

Liability Principles of PT. Perusahaan Listrik Negara (Persero) To the Loss of Consumers Electric Services

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ABSTRACT

Electricity is very important for our daily needs, and also for community and businesses because it can run their products. Recently We and the community are depending on electricity, so the usage of electricity is getting increase. All our hardware and software tools use electricity because of that electricity changes our style in daily life. So, the management of electricity which is given by State to PT. Perusahaan Listrik Negara (PLN) as a "State Owned Enterprise" as we known (BUMN). But in the distributions to the consumers is still frequently blackout, so people and community group make lawsuit to PT. PLN (Persero) It is caused they fell loss with the black out. This study uses a normative juridical approach, which is carried out by analyzing data Referring norms in the applicable law and regulations. The benefit of this research to contribute to development of legal science, specifically the law regarding consumers protection for electricity users. This research suggested that PT. PLN (Persero) has a commitment to do the quick respond when there is blackout happened, and give good service to the users. And for the consumers have to get a copy of Power Purchase Agreement at the beginning of the installation before. It is very important for the consumers as an evidence to do lawsuit when PT. PLN did not keep the promise of the Agreement.

Keywords: Electricity, Blackout, Group lawsuits.

INTRODUCTION

Electric power has ¹ a very important role in realizing the goals of national development, so the supply effort needs to be continuously improved in line with development developments so that electricity is available in sufficient quantity, equality and quality. Because electric power ¹ is a vehicle that plays an important role in national development, the availability of electricity must be guaranteed so that it can carry out its function as the driving force and backbone ¹ of the national economy. Given the importance of electricity in public and industrial life, the ²² supply of electricity is controlled by the State, as stated ⁶ in the 1945 Constitution Article 33 Paragraph 2 which reads:

"Production branches which are important to the state and which affect the livelihood of many people are controlled by the state"¹ The distribution of electricity to the public as consumers of electricity is currently carried out by PT. The State Electricity Company (PLN), which is a State-Owned Enterprise, based on Law Number 30 of 2009 concerning Electricity, the main task of PT. PLN (Persero) is to carry out the business of ⁸ providing electricity for the public interest.

The issuance of Law Number 30 of 2009 concerning Electricity changed the status of PT. PLN (Persero), which was originally the Holder of the Electricity Business Authority, became the Electricity Provider Business License Holder, and as a state-owned company, PT. PLN (Persero) has priority as the holder of a business license in the electricity sector.

To buy electricity from PT. PLN (Persero) which subscribes for the first time or has just subscribed, the consumer first signs a contract or agreement called the Power Purchase Agreement (SPJBTL) and from the agreement the

¹ UUD'45 dan Amandemennya

¹ rights and obligations of the parties arise. Based on the power purchase agreement between PT. PLN (Persero) and consumers stated that the distribution of electricity by PT. PLN (Persero) is implemented continuously without intermittent, except in the following cases:

1. Force majeure occurred including riots, war riots, strikes, fires, earthquakes, floods, landslides, volcanic eruptions, tsunamis, fallen trees, lightning, airplane accidents, theft of electric cables which resulted in the interruption of the distribution of electricity, the result there is a government regulation;
2. There is a temporary termination to the consumer installation as a follow-up to curbing the use of electricity at the consumer's premises, network maintenance activities and or network installation;
3. At times of peak loads, which from time to time require a blackout by PT. PLN (Persero);
4. PT. PLN (Persero) carries out maintenance and or repair of power plants and or networks;
5. By order of the competent authority or court.

In Article 1233 Burgerlijk Wetboek (hereinafter referred to as BW), it states that "Every engagement is born good by agreement, either due to law" and Article 1320 BW there are ¹ four conditions to determine the validity of the agreement, namely:

1. Agreeing those who bind themselves;
2. The ability to make an engagement;
3. A certain thing and;
4. A cause that is allowed.

From the provisions regarding the agreement according to Article 1233 BW as well as the legal terms of an agreement in Article 1320 BW, it can be concluded that the agreement is a legal act that creates a bond between one party and

another party. Where the agreement is carried out by agreeing without any coercion either from one of the parties who entered into the agreement or from parties not involved in the agreement.

