

AUTHORITY OF LOCAL GOVERNMENTS IN MANAGEMENT RENEWABLE ENERGY

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Abstract

Indonesia has faced various problems regarding the fulfillment of targets in energy development until now. Dependence on non-renewable energy is still high, causing the adequacy of energy reserves, especially in Indonesia, to still be highly dependent on the development of exploration. The legal rule of the authority of the regency/city local government to manage energy requires consistency in its implementation as stipulated in Article 14 paragraph 1 of the Local Government Law states that the determination of the division of government affairs in the fields of forestry, marine, and energy and mineral resources is divided into two, namely the Central Government and the Provincial Regions, in this case it clearly negates the autonomy of the Regency/City Regional Government. The authority of the provincial local government in the management of renewable energy Currently, the legal rules governing the authority of the central government in energy management are contained in Article 14 paragraph (1) and paragraph (3) of the Local Government Law. The authority of the regency/city local government in the management of renewable energy, the legal rules that regulate the authority of the provincial local government in energy management are contained in Article 26 paragraph (2) of the Energy Law. The *lex specialis* set of provisions or norms must be at a level (hierarchy) that is the same as the *lex generalis* set of provisions or norms. So it is clear that the City Government has the authority, namely attribution authority that comes directly from the legislation, because it is sourced directly from Article 26 paragraph 3 of the Energy Law.

Keywords: Authority, Renewable Energy, Government.

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1. Introduction

In today's era, humans cannot live without energy. Energy is something that is very inherent in the daily life of humans. Energy can be interpreted as a strategy or sector that has an important role in achieving social, economic, and environmental goals in the context of sustainable development that supports national development.¹ Based on its form, energy is divided into two, namely renewable and non-renewable energy. Renewable energy is energy that is produced and renewed indefinitely from geothermal, bio energy, sunlight, waterfall and water flow, wind, movement and temperature differences in the sea layer obtained if managed properly. Meanwhile, non-renewable energy or fossil energy is energy that, if managed continuously, can be exhausted such as coal, petroleum, bituminous shale, peat and natural gas.²

Indonesia has faced various problems regarding the fulfillment of targets in energy development until now. Dependence on non-renewable energy is still high, causing the adequacy of energy reserves, especially in Indonesia, to still be highly dependent on the development of exploration.³ These limitations make it very necessary to make efforts that aim to be able to reduce and even overcome various impacts that may occur. As stated in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) which regulates:

"The branches of production that are important to the state and that control the livelihood of the people are controlled by the state".

Furthermore, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, regulates:

"... The earth and water and the natural resources contained in it are controlled by the state and used for the greatest prosperity of the people".

¹ Dewi Aryani, 2012, *Indonesia's Energy Policy Scenario Until 2035*, University of Indonesia, Jakarta, pg.74.

² Sutarno, 2013, *Energy Resources*, Graha Ilmu, Yogyakarta, pg.23.

³ Agustinus P.Tampubolon, 2008, *Study of Fuelwood Biomass Energy Policies*, *Journal of Forestry Policy Analysis* Vol.5, No.1, pg.29 – 37.

Paying attention to Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it can be described, among others:

- a. Substance (natural resources);
- b. Objectives (as much as possible for the prosperity of the Indonesian people);
- c. status (controlled by the state).

So that the business and existence of fundamental natural resource management are carried out by the state.⁴ Therefore, there is a need for policies and actions to manage, regulate, supervise, and manage energy sources that are optimally pursued by the state with the greatest possible purpose and can be used for the prosperity of the Indonesian people.

People, especially in Indonesia itself, are more dominant in utilizing non-renewable energy in meeting the needs for daily activities such as transportation facilities, household activities, business, industry and in improving the country's economy and foreign exchange sources.⁵ Among the many energies, one of the most needed by the community is electrical energy which is the most widely used energy, even all equipment requires electricity not only for urban areas but even for remote ones. This is because electrical energy is the easiest energy to be converted into other forms of energy, this causes people to become dependent on electrical energy.

