concepting law is not limited to the norm, but also as a behavior. Conception of law as behavior that appears in reality have consequence that the law is seen not just as a suitable concrete, written, contains the sanctions and issued by competent authorities that in operation is influenced by many other factors such as economics, politics, culture, religion, and etc. [12]

The use of this approach is important to bring it to a more thorough understanding of the law, intact and not text only. Also want to known whether the regulation is effective, positive, productive, or even disturb and ruin. [13] Some data are obtained through the news papers. The data is combined with an overview of the legislation. The analysis was performed by using descriptive-qualitative method.

## 3. Discussion

### Questioning the State Right to Control

There is a difference between Article 33 before and after the amendment. Additional of two paragraphs focused on the national economy that is organized based on economic democracy. This article basically have hope to reinforce the direction of life idealized form of the prosperity based on the family principles. The initial concept of Article 33 was discussed on July 16, 1945, proposal initiated by Muhammad Hatta on social welfare. [14]

This article is intended to make the natural resources are not controlled arbitrarily and the state must protect and manage carefully. This article contains the rules or general principles -what is called a moral text, among others: earth, water, natural resources utilized for the benefit of the people, the economy is based on family principles, and production for the lives of many people dominated by state. [15]

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[10] I Nyoman Nurjaya (2008), *Pengelolaan Sumberdaya Alam dalam Perspektif Antropologi Hukum*, Prestasi Pustaka Publisher, Jakarta, hlm. 96.

[11] Khudzaifah Dimyati (2001), Di Tengah Pengembangan Pemikiran Teori Hukum, Sepi dari Wacana Perdebatan, *J. Ilmu Hukum*, Vol. 4, No. 2, 129-132.

[12] FX. Adji Samekto (2012), *Ilmu Hukum dalam Perkembangan Pemikiran Menuju Post-Modernisme*, Indept Publishing, Lampung, hlm. 73.

[13] Brian Z. Tamanaha (2006), *A General Jurisprudence of Law and Society*, Oxford University Press, hlm. 1-2.

[14] RM. AB. Kusuma (2005), *Lahirnya Undang-Undang Dasar 1945*, Badan Penerbit FH UI, Jakarta, hlm. 443-453.

[15] Satjipto Rahardjo (2007), *Mendudukkan UUD: Suatu Pembahasan dari Optik Ilmu Hukum Umum*, Badan Penerbit Undip, Semarang, hlm. 57-58.

Through this article state rights to controle doctrine is known. The interpretation of this doctrine continues to be debated. [16] This is caused partly because too abstract and in various laws there are differences. Indeed, through the Constitutional Court Decision No.022/PUU-I/2003, "controlled by the state" can not be interpreted as in the sense of private ownership by the state. " controlled by the state" should be interpreted to include the meaning of mastery in a broad sense sourced and originates from the conception of the sovereignty of the people of Indonesia over all sources of wealth "earth and water and natural resources contained therein", also including public ownership by the people collectively sources intended natural-source. That is related to the goal of "the greatest welfare of the people", as the mandate to "promote the general welfare" and "creating social justice for all Indonesian people". People collectively, constructed by the 1945 Constitution mandates the state to create a policy (beleid), make arrangements (*regelendaad*), maintains (*bestuursdaad*), managing (*beheersdaad*), and control (*toezichthoudensdaad*), for the purpose of the large prosperity.

In addition, in Decision No. 72/PUU-VIII/2010 regarding judicial review of Law No. 41 of 1999 on Forestry, the Constitutional Court confirms that natural resource management planning should be based on the principle of efficiency of justice, sustainable, and environmentally sound, so that need of the comprehensive planning. Decision No. 45/PUU-IX/2011 regarding the testing of the Forestry Law, the Constitutional Court stated that administration officials should not be done arbitraily.

Through Decision No. 3/PUU-VIII/2010 regarding judicial review of Law No. 27 Year 2007 on the Management of Coastal Areas and Small Islands, the Constitutional Court also defines four benchmarks "for the greatest welfare of the people", namely: (a) their natural resources for the benefit of the people; (B) the level of equitable distribution of the benefits of natural resources for the people; (C) the level of people's participation in determining the benefits of natural resources; (D) respect for the rights of the people from generation to generation in utilizing natural resources. Destination "for the greatest welfare of the people" can not be separated by the authority of state control.