An agreement is an event that occurs when the parties promise each other to perform certain actions. According to the Subject of an agreement is an event when one or more people promise to carry out an agreement or commit to each other to do something.²

In the agreement, electricity consumers commit themselves to pay electricity bills and are entitled to electricity and / or electricity services, and PT. PLN (Persero) is obliged to provide electric power and electricity services to electricity consumers so that PT. PLN (Persero) has the right to receive payments in the form of a sum of money from consumers or users of electricity services. If the electricity consumer is late in paying for his electricity usage every month, a fine or 3 (three) consecutive months will be terminated.

One of the blackout events occurred on August 4, 2019, where electricity in the Banten, DKI Jakarta and West Java areas went out for between 8 hours and 18 hours, because the system at SUTET Ungaran-Pemalang was black out. The blackout resulted in losses for both household customers and small and medium industries. In Law Number 30 of 2009 concerning Electricity, Article 29 paragraph (1) letter e, states that "consumers have the right to receive compensation in the event of an outage caused by errors and / or negligence in operation by the holder of the electricity supply business license according to the conditions specified. regulated in the power purchase agreement".

In ⁷ Law Number 8 of 1999 concerning Consumer Protection in Article 4 letter h, it is also stated that "consumers ¹³ are entitled to compensation, compensation and / or replacement, if the goods and / or services received are

¹⁸
² Wawan Muhwan Hariri. (2011). *Hukum Perikatan*. Bandung: CV Pustaka Setia, h. 119

¹ not in accordance with the agreement or not as they should be.”.

PROBLEM FORMULATION

Liability Principles of PT. Perusahaan Listrik Negara (Persero) To the Loss of Consumers Electric Services

RESEARCH METHOD

This study uses a normative juridical approach, which is done by analyzing data and referring to legal norms in the prevailing laws and regulations..

DISCUSSION

The lawsuit against PT. PLN (Persero) based on Default

Each engagement is born either because of agreement, either because of the law as in Article 1233 BW, it is emphasized that every civil obligation can occur because of the will of the parties involved in the engagement / agreement which is deliberately made by them, or because it is determined by applicable laws and regulations. Thus, it means that an engagement or ¹ agreement is a legal relationship between two or more people (parties) in the field of assets, which creates an obligation on one of the parties in the legal relationship.³ In Article 1320 BW there are four conditions to determine the validity of the agreement.⁴

In the implementation of an agreement, the consequence is that all assets of a person or entity that is recognized as a legal entity will be at stake and used as a guarantee for each engagement or contract of the individual and / or legal

¹⁵
³ Kartini Muljadi dan Gunawan Widjaja. (2003). *Perikatan Pada Umumnya*. Jakarta: PT. Raja Grafindo Persada, h.17

¹⁶
⁴ Ahmadi Miru. (2010). *Hukum Kontrak Perancangan Kontrak*. Jakarta: PT.Raja Grafindo Persada, h.13

entity, as described in Article 1131 BW.⁵

One of the things done by PT. Before connecting electricity to electricity consumers, PLN must first sign a Power Purchase Agreement (SPJBTL). The agreement made by the parties can be used as the basis for the engagement for both parties. Rights and obligations of PT. PLN (Persero) is listed in Law Number 30 of 2009 concerning Electricity Article 27 and Article 28. It explains that the obligations of the electricity supply business license holder are required to provide electricity that meets the applicable quality and reliability standards, providing the best possible service to consumers and society.

Then the electric power consumers, their ¹ rights and obligations are regulated in Law Number 30 of 2009 concerning Electricity Article 29 paragraph (1) and paragraph (2). One of the rights of electricity users themselves is to receive electricity continuously with good quality and reliability, to receive compensation if a blackout occurs due to errors and / or negligence in operation by the holder of the electricity supply business license according to the conditions stipulated in the agreement. buying and selling of electricity. Meanwhile, the obligation of electricity user consumers is to pay electric power usage bills, which of course must be done in order to get electricity supply in each consumer's house.