In addition, the most needed energy is also petroleum energy, which is a significant benchmark in fulfilling energy consumption in the world. Although many countries have switched to alternative energy and explored the potential of renewable energy, the role of petroleum as an energy source is still very large, the dependence and importance of the existence of petroleum in the world cannot be denied or ignored. Petroleum is still very important for the economy and development efforts, especially in Indonesia. With the increase in demand and consumption levels of petroleum compared to its availability, the existence of oil has become very crisis and the price of oil has soared and has a great influence on the world.⁶

According to Law Number 30 of 2007 concerning Energy (hereinafter referred to as the Energy Law), energy management is the implementation of business activities, the provision and

⁴ Ahmad Redi, 2014, Indonesian Mining Law, Gramata Publishing, Jakarta, pg.112.

⁵ Fery Triatmojo, 2013, The Dynamics of Energy Diversification Policy in Indonesia: An Analysis of Renewable Energy Development Policy in Indonesia, Scientific Journal of Public Administration and Development, Vol.4, No.2, pg.146-159.

⁶ Muhamad Azhar, 2018, Implementation of New Energy and Renewable Energy Policies in the Context of National Energy Security, Feakultas Hukum, Diponegoro University, Semarang, pg.69.

utilization of energy. This management of course aims to be able to conserve energy use and provide alternative reserves to be able to meet energy needs both now and in the future. Energy management is closely related to the development of new and renewable energy, because it is unlimited energy given by God Almighty, but in its development there are still many obstacles in Indonesia due to inadequate policies, costs and technology.⁷

One of the government's efforts to ensure energy availability is to issue an Energy Law which in Article 3, regulates:

“... It aims to be able to ensure the availability of domestic energy, both domestic and foreign sources, the achievement of energy management independence, the use of energy management efficiently and sectorally, as well as the achievement of increased energy access for people who cannot afford it or live in remote areas and the guarantee of optimal, integrated and sustainable management of energy sources so that it can realize the country's goals, namely the prosperity of the people Indonesia”.

In this case, the government also issued regulations regarding energy contained in Law Number 23 of 2014 concerning Regional Government (hereinafter referred to as the Local Government Law), in Article 14 paragraph 1, regulating:

"The implementation of government affairs in the fields of forestry, marine, and energy and mineral resources is divided between the Central Government and the Provincial Regions”.

Paying attention to the provisions of Article 14 paragraph 1 of the Local Government Law above, it means that the district/city area does not have authority in the fields of forestry, marine and energy and mineral resources. This becomes problematic when it is associated with the provisions of Article 14 paragraph 4 of the Local Government Law, regulating:

“... related to the direct use of geothermal is the authority of the regency/city government”.

Based on the description above, the legal rule of the authority of the regency/city local government to manage energy requires consistency in its implementation as stipulated in Article 14 paragraph

⁷ Eduardo Heyko, Zamruddin Hasid, Priyagus, 2016, Renewable Energy Utilization Strategy in the Context of Regional Energy Independence of East Kalimantan Province, Faculty of Economics and Business, Mulawarman University Indonesia, Vol.12, No.3, pg.104.

1 of the Local Government Law states that the determination of the division of government affairs in the fields of forestry, marine, and energy and mineral resources is divided into two, namely the Central Government and the Provincial Region, in this case it clearly negates the autonomy of the Regency/City Regional Government.

2. Problem Formulation & Method Research

Based on the explanation in the background, the main problems can be formulated as follows:

1. What is the authority of the provincial local government in the management of renewable energy today?
2. What is the authority of the regency/city local government in the management of renewable energy?

3. Analysis and Discussion

3.1 Authority of Provincial Governments in Renewable Energy Management Currently

The legal rules governing the authority of the Central Government in energy management are contained in Clause 26 paragraph (1) of the Energy Law, regulating:

- a. making laws and regulations;
- b. the establishment of national policies;
- c. setting and enforcing standards;
- d. procedure designation.

Related to the making of laws and regulations in this case which is the background for the consideration of its creation, because energy itself is the source of natural wealth contained in Article 33 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia.⁸ Based on the above rules, it can be interpreted that the role of energy is very important for economic activities and national security, so energy management which includes its supply, utilization, and business must be carried out in a fair, sustainable, rational, optimal and integrated manner. Justice in question is interpreted as one of the necessities in human life whose

⁸ Ahmad Redi, 2014, Natural Resources Law in the Forestry Sector, Sinar Grafika, Jakarta, pg.132.

existence is generally recognized by the whole world and if justice is then confirmed in legal institutions, then the legal institution must be able to become a channel so that it can be carefully implemented in society.⁹ Therefore, the law can be interpreted as a logical order that aims at the general welfare.