The above decision of the Constitutional Court, should be the basis for energy management in Indonesia. Energy management which should represent the lofty ideals as in the Preamble of the Constitution 1945. Thus, in the context of development, natural resources are not only oriented economy. [17] Since 1976, Mochtar Kusumaatmadja remind, development of which only economic oriented carried the negative implications to efficiency and environmental functions. [18] Actually development is efforts to realize quality of life. [19]

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[16] Noer Fauzi (2002), *Quo Vadis Pembaruan Hukum Agraria, Perspektif Transitional Justice untuk Menyelesaikan Konflik*, HuMA, Jakarta, hlm. 7.

[17] Otong Rosadi (2012), *Quo Vadis Hukum, Ekologi, dan Keadilan Sosial*, Thafa Media, Yogyakarta, hlm. 49.

[18] Mochtar Kusumaatmadja (1976), *Pengaturan Hukum Masalah Lingkungan Hidup Manusia: Beberapa Pikiran dan Saran*, Bina Cipta, Bandung, hlm. 6.

[19] M. Daud Silalahi (2000), *Perkembangan Hukum Lingkungan Indonesia: Tantangan dan Peluang*, Pidato Guru Besar, FH Unpad, Bandung, hlm. 10.

Indonesia opened the neo-capitalist ideology since the 1970s, with the birth of Law No. 1/1967 on foreign investment and Law No. 6/1968 on domestic investment. [20] Three decades later the state realized, among others, with the birth of the People's Consultative Assembly Decree No. IX/MPR/2001 on Agrarian Reform and Natural Resources Management.

In the letter c consideration of MPR Preamble decree stated that the management of agricultural/natural resource that has lasted for environmental degradation, inequality holding structure possession, use and utilization as well give rise to various conflicts. So MPR confirmed a number of important principles, among others: (a) justice in the control, ownership, use, utilization, and maintenance of agrarian resources/natural resources; (b) maintain continuity with regard to capacity and carrying capacity; (c) carrying out a social function, sustainability and ecological functions; (d) increased integration and coordination between sectors; (e) pursuing the balance of rights and obligations of the state, the government, society and individuals; and (f) implement a decentralized form of the division of authority.

On this basis, the policy directions that have been outlined is: (a) reexamining the various legislations in order to synchronize policies; (b) resolve natural resource use conflicts arising during this time as well as to anticipate potential conflicts in the future to ensure the implementation of law enforcement to be based on the principles of natural resource management.

Thus, this MPR decree is a keeper of boundary natural resources management in order to conform with the constitution. This limit itself in order to achieve what is called Jeremy Bentham as a guarantee of happiness for human beings as much as possible. [21] Happiness is that in the context of Indonesia, is intended as a welfare state goals. [22] Leading economic constitution that Indonesia adheres to the welfare state. [23]

Constitution of 1945 basically want to realize and maximize the well-being and happiness. But unfortunately associated with the acquisition and utilization of natural resources, for over 60 years of independence, natural resource management arrangements, instead generates injustice. Nationally, the exploitation of natural resources has not also provide prosperity for the people. The phenomenon of exploitation of natural resources that never ended without any effect on the welfare of the community can be seen in a variety of optical, one of which is the incorporation of the principle of social justice in the legislation. [24] On this basis, the legal reform of fair energy should be guided by the values of social justice as defined in the Indonesian legal system.

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[20] Imam Koeswahyono (2008), Hak Menguasasi Negara, Perspektif Indonesia sebagai Negara Hukum, *J. Hukum dan Pembangunan*, Tahun ke-38 No. 1, 62-72.

[21] HM. Agus Santoso (2014), *Hukum, Moral, dan Keadilan, Sebuah Kajian Filsafat Hukum*, Kencana, Jakarta, hlm. 58-60.

[22] Muntoha (2009), Demokrasi dan Negara Hukum, *J. Hukum*, Vol. 16 No. 3, 384-385.

[23] I. Dewa Gede Palguna (2008), *Mahkamah Konstitusi, Judicial Review, dan Welfare State*, Sekjen MK, Jakarta, hlm. 18.

[24] Otong Rosadi (2012), *Quo Vadis Hukum Ekologi dan Keadilan Sosial dalam Perenungan Pemikiran (Filsafat) Hukum*, Thafa Media, Yogyakarta, hlm. 32-34.

**Energy Management Must be Oriented Social Justice**

The laws of energy sector, include similar philosophical orientation. Law No. 22/2001 expressly mention the achievement of public welfare orientation of the national development activities should always rely on Pancasila and the Constitution of 1945.[25] This is also confirmed in the Law No. 30/2009. In the same spirit, the Law No. 30/2007 calling as a wealth of energy resources for the greater prosperity of the people. While Law No. 4/2009 also mentioned are owned by the state,[26] but did not call directly for the people's welfare, but the welfare of the people equitably pressure. While Law No. 21/2014 seem more loose.