⁷ Law Number 8 Year 1999 regarding Consumer Protection Article 7 letter g ¹⁰ states that business actors are required to provide compensation, compensation and / or replacement if the goods and / or services received or used are not in accordance with the agreement.

Power outages by PT. PLN (Persero) is very detrimental to electricity consumers, because it is disrupted in its activities. With the blackout that was

¹²
⁵ Gunawan Widjaja dan Kartini Muljadi. (2003). *Perikatan yang Lahir dari Undang-Undang*. Jakarta: PT. Raja Grafindo Persada, h.1

not informed beforehand, PT. PLN (Persero) violates the agreement that has been agreed upon, so that the electricity consumer is entitled to compensation or compensation caused by the outage. In the event of a unilateral blackout, then one of the obligations of PT. PLN (Persero) provides the best possible service to consumers and society, it can be said that it is not implemented properly in accordance with what PT. PLN (Persero). So in this case PT. PLN (Persero) as a debtor, broken promises (default) in fulfilling its obligations to creditors (consumers using electricity).

In the case of a request for compensation, the consumer can file a civil suit at the local District Court for the blackout conducted by PT. PLN (Persero). If the consumer's lawsuit against PT. PLN (Persero) in the District Court granted and decided by the judge, the decision can never be implemented (non-executable), because PT. PLN (Persero) is a state-owned company which incidentally belongs to the government. Confiscation of guarantees and confiscation of execution of state property is prohibited, where in ²Article 50 of Law Number 1 of 2004 concerning State Treasury it is stated that any party is prohibited from confiscating:

1. Goods or securities belonging to the state / region, either in government agencies or in third parties;
- ²2. Money that must be deposited by a third party to the country / region;
3. Movable property belonging to the state / region, either in government agencies or by third parties;
4. Movable property and other things belong to the state / region;
- ²5. Goods belonging to third parties that are paid by the state / region which are required to carry out government duties.

Thus the lawsuit of electricity consumers against PT. PLN (Persero) even though it was granted by the judge, the assets of the defendant (PT. PLN (Persero)) could not be executed. Therefore, default cannot recover the losses of

electricity consumers who experience blackouts.

However, there are still regulations governing compensation in the event of a blackout. The compensation is regulated in the ⁵ Minister of Energy and Mineral Resources Regulation Number 18 of 2019 concerning the Second Amendment to the Regulation of the Minister of Energy and Mineral Resources Number 27 of 2017 concerning Service Quality Levels and Costs Associated with the Distribution of Electric Power by PT. PLN (Persero).

Class action can be used in filing a lawsuit by consumers who are not satisfied with PT. PLN (Persero). The blackout conducted by PT. PLN (Persero) without prior notification or even delay in delivering notification, can cause consumer losses. Consumer losses are very diverse, ranging from disruption of activities and comfort, especially for urban people who prioritize all electronic equipment, to the death of domestic ornamental fish such as koi and arwana. The blackout is very detrimental to many people, so that if it is to file a lawsuit if it is carried out by each electricity consumer it is not effective and efficient, it will be carried out in a class representative suit.

In ⁴ Article 46 paragraph (1) letter b of Law No. 8 of 1999 concerning Consumer Protection, describes an effort to resolve consumer disputes, namely by lawsuits: Lawsuits against business actors' violations can be ³ filed by a group of consumers who have the same interest. The lawsuit ¹ as referred to in Article 46 paragraph (1) letter b is referred to as a class action lawsuit. There are several elements related to the class action lawsuit, among others:⁶

1. Civil litigation, namely a class action lawsuit entered into the field of civil law. The term lawsuit is known in civil procedural law as an action that aims to obtain protection of the rights provided by the court to avoid eigenechting;

⁶ I Nyoman NurJaya. (2006). ¹⁷ "Gugatan Perwakilan Kelompok Masyarakat (Class action) dalam Teori dan Praktek Peradilan". Jurnal Perspektif. 17(2), 119-124., h. 122