Indonesia faces various problems regarding the fulfillment of targets in energy development even now. The existence of dependence on energy and lack of energy development in both non-renewable and renewable energy as well as the lack of adequate policies related to energy and energy management are still high. Based on these goals, it is clear that legal certainty related to the authority of the government and local governments is very important in managing energy so that energy management can run well and in accordance with the expected goals.

Energy needs continue to increase as a consequence of the daily increase in population and economic growth. This is a factor that causes the adequacy of energy reserves, especially in Indonesia, to still be highly dependent on the development of exploration.¹⁰ Therefore, energy management that is carried out as well as possible is needed to be able to guarantee and meet the needs of the community both in the present and in the future.

The legal rules governing the authority of the central government in energy management are contained in Article 14 paragraph (1) and paragraph (3) of the Local Government Law. In Article 14 paragraph (1) of the Local Government Law, it regulates:

"The implementation of Government Affairs in the fields of forestry, marine, and energy and mineral resources is divided between the Central Government and the provincial regions".

Furthermore, in Article 14 Paragraph (3) of the Local Government Law, it regulates:

"Government affairs in the field of energy and mineral resources as referred to in paragraph (1) related to oil and gas management are under the authority of the Central Government".

⁹ Amstrong Sembiring, 2009, Energi Keadilan, Masyita Pustaka Jaya, Medan, pg.94.

¹⁰ Yurista, 2015, Legal Politics of Petroleum Mining in Old Wells as a Strategy Towards Energy Security in Indonesia, Rechts Vinding Journal: National Legal Development Media, Vol.2, No.4, pg.311–325.

In the sub-division of Government affairs for Energy and Mineral Resources the Central Government is divided into several sub-divisions, namely:

- a. Geological sub-affairs:
- b. Sub-affairs of minerals and batura:
- c. Oil and gas sub-affairs:
- d. New and renewable energy sub-affairs:
- e. Sub Electrical Affairs.

Based on Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it regulates:

"The Unitary State of the Republic of Indonesia is divided into Provincial Regions and Provincial Regions, which are divided into Regency and City Regions, each of which has a government, which is regulated by Law."

In Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is clear that there is a basis for the existence of Regional Government, namely the Provincial Regional Government and the Regency/City Regional Government. The Local Government Law is an elaboration of the constitutional basis containing legal provisions that further regulate the relationship of authority between the Central Government and the Regional Government, including the relationship of authority between the Central Government and the Regional Government in the energy sector.

3.2 Authority of Regency/City Regional Governments in Renewable Energy Management

The legal rules governing the authority of provincial local governments in energy management are contained in Article 26 paragraph (2) of the Energy Law, regulating:

"The authority of the provincial government in the energy sector includes:

- a. Provincial Regulations;
- b. Coaching and supervision of business across Regencies/Cities;
- c. Determination of management policies across districts/cities."

Thus, the authority of the central government, provincial local governments and regency/city local governments, in accordance with the provisions of Article 26 paragraph (3) letter a of the Energy Law above, is mandatory to make regional regulations.

Based on Article 1 number 7 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (hereinafter referred to as Law Number 13 of 2022), it regulates:

"Provincial Regional Regulations are Laws and Regulations formed by the Provincial Regional People's Representative Council with the joint approval of the Governor".

Meanwhile, in Article 1 number 8 of Law Number 13 of 2022, it regulates:

"Regency/City Regional Regulations are Laws and Regulations formed by the Regency/City Regional People's Representative Council with the joint approval of the Regent/Mayor."

The authority of the central government, the authority of the provincial local government and the authority of the regency/city local government whose source of authority is attribution. Based on Article 1 number 22 of Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as Law Number 30 of 2014), it regulates:

"Attribution is the granting of authority to government bodies and/or officials by the 1945 Constitution of the Republic of Indonesia or the Law".

The legal rules regarding the authority of the provincial local government in energy management are contained in Article 14 paragraph 1 of the Local Government Law, regulating: "The Implementation of Government Affairs in the fields of forestry, marine, and energy and mineral resources is divided between the Central Government and the Provincial Regions". Furthermore, in Article 14 paragraph 4 of the Local Government Law, it regulates: "Government affairs in the field of energy and mineral resources as referred to in paragraph (1) related to the direct use of geothermal in the Regency/City Area shall be the authority of the Regency/City Region".

