

FIDIC FOR SOLVING DISPUTE IN SMALL CAPACITY HYDROELECTRIC POWER PLANT PROJECT CASE STUDY PLTM PARAENG IN WEST JAVA.

Eric Baroroh ^{1*}, Sarwomo Hardjomuljadi²
¹² Magister Hukum, Universitas Pekalongan
Email: eric.baroroh@pln.co.id

Abstract :

Electricity is very important in the era of modernization, as it not only serves as an energy source that meets the needs of many people but also supports economic growth in a region. Therefore, its management is regulated based on Article 33 of the Indonesian Constitution and applicable regulations. As technology advances, the demand for electricity supply is also increasing rapidly. To support this, PLN (Persero) as a state-owned electricity company in Indonesia opens up collaboration opportunities with private enterprises as electricity producers commonly referred to as Independent Power Producers. (IPP). The role of the IPP here is as a seller of electricity to PT. PLN Persero through the Power Purchase Agreement (PJBTL). The collaboration between PLN and the Private Business Entity is aimed at developing small-scale Renewable Energy Power Plant (EBT) projects under 10 MW, particularly Mini-Hydro Power Plants. (PLTM). In conducting the electricity sale and purchase process between both parties through the Power Purchase Agreement (PPA), several disputes were found. This research aims to identify the disputes occurring in the PJBTL PLTM Paraeng in West Java and to understand the efforts made to resolve these disputes based on the applicable rules/regulations.

Keywords: PJBTL, PLTM, dispute

I. INTRODUCTION

The availability of electricity in the current era of digitalization is one of the basic needs that must be met, where electricity becomes a primary resource for the livelihood of many people in supporting human needs in the era of modernization, and its management is controlled by the state in accordance with Article 33 of the 1945 Constitution of the Republic of Indonesia, which states: "Branches of production that are important for the state and control the livelihood of many people are controlled by the state." To support this, PT PLN (Persero), as the only state-owned enterprise engaged in the electricity sector, strives to produce electricity optimally.

In supporting Net Zero Emission (NZE), PT PLN as an electricity company in Indonesia strives to reduce carbon emissions by building renewable power plants. In the construction of these renewable power plants, PLN provides opportunities for private enterprises or power plant developers (PPL) to take a role in electricity availability, and PT PLN (Persero) is obligated to purchase the power generated from the electricity produced by these PPL/private enterprises.

The purchase of electrical power between private enterprises/PPL and PT. PLN (Persero) is regulated by the Minister of Energy and Mineral Resources Regulation Number 10 of 2017 concerning the Main Points of the Electricity Sale and Purchase Agreement.

Regarding the agreement, it can be seen in Article 1 number (1) of the Minister of Energy and Mineral Resources Regulation Number 10 of 2017 concerning the Main Points of the Electricity Sale and Purchase Agreement, which states: "The electricity sale and purchase agreement, hereinafter referred to as PJBL, is the electricity sale and purchase agreement between PT. PLN (Persero) as the buyer and the business entity as the seller." With the existence of this agreement, the Ministry of ESDM opens opportunities for private enterprises to generate their own electricity, with PLN as the first consumer in purchasing that electricity. Therefore, with the existence of this agreement, there is a potential for disputes or conflicts between the electricity buyer and seller.

The problem formulation in this research includes:

1. What causes the disputes that occur in the electricity sale and purchase agreement (PJBL) for mini-hydro power plants (PLTM) provided by private enterprises with PT PLN (Persero), where these disputes lead to delays in the completion of PLTM projects or even termination.
2. What efforts have been made to resolve the dispute?

II. METHODOLOGY

The method used in this research and normative juridical legal approach, which is research based on existing legal norms and also examines the realities that occur, as well as studying written law from various aspects, namely theory, history, philosophy, comparison, structure, and composition, scope of material, consistency, general explanation and article by article, formality, and the binding force of a law, as well as the legal language used, but does not examine the applied or implemented aspects. As for the type of data, this research uses secondary data with data collection methods such as document study or library materials, observation, or observation, which can be used either individually or together. For the data processing and analysis methods used in this research, a qualitative method is employed, which is a research procedure that produces descriptive-analytical data, namely what is stated by the relevant research subjects either in writing or orally, and actual behaviour.