2. Class Representative, namely one or more people who suffer losses who file a lawsuit at the same time representing a larger number of people. To become a group representative is not required to have a special power of attorney from a group member. When a class action lawsuit is filed in court, the position of the group representative is as active plaintiff;
3. Class members, namely a group of people in large numbers who suffer losses whose interests are represented by group representatives in court. If the class action is submitted to court, the position of the group member is as a passive plaintiff;
4. There is a loss, namely in order to submit a class action, both group representatives (class representative) and group members (class members) must actually or actually experience losses or are termed concrete injured parties;
5. Similarity of events or facts and legal basis, namely there are similarities in facts (events) and similarity of legal basis (question of law) between the party representing (class representative) and the party represented (class members).

To file a lawsuit through class action, several requirements must be met, including:⁷

1. There are a large number of members (numerosity), namely the number of class members must be so much that it is not effective and efficient if the lawsuit is carried out individually;
2. There is commonality, that is, there are similarities in facts (events) and similarity of legal basis (question of law) between the party that is represented (class representative) and the party represented (class members);

⁷ Wiwik Sri Widiarty. (2015). "Gugatan Class action Dalam Hukum Perlindungan Konsumen". Jurnal Hukum, 90-97. h, 94

3. Similar (typically), namely the demands and defense of all members represented must be the same as those represented;
4. Adequacy of representation, that is, group representatives must have honesty and seriousness to protect the interests of the group members being represented. The party who will be the class representative must meet a number of requirements to determine his suitability in filing a lawsuit in court. Some of these requirements include:
 - a. Has the same fact or legal basis with the group represented;
 - b. Have strong evidence that can be justified;
 - c. Have integrity and be accountable for their statements and actions before the law;
 - d. Committed to fighting for the rights of the group it represents for the losses caused by the defendant;
 - e. Putting the interests of groups over personal interests;
 - f. Willing and able to bear the costs required during the process of filing a lawsuit and trial.

Based on the ²¹ provisions of Article 1 letter (b) of Perma No. 1 of 2002 concerning Class Action Program, it is determined that the group representative is one or more people who suffer losses who file a lawsuit and at the same time represent a larger group of people (group members).

Apart from themselves, group representatives also represent the interests of a larger number of other parties, who are also disadvantaged. "Class representative action is a procedure for filing a lawsuit, in which one or more people representing the group file a lawsuit for themselves or themselves and at the same time represent a large group of people, who have the same fact or legal basis between the representatives of the group and members of the said group ". Thus, a party who does not suffer a loss cannot file a lawsuit as a representative of the injured community group, because it does not have legal

force as a person entitled to represent the group based on article 1 letter b of Perma No. 1 of 2002.⁸

In Article 46 paragraph (1) letter b of Law Number 8 Year 1999 concerning Consumer Protection, it is stated that a group of consumers who have the same interests and facts can file a class action lawsuit against business actors. The similarity of interests and facts can be seen from the existence of the same agreements or evidences.

Parties that can file a class action lawsuit are only a group of people who have the same interests and facts, as explained in Article 46 paragraph (1) of the Consumer Protection Law that class action or class action must be filed by consumers who really can be proven legally, one of which is evidence of a Power Purchase Agreement (SPJBTL).

Civil litigation involving a large number of people who have suffered losses or are massive or massive, so it is very appropriate to file a class action lawsuit. Some of the benefits of a class action lawsuit, namely:

1. Class action is useful, because the litigation process becomes very economical (judicial economy). With class action lawsuit raising (repetition) similar claims individually can be prevented. It is not economical for a court to have to serve similar claims individually. The economic benefits are not only felt by the plaintiff but also by the defendant, because with the class action the defendant only incurs a one-time fee to serve the claims of the aggrieved parties;
2. Class action provides access to justice (access to justice). When a lawsuit is filed individually, it will result in burdens for potential plaintiffs, often such burdens become an obstacle for someone to fight for their rights in court. This is even more so if the cost of the lawsuit