All of the Energy Laws above, lists the three important principles in addition to other principles, that each justice, sustainability, and environmental sustainability. At the level of principle to realize the benefit of these three things in development. But it looks different in different settings. In Law No. 22/2001, the operationalization of the principle of justice is virtually invisible. There are provisions governing small businesses and cooperatives, but the setting was sunk by the dominance of business entities and licensing arrangements. It's just that this law is very concerned with the number of areas, including sacred area, territories of indigenous peoples, and cultural heritage that can not do the activities of oil and gas mining.

The dominance of licensing and terms of authority also dominant once in Law No. 21/2014. Exploitation and division of authority is very dominant. It also should be careful about the land and permits on the land, which in this case remains back to the land sector. Problem of this authority as well, it feels an attraction in Law No. 4/2009, it's just that this Act has been divided more detail some authority.[27]

The setting that interesting from Law No. 30/2007, by arranging emergency conditions and prices, including the reserve and fair energy pricing. The disadvantage is the provision of subsidy funds for the group is not able to not be an obligation, so the discussion is dependent on policy. Another thing for the operationalization of this article is subject to other provisions, particularly in pricing, and it would be risky for the people below. About authority, the same thing can also be seen that each level has a certain authority, and this authority issue back to the relevant laws.

The above conditions, basically there is awareness that justice becomes one of the important things of the Law on the energy sector. The orientation of this justice in the operationalization not all open space, among others due to a variety of factors surrounding the Act itself. Furthermore, the orientation of justice by the actual operationalization reflect how attraction occurs. This condition is caused by the Act can

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[25] Look at: Sulaiman (2016), *Rekonstruksi Hukum Minyak dan Gas Bumi Yang Berkeadilan di Indonesia*, Kanun Jurnal Ilmu Hukum Vol 18 No. 2, Agustus, hlm. 219-233.

[26] Look at: Ade Arif Firmansyah dan Malicia Evendia (2015), *Harmonisasi Pengaturan Kewenangan Daerah Bidang Pengelolaan Pertambangan Mineral Bukan Logam dan Batuan*, Kanun Jurnal Ilmu Hukum No. 65 Th XVII, hlm. 19-36.

[27] Look at: Budiyono, Muhtadi dan Ade Arif Firmansyah (2015), *Dekonstruksi Urusan Pemerintahan Konkuren Dalam Undang-Undang Pemerintahan Daerah*, Kanun Jurnal Ilmu Hukum No. 67 Th XVII, hlm. 419-432.

not be removed-associate of various factors, political, economic, and so on. These factors are then pressed on a waiver orientation of justice in the name of development.

Term development in this context is actually another meaning of modernization. According to Mansour Fakih, interchangeable term modernization as a development in order to avoid any negative impression, especially a development process that is generally dominated economic development orientation. [28] The orientation of this kind, called Myint classified as "In Looking Policy" (inward-looking policy) where a large intervention in the economic sphere that is associated with the allocation of natural resources in the context of development policy. [29] Andre Gorz calls this the term "looting reserves of natural resources".[30]

Based on the description above, it can be understood as the natural wealth of the existence of energy has a dual role, on the one hand as development capital, on the other hand as the support system of life. Achievement of both these roles simultaneously is often not realized. Though both are needed, especially related to environmental sustainability. [31]

Both roles above, basically also related to the concept and functions of the state in protecting the welfare of its people. With the concept of the welfare state, social justice utilization of energy is expected to run optimally, at the same time the environmental issues are not left behind.

**Reconstruction of Energy Management Law in Indonesia Legal System**

Terminology reconstruction, comes from the word construction that mean "arrangement (style, layout) of a building". Construction is done by the constructor recycled into reconstruction, which tells us "to build a re-arrangement of the building". Reconstruction is not much different from so-called "legal reform" which means the law that makes the development of society as equitably as orientation. Thus concept is disclosed by Satjipto Rahardjo[32] and Barda Nawawi Arief. [33] Legal reform itself is also associated with the sustainable development of the activity of the scientific and philosophical thinking/basic ideas/intellectual conception.[34] The study on this issue is certainly a study that "generations".[35]

In addition, referring to the concept of "reform" itself, should also improve the system. In the Oxford Dictionary is positioned updates as to fix the system in a variety of

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[28] FX. Adji Samekto (2008), *Kapitalisme, Modernisasi, dan Kerusakan Lingkungan*, Genta Press, Yogyakarta, hlm. 70.