III. RESULT AND CONCLUSION

1. Power Purchase Agreement (PPA/PJBTL)

Mini-hydro Power Plants (PLTM) are one type of renewable energy (EBT) generator that utilize water to drive the generator's turbine, which can produce electrical power, and the generated electricity is distributed through the network owned by PT. PLN. (Persero). PLN collaborates with private enterprises (Independent Power Producers (IPP)) in developing mini-hydro power plant (PLTM) projects using a power purchase agreement (PPA) system, where the agreement generally applies to plants with a total installed capacity of 10 MW or smaller. The agreement process refers to ESDM regulations that establish specific review procedures and approvals, as well as timelines for each type of Renewable Energy Power Plant.

Several basic activity stages that must be undertaken in making a power purchase agreement by an Independent Power Producer (IPP) include holding initial meetings with PLN Region or Distribution to obtain information, preparing feasibility studies related to the power plant to be built, preparing environmental studies, as well as obtaining principle permits and other necessary permits to build a Renewable Energy Power Plant.

In the process, feasibility studies and environmental studies are among the most important activities because they are related to investment and mitigation in determining the sustainability of IPP-owned power plant operations to generate electricity that will be sold to PLN (Persero). For hydropower plants (PLTM) themselves, the scope of environmental and feasibility studies is related to water discharge and flow duration curve (FDC) as well as the elevation of the power plant, which can affect the inlet and discharge points.

Next, if the feasibility study and environmental study along with the environmental permits have been obtained, the IPP can propose a cooperation agreement with PT. PLN (Persero) Regional Unit or Main Unit to carry out the verification and approval process. Where in the cooperation proposal must meet the requirements in the form of: qualification requirements, technical requirements, and financial requirements. After these requirements are met, the qualification process will continue in accordance with Article 5 of the PT. PLN (Persero) Board of Directors Regulation Number 002ZP/DLR/2018 on the Purchase of Electric Energy from Renewable Energy Power Plants, which explains the qualification process undertaken by Independent Power Producers (IPP) after fulfilling the requirements. Next, referring to Article 4 paragraph

(1) of the Minister of Energy and Mineral Resources Regulation No. 50 of 2017 concerning the utilization of renewable energy sources for electricity supply, which states: "the purchase of electricity from power plants utilizing renewable energy sources is carried out by PT. PLN (Persero) through a direct selection mechanism." Therefore, the Planning Division of PT. PLN (Persero) ensures that all requirements of the Electricity Sale and Purchase Agreement (PJBL) are met and submits the Electricity Sale and Purchase Agreement (PJBL) documents to the Goods/Services Users to be signed together with the Independent Power Producer. (IPP). To ensure that the renewable energy power plant can be used, the plant must pass several testing stages in accordance with Article 13 of the Minister of Energy and Mineral Resources Regulation Number 50 of 2017, which regulates the utilization of renewable energy sources for electricity supply and stipulates the commissioning implementation provisions. After the testing process is completed and the power plant is declared feasible, the next process is the Commercial Operation Date (COD), the date when the power plant begins its operation to supply electricity to the PT. PLN (Persero) network. The COD date is the date when the electricity purchase process conducted by PT. PLN (Persero) from the Independent Power Producer (IPP) begins until the sale and purchase period ends according to the PJBTL. In accordance with Article 1320 of the Civil Code, it regulates the conditions for the validity of an agreement, or, in other words, an agreement/contract can be considered legally valid if it meets certain legal requirements in its formation, namely mutual consent, legal capacity, a certain subject matter, and a lawful cause. The PJBTL between PT. PLN (Persero) and IPP is a standard agreement in which certain conditions have been set by one party. A standard agreement is often understood as an agreement that contradicts legal regulations and does not provide one party with the opportunity to draft or negotiate the existing clauses. Although the agreement is a standard contract, if the clauses contained within it mutually benefit and reflect equality of position as well as rights and obligations between the parties, then the agreement remains valid and binding. In the creation of a contract or agreement, at a minimum, the following must be included : the presence of the parties (each party's position is mentioned), the object of the agreement (what forms the basis of the cooperation), the rights and obligations of the parties, the duration of the agreement or when the agreement is said to end, provisions

regarding breach of contract and its consequences, provisions regarding force majeure or unforeseen events (overmatch), provisions for dispute resolution.