In the Local Government Law, the sub-division of government affairs in the field of energy and mineral resources, provincial governments, and regency/city governments is divided into several sub-divisions, namely:

"The Central Government includes:

1. The Geological Sub Affairs, which includes;
2. Sub Mineral and Batura Affairs;
3. The New and Renewable Energy Sub-Affairs includes;
4. The Electricity Sub includes".

"Regency/City Regional Governments include: New and Renewable Energy Sub-affairs include the issuance of permits for the direct use of geothermal in Regency/City Areas".

Thus, when compared with the Energy Law, it is clear that the authority of the Regency/City Government, especially related to energy management, has a conflict of norms because the regency/city local government which does not have the authority as stated in Article 26 of the Energy Law, regulates:

- 1) Government Authority in the Energy sector, including:
 - a. making laws and regulations;
 - b. the establishment of national policies;
 - c. setting and enforcing standards; and
 - d. procedure designation.
- 2) Provincial Government Authority in the Energy Sector, among the Permits:
 - a. the creation of provincial regulations;
 - b. Coaching and supervision of businesses across districts/cities; and
 - c. Establishment of management policies across districts/cities;
- 3) The authority of the Regency/City Government in the field of Energy, including:
 - a. Making Regency/City Regional Regulations;
 - b. Coaching and supervision of businesses in Regencies/Cities; and
 - c. the determination of Management Policies in the Regency/City;

- 4) The authority of the Provincial and Regency/City Governments, as referred to in paragraphs (2) and (3) is carried out in accordance with the provisions of Laws and Regulations.

Therefore, based on the principle of *preferens*, the resolution of the problem of conflict of norms as referred to above is resolved through the principle of *preferens lex specialis derogat legi generali*. The principle of legal preponderance is a principle that designates which law is prioritized to be enforced in the event of a legal event related to or subject to several regulations. The *lex specialis* set of provisions or norms must be at a level (hierarchy) that is the same as the *lex generalis* set of provisions or norms.¹¹ So it is clear that the City Government has the authority, namely attribution authority that comes directly from the legislation, because it is sourced directly from Article 26 paragraph 3 of the Energy Law.

In accordance with the principle of government administration that the government system in Indonesia which is adjusted to the size and breadth of Indonesia's territory is included in various diversity of society makes good government can be carried out uniformly where the implementation of local government cannot be separated from the implementation of the central government, this is because local government is part of the implementation, it is clear about the authority of the government and local governments in managing energy, moreover, energy is a resource that is urgently needed by the community in living its survival and can maximize in achieving social, economic, and environmental goals in sustainable development, especially in Indonesia. So that the welfare of the entire community is achieved not only in daily life in the present but to be able to meet the needs of future generations.

4. Conclusion

The authority of the provincial local government in the management of renewable energy Currently, the legal rules governing the authority of the central government in energy management are contained in Article 14 paragraph (1) and paragraph (3) of the Local Government Law. The Local Government Law is an elaboration of the constitutional basis containing legal provisions that further regulate the relationship of authority between the Central Government and the

¹¹ Achmad Ali, 2009, *Uncovering Legal Theory and Judicial Theory (Judicialprudence) Including the Interpretation of the Law*, Kencana Prenada Media Group, Jakarta, pg.55.

Regional Government, including the relationship of authority between the Central Government and the Regional Government in the energy sector. The authority of the regency/city local government in the management of renewable energy, the legal rules that regulate the authority of the provincial local government in energy management are contained in Article 26 paragraph (2) of the Energy Law. Based on the principle of preemption, the resolution of the problem of norm conflict as referred to above is resolved through the principle of *preemptio lex specialis derogat legi generali*. The principle of legal preponderance is a principle that designates which law is prioritized to be enforced in the event of a legal event related to or subject to several regulations. The *lex specialis* set of provisions or norms must be at a level (hierarchy) that is the same as the *lex generalis* set of provisions or norms. So it is clear that the City Government has the authority, namely attribution authority that comes directly from the legislation, because it is sourced directly from Article 26 paragraph 3 of the Energy Law.

5. Recommendations

To the Government in forming a law that regulates authority by attribution both to the central government, provincial governments and regency/city governments, especially regarding energy management, it must be firm and clear because it talks about authority, related to the principle of legality where the legal basis must be appointed so as not to cause a conflict of norms.

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