[29] Budi Winarno (2009), *Pertarungan Negara vs Pasar*, Merdpress, Yogyakarta, hlm 124.

[30] Andre Gorz (2005), *Anarki Kapitalisme*, Resist Book, Yogyakarta, hlm. 16-17.

[31] Muhammad Akib (2012), Wewenang Kelembagaan Pengelolaan Lingkungan Hidup di Era Otonomi Daerah, *J. Media Hukum*, Vol. 19 No. 2, 248.

[32] Satjipto Rahardjo (2009), *Membangun dan Merombak Hukum Indonesia*, Genta, Yogyakarta, hlm. 15.

[33] Barda Nawawi Arief (1994), *Beberapa Aspek Pengembangan Ilmu Hukum Pidana, Menyongsong Generasi Baru Hukum Pidana Indonesia*, Pidato Guru Besar, FH Undip, Semarang, hlm. 15.

[34] Compare with: Sulaiman (2015), *Pengembanan Hukum Teoretis Dalam Pembangunan Ilmu Hukum Indonesia*, Kanun Jurnal Ilmu Hukum No. 67 Th XVII, hlm. 585-601.

[35] Barda Nawawi Arief (2014), *Pembaruan Sistem Hukum Nasional*, Penerbit Undip, Semarang, hlm. 16.

changes, leading to a better direction than before. [36] With a such scheme, then the update finally strung in a system aimed at (purposive system), [37] as well as destination countries in order to protect all the people of Indonesia and to promote the general welfare based on Pancasila and the 1945 Constitution.

Efforts to legal reform itself has been started since the inception of the 1945 Constitution in this context, which became a paradigm that can be captured from 1945, among others: (a) Belief in God Almighty; (b) Humanitarian; (c) the Union; (d) Democracy; (e) Social Justice; (f) Kinship; (g) Harmony; (h) Council. [38] Thus, the legal reform called, in the context of the law of energy, basically want to differentiate from Western thinking patterns within the law. Indonesia puts Pancasila in 1945 Constitution opening as a philosophical foundation that underlies and animates the preparation of the provisions contained in the Constitution. This concept emphasizes that the preparation and application of the rule of law in Indonesia must be based on and inspired by Pancasila. [39]

In the concept of Pancasila, mediate what the West individually prominent and Socialist communal glorifies. [40] Understand Pancasila seated individual interests are balanced with the public interest. Within this scope, Pancasila is the outlook of the Indonesia nation which express the views of Indonesia concerning the relationship between man and God, man and fellow human beings, and human beings with the universe, with a core of beliefs about man's place in society and the individual in the universe. On the basis of this, the context of the division of authority and exploitation of the energy sector, should not forget the values of Pancasila, particularly social justice that made the difference of the Indonesian legal system with modern law.

## 4. Conclusion

Based on the previous section, it can be concluded that basically in Indonesia there are basic of state rights to control, in order to protect the management of energy wealth equitably, it's just right to run the country interpreted vary up to the Constitutional Court in several decisions has set a limit of public welfare-related social justice. Concretely, the state authorities create policies, regulation, maintenance, management, and supervision, for the purpose of the people's welfare.

In the laws of energy sector, include similar philosophical orientation. That laws also lists three important principles in addition to other principles, that each justice, sustainability, and environmental sustainability. At the level of principle to realize the benefit of these three things in development. But it is different in the operationalization of the principles of justice are almost invisible. In the context of social justice, that caused due to other interests which are considered more important, that is the problem of

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[36] Oxford (2005), *Oxford Learner's Pocket Dictionary*, Oxford University Press, hlm. 360.

[37] Barda Nawawi Arief (2009), *Tujuan dan Pedoman Pemidanaan, Perspektif Pembaharuan Hukum Pidana dan Perbandingan Beberapa Negara*, Penerbit Undip, Semarang, hlm. 9.

[38] Bernard Arief Sidharta, "Filsafat Pancasila", Makalah, tt.

[39] Ibid.

[40] T. Mohammad Radhie (1987), "Pembangunan Hukum Nasional dalam Perspektif Kebijakan", Makalah Seminar Hukum FH UII, Yogyakarta.

exploitation, domination of licensing by financiers, and about the respective authority. Including the community's access to energy is still not optimal.

Energy management law reform is to fully offered in the context of the laws of energy, into the values of Pancasila as the foundation and soul. The existence of this value is different with modern laws that are more reliant upon individuals freedom.

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