In PJBTL, the object of the agreement is electrical power, which falls under the category of intangible assets. According to Article 1 Paragraph (2) of Law Number 30 of 2009 on Electricity, electrical power is a form of secondary energy that is generated, transmitted, and distributed for various purposes, including communication and signalling. Electrical power is an intangible asset that, although it cannot be seen or touched, has an economic value/price that can be determined and can be transferred as an object of ownership that can be traded.

As for the legal subjects, there are several classifications of legal subjects according to the Civil Code, which are divided into two categories: natural persons or legal entities. In this case, PJBTL regulates the agreement between two subjects, namely a private business entity and PT. PLN (Persero), which is a state-owned enterprise (BUMN).

For the rights and obligations contained in the PJBTL, refer to Article 6 of the Minister of Energy and Mineral Resources Regulation Number 10 of 2017 concerning the Main Points of the Electricity Sale and Purchase Agreement, which explains the obligations and rights of the buyer as follows:

PT. PLN is always a buyer:

- Entitled: to obtain reliable and sustainable electricity supply from power plants; and to receive any necessary approvals related to PJBL.
- Obligated: to provide incentives for the acceleration of COD implementation to the Business Entity if the acceleration is requested by PT PLN (Persero); to absorb and purchase the electricity generated by the Business Entity in accordance with the agreed PJBL for a certain period; to pay deemed dispatch if the PT PLN (Persero) electricity network is disrupted not due to force majeure; and to maintain and ensure the reliability of the network facilities.

The rights and obligations are regulated for a certain period agreed upon by both parties, and further provisions regarding the rights and obligations of PT. PLN (Persero) as the buyer are outlined in the PJBTL.

Meanwhile, the rights and obligations of the IPP refer to Article 5 of the Minister of Energy and Mineral Resources Regulation Number 10 of 2017 concerning the Main Points of the Electricity Sale and Purchase Agreement (PJBL), which states.

Business Entity as the seller:

- Entitled: To receive payment related to the selling price of electricity according to the Power Purchase Agreement (PPA); To receive an incentive for the accelerated implementation of Commercial Operation Date (COD) if the acceleration is at the request of PT. PLN (Persero) and to receive deemed dispatch if the PT. PLN (Persero) network is disrupted not due to force majeure.
- Obligations: a) Designing, financing, constructing, owning, operating, and transferring power plants including electricity transmission if necessary; b) Providing guarantees in the form of project performance guarantees and performance guarantees in the form of penalties; c) Paying penalties for failing to meet performance guarantees as referred to in point b, including penalties for delays in achieving COD; d) Submitting monthly projected electricity supply plans (projected AF); e) Submitting electricity supply plans to PT. PLN (Persero) in accordance with the projected electricity supply plans (projected AF); f) Obtaining all necessary permits; g) Meeting domestic component level requirements; h) Ensuring the continuity of electricity supply during the PJBL period; and i) Paying penalties in accordance with applicable regulations.

The duration of PJBL according to Article 4 of the Minister of Energy and Mineral Resources Regulation Number 10 of 2017 concerning the main points in the electricity sale and purchase agreement outlines the period of the electricity sale and purchase agreement as follows: "PJBL is carried out for a maximum period of 30 (thirty) years from the commencement of COD." In practice, this duration is not absolute and can be less than or equal to 30 years.

The termination of an agreement or contract is regulated according to the Civil Code regarding the termination of obligations, Article 1381, where the ways an obligation can terminate are divided into 10 methods: (1) payment, (2) consignation, (3) novation (debt payment), (4) compensation, (5) confusion (mixing of debts), (6) debt release, (7) destruction of the object of the obligation, (8) the occurrence of a resolutive condition, (9) annulment and cancellation, and (10) expiration. In addition, the termination of a contract can also occur due to default, which results in legal consequences. One of them is that PT. PLN (Persero) is obligated to provide incentives if the IPP can accelerate the operation of the power plant and supply electricity according to the agreed capacity. If the

PT. PLN (Persero) power grid cannot absorb the electricity, then PT. PLN (Persero) is obligated to pay compensation or penalties according to the price incurred by the Independent Power Producer (IPP) to produce the electricity, and vice versa for the IPP if the power plant cannot generate electricity according to the agreed COD date.

