

## Court rulling raises uncertainty in energy sector

The Jakarta Post, January 3<sup>rd</sup> 2005



**Eddy Satriya, Jakarta**

<http://www.thejakartapost.com/yesterdaydetail.asp?fileid=20050103.F01>

Economic changes coupled with advances in new technology, the need to conduct good-governance practices, and intensifying pressure to reduce the central government's role have significantly brought new developments to the provision of public utilities and infrastructure in many developing countries.

Waves of deregulation, liberalization and privatization started in the 1980s have had an effect on decision makers in setting up their industries.

The energy sector in Indonesia has also progressed significantly in its reform through the issuance of new regulations. Oil and Gas Law No. 22/2001, Electricity Law No. 20/2002, and Geothermal Law No. 27/2003 were all promulgated after the economic crisis in 1997. The main themes of the new laws are improving the quality of services, abolishing monopoly, defining the new role of the government, and improving public-private partnerships in infrastructure provision. As a result, the energy sector is now ready to open up the domestic market and to redefine the government's role in the industry.

Therefore, it was like a clap of thunder overhead on Dec. 15, 2004, when the news regarding the dissolution of Electricity Law No 20/2002 reached all decision makers, investors and players in infrastructure who assembled in the National Development Planning Board's (Bappenas) hall on Jl. Taman Suropati, Central Jakarta.

The reason for the annulment is that some of the main articles -- article no. 16, 17, and 38 -- of the Electricity Law are against article 33 of the 1945 Constitution. Having the Electricity Law canceled means that the law is no longer effective and all of the contracts and commitments being prepared must be stopped. Thus, at the moment there is no law or basic regulation effectively in place for the electricity industry. Yet, some say that the annulment means that the old Electricity Law No. 15/1985 is the prevailing law. However, that is not automatically the case since the old law had already expired and the decree made by the Constitutional Court canceled Law No. 20/2002 but said nothing about Law No. 15/1985. In short, the annulment has caused a backlash and the virtual eclipse of the power industry. The industry may be led into an even darker tunnel, unless the government and related stakeholders make a quick move to fill the gap.

As a matter of fact, the enactment of Electricity Law No 20/2002 has already marked a new era in the country's power sector. A series of restructuring and reform steps have been taken accordingly. For example, the formulation of the so-termed Blueprint for Indonesia's Power Sector -- also known as Guidelines for the Development of the National Power Industry -- and the establishment of the Electricity Market Supervisory Board through Government Regulation No 53/2003 are among reform steps taken in the sector. In addition, good will for reform has been signaled by the resignation of the former director general of electricity and energy utilization as a member of the board of commissioners of state-owned electricity company PLN.

On the other hand, unfortunately, PLN has not fully recovered yet from the economic crisis. The fact that only half of the population is connected to the grid shows PLN's difficulty in expanding its services. Blackouts and brownouts in some areas outside of Java and Bali islands also indicate a lower grade of

electricity services. The company's limited budget for new investment and the rehabilitation of power generators, and the price increases of crude and diesel oil has hampered PLN's activities significantly since about one third of its power generation is oil-fueled.

Other alternative for funding new investments in the system -- ranging from generation, transmission, and the distribution of the power to end-users -- are through foreign debt or loans. However, financing new projects through foreign loans has not been that easy for PLN. Most investors now seek government guarantees due to the poor track record of PLN., as many of its previous projects suffered long delays in the implementation stage.

The other way to improve the power supply service is through increasing the selling price to users. As the sole operator in the country, PLN -- through a government decision -- has successfully increased electricity charges over the last four years. Statistics show that price increases in the electricity tariff are much higher than those of other basic utilities, such as water supply and public transportation. In addition, power losses and inefficiency in management have worsened the overall performance of the power sector. All of these difficulties and the "wait-and-see" attitude of investors in the power sector have caused the deterioration of overall services.

Thus, we arrive at the question: How does this logic actually work? On one side, Electricity Law No. 20/2002 encourages the modernization of the sector through, among other things, redefining the government's role, gradually liberalizing the power sector that has been controlled by one party for decades, and by inviting private participation in the sector. The new Electricity Law has also freed PLN from constructing facilities and providing services in rural and remote areas. Article 7 of the law says that this task has now been transferred to both the central and regional administrations.

On the other hand, the cancellation of the law may throw the industry into uncertainty, which could lead to the deterioration of power supply services and worsen the investment climate at a national level. In other words, the cancellation of Electricity Law No. 20/2002 does not send out a positive signal ahead of the Infrastructure Summit.

The Constitutional Court has made its decision. Yet, we are aware that not all liberalization programs carried out across the world end as success stories. This is not a matter of "the Lexus and the Olive Tree" as underlined by Thomas L. Friedman. But, this is purely a question of which one is now the real enemy to the welfare of the Indonesian people from transition to transition: Monopoly or liberalization? Only time will tell.

*The writer is a senior infrastructure economist, working for Bappenas. He can be reached at [esatriya@bappenas.go.id](mailto:esatriya@bappenas.go.id)*