¹¹

⁸ Sundari. (2002). Pengajuan Gugatan Secara Class action (Suatu Studi Perbandingan dan Penerapannya di Indonesia). Yogyakarta: Universitas Atma Jaya, h. 28

that will be issued is not proportional to the demands to be filed. Through the class action procedure, this economic constraint can be overcome by joining forces with other class members in one lawsuit, namely a class action lawsuit;

3. Class action is intended to change the attitude of the offender (behavior modification). The application of the class action procedure means providing wider access for justice seekers to file claims at a more efficient cost (cost efficiency). Access to class action thus has the opportunity to encourage a change in the attitude of those who have the potential to harm the interests of the wider community. This kind of opportunity is called the opportunity to develop a deterrent effect;
4. Time, cost and energy savings, because the lawsuit is not filed by every member of the community or group, but is accumulated in one lawsuit. The value of empowering community members to achieve justice, because they do not fight alone but together with other community members.⁹

Although there are many benefits that can be obtained in filing a class action lawsuit, that does not mean that it does not have weaknesses. Several obstacles in filing and implementing class action, namely:¹⁰

1. Difficulty in managing. The greater the number of group members, the more difficult it is to manage a class action lawsuit. The difficulties that occur are usually at the time of notification and distribution of compensation. The large number of group members and spreading in different areas will make it difficult in terms of notification and require a

⁹ Hotma Timbul Hutapea, Class Action Konsumen Elpiji, Upaya memperjuangkan Hak dan Ganti Rugi, Makalah disampaikan dalam forum dialog konsumen elpiji di Hotel Wisata Internasional, Jakarta I, 2001, h.5.

¹⁰ Aulia Mutiah. (2018). *Hukum Perlindungan Konsumen (Dimensi Hukum Positif dan Ekonomi Syariah)*. Yogyakarta: Pustaka Baru Press, h. 222

lot of money. If the claim is won and compensation is given, it is not impossible that the amount of compensation is not proportional to the cost of distribution;

2. Can cause injustice. This injustice is related to the problem of determining group membership and the binding power of the judge's decision. If the procedure chosen to determine group membership is an option in then the absence of statements from group members who actually have the same interests only because they are not aware of the notification, will result in the loss of their right to enjoy the success of a class action lawsuit, because the judge's decision will only have consequences. for those who enter as group members;
3. Can lead to bankruptcy of the defendant. The number of claims for compensation in a class action lawsuit can result in the defendant going bankrupt if the lawsuit is granted, where the defendant is obliged to provide compensation or take certain actions to all the group members, which are very large in number;
4. The publication of a class action lawsuit could corner the defendant. Mass media coverage and notification of class action suits in the mass media can be an attack on the position or power of the defendant. Usually, media readers will have bad prejudices. In fact, it is not certain that the defendant is the guilty party because whether the defendant is true or not has yet to be proven by the court.

CONCLUSION

The blackout lawsuit against PT. PLN (Persero) based on default even though it was granted and decided by the judge, does not necessarily mean the assets or assets of the defendant, in this case PT. PLN (Persero) can be executed, because ⁸PT. PLN (Persero) is a state-owned enterprise which in fact is owned by

the government, so collateral seizure and execution cannot be carried out, but electricity consumers can only be compensated for the blackout, so the decision for the compensation lawsuit automatically cannot recover consumer losses. Filing of a lawsuit can be done in a group (class action), because consumers who are disadvantaged by the blackout by PT. There are many PLN (Persero), so that if they file a lawsuit individually, it becomes ineffective and inefficient.

RECOMMENDATION

For PT. PLN (Persero) as a business actor must provide information on the level of service quality to electricity consumers in an open manner, and increase the speed of implementation of repairs in the event of a power cut and provide information to customers regarding power outages. Electricity consumers should ask for an Electricity Sale and Purchase Agreement (SPBJTL) at the initial installation of electric power, because if PT. PLN (Persero) does not fulfill what has been agreed in the agreement which is used as the basis for a default lawsuit.

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