Whereas for force majeure, which is an unforeseen circumstance that cannot be anticipated by either party, such as climate conditions, loss, or theft. As a result, there is no need to compensate the creditor or debtor for losses because the debtor has no performance obligation.

2. Study Case PLTM Pareang (2x1,4MW), Jawa Barat

PLTM Pareang with a capacity of 2.8 MW located in Sindangresmi Village, Jampang Tengah District, Sukabumi Regency, West Java Province is a renewable energy power plant using run-of-river technology with IPP PT Akasu Energi Utama, (AEU). This PLTM refers to the electricity purchase agreement (PJBTL) or Power Purchase Agreement (PPA) dated August 2, 2017, No. 144.Pj/AGA.01.01/DJB.

The PJBTL for PLTM Pareang became active after the BA was signed on December 31, 2018, following the AEU's submission of the Performance Guarantee (Jampel I-III), where Jampel I was valid until June 30, 2019, Jampel II was valid until September 30, 2020, and Jampel III was valid until December 31, 2020. Meanwhile, the target COD for the Pareang PLTM is 36 months after the PPA is signed, which is the COD in July 2022. On September 19, 2019, a site visit was conducted to PLTM Paraeng, but there was no construction activity at that time, whereas construction should have started after the PPA was signed in 2017.

However, until 2019, two years after the PPA was signed, there was no construction activity. Knowing this, the Director General of EBTKE inquired about the progress of the PLTM Pareang development to PLN UID Jabar through letter No. 1036/23/SDE.R/2020 dated June 15, 2020, and PLN responded to the letter through letter No. 1598/KIT.01.01/B020000000/2020 dated June 23, 2020, explaining the development of PLTM Pareang. Knowing that the progress of the PLTM Paraeng development is very small, the Director General of EBTKE facilitated a meeting with the developer on August 10, 2020, with the following results:

- a. The developer has stated their commitment to continue the work and will meet the COD target according to the PPA.

- b. The financial feasibility study results indicate that the project is feasible, and PT SMI as the consultant will facilitate discussions between the developer and potential creditors to obtain financing.
- c. PT PLN UID Jabar is advised to have further discussions with the developer.

Following up on this matter, the developer issued a letter to PLN on August 13, 2020, regarding the request to postpone the original COD target from July 2022 to July 2024. In response, PLN rejected the request for a change in the COD timeline because the evidence provided by the developer was not convincing regarding the change in the COD timeline, and the progress in August for procurement had reached 15% while construction was still at 0%. On June 9, 2022, PLN reminded about the COD of PLTM Paraeng on July 5, 2022, to be prepared and not delayed. Subsequently, on June 16, 2022, PLN also reminded PT AEU to extend Jampel II and III no later than June 27, 2022. Following up on the letter, PT AEU agreed to extend the validity period of the Jampel in accordance with the COD extension to July 5, 2025. PLN UID Jabar held a Zoom meeting with PT AEU on July 5, 2022, to discuss the progress of the PLTM Pareang project. During the meeting, PT AEU explained that as of July 2022, they had not yet secured funding sources and would use their own funds for civil work while simultaneously seeking funding sources. PT AEU is willing to extend the jampel but is hindered by the issuing bank's requirement for valid documents related to the COD extension as the basis for extending the Jampel validity period. In response to this, PLN UID JABAR sent a letter to PT AEU regarding the change in the COD date, requesting PT AEU to submit an updated master schedule and performance guarantee referring to the adjusted COD target. PLN also informed PT AEU about the consequences of the COD delay in the form of liquidated damages that can be calculated.

In August 2022, PT AEU submitted the master schedule for the PLTM Paraeng project with a construction period of 34 months and an explanation regarding the process of extending the performance guarantee, which remains a hurdle due to the complicated process and the considerable amount of time required. Therefore, in November 2022, PT AEU requested an extension of the handover deadline to December 12, 2022. In response to this, PLN held another meeting with PT AEU in December, during which PT AEU presented several points, including the rescheduling of COD, changes in PLTM capacity, organizational restructuring, the change from BOOT to BOO system, and the change of

currency to US dollars. PLN's response to this matter is that PLN will consult with the legal department regarding PT AEU's request and ask PT AEU to promptly submit the performance guarantee.

3. Dispute Resolution

The parties involved in PJBTL have made various efforts to resolve the disputes that have arisen. Dispute resolution in agreements/contracts can be carried out in two ways, namely through the courts and out of court (Salim, HS). Out-of-court dispute resolution is known as alternative dispute resolution (ADR), one form of which is through consultation, negotiation, mediation, and conciliation. If those methods do not succeed, the aggrieved party can file a lawsuit in the district court where the agreement/contract was made. However, before proceeding to court, in accordance with Article 24, paragraph 2 of the electricity sale and purchase agreement, the parties agree to resolve the dispute through the Indonesian National Arbitration Agency (BANI).

From the case above, the construction of small-scale renewable energy power plants under 10 MW, particularly micro-hydropower plants, is experiencing disputes related to unmet COD targets. Both parties have resolved the dispute out of court through negotiation and consultation processes. Negotiations have been conducted from 2020 to 2024, but no agreement has been reached between both parties. As a result, PLN consulted with KON (Komisi Ombudsman Negara) Jabar regarding the dispute over the Paraeng PLTM, where KON JABAR stated that the rescheduling of COD or extension of COD is only granted for force majeure reasons, which can accommodate the provision of a recovery period and still provide LD (Liquidated Damages) that can be calculated. The results of the consultation between PLN and KON Jabar have been conveyed to PT AEU, but there is still no agreement between both parties on the amount of LD (Liquidated Damages) that must be paid.

IV. CONCLUSION

1. The implementation of the Power Purchase Agreement between PT. PLN (Persero) and Private Business Entities consists of nine stages: the first stage is the documentation process by the Independent Power Producer (IPP) for licensing requirements, the second stage is the system feasibility study and environmental study, the third stage is the proposal/application of licensing documents and the

reports of the feasibility study and environmental study. The fourth stage is the qualification process of the Independent Power Producer (IPP), including administrative qualification, technical qualification, and financial qualification. Fifth stage: signing of the electricity sale and purchase agreement between PT. PLN (Persero) and the private business entity. The sixth stage: the construction phase of the mini-hydro power plant (PLTM). The seventh stage is the generator capability test conducted by PT. PLN (Persero) to ensure the operational feasibility of the generator. The eighth stage is commissioning, which is the phase of connecting the PT. PLN (Persero) system with the Independent Power Producer (IPP) to determine if the generator is ready for operation. The ninth stage is the Commercial Operation Date (COD), which is the date the power plant is allowed to operate commercially within the PLN Distribution System.

2. The content/substance of the Power Purchase Agreement between PT. PLN (Persero) and the Private Business Entity (IPP) includes several aspects, namely that the object of the agreement is intangible electricity, where the determination of the electricity price is set according to the agreement reached during the negotiation process. The price is adjusted according to the amount of the Basic Cost of Power Supply (BPP). For PLTM Paraeng, the cost of power supply is Rp.866/kWh, where the BPP is used as the selling price of electricity that PT. PLN must purchase. Both parties have agreed to fulfill their rights and obligations as outlined in the PJBTL and agreed upon when the PPA was signed by both parties. Whereas the PJBTL also regulates the period of the electricity sale and purchase agreement in accordance with Article 4 of the Minister of Energy and Mineral Resources Regulation No. 10 of 2017 concerning the main points in electricity sale and purchase agreements, which states, "The PJBL is implemented for a period of no more than 30 (thirty) years from the commencement of COD."
3. The dispute occurring in the PJBTL PLTM Paraeng can be resolved through two methods, namely out of court and through the court. Efforts have been made by both parties to resolve the dispute related to the COD target of PLTM Paraeng out of court by negotiating from 2020 to 2024. And PLN has also conducted a legal consultation through KON Jabar to seek input regarding the dispute over the COD target, which affects the fines/penalties that must be paid by the IPP. (LD). Those efforts have been

made, but there has been no agreement between both parties regarding the continuation of the PLTM Paraeng, whether the private business/developer is willing to pay the fines/compensation. Because of this, the project has been delayed, causing the target for achieving NZE to be hindered.

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