

THE CHARACTERISTICS OF RELATIONSHIP BETWEEN CONSUMERS AND STATE- OWNED GAS COMPANY IN IMPLEMENTING A PROJECT OF DOMESTIC GAS INSTALLATION SYSTEM

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THE CHARACTERISTICS OF RELATIONSHIP BETWEEN CONSUMERS AND STATE-OWNED GAS COMPANY IN IMPLEMENTING A PROJECT OF DOMESTIC GAS INSTALLATION SYSTEM

Ghansham Anand and Dyah Ismi Afifah*

1 Abstract

A project of one million domestic gas installations across Indonesia has been implemented by PT Perusahaan Gas Negara (PGN) since 2014. However, the right and obligation between the company and consumers who installed the domestic gas is not clearly stated. This may cause a right dispute between them when it comes to an unexpected occurrence. Whereas, their relationship is important as it relates to some aspects of consumer protection and obligation, which may lead into claims when something bad happen. Based on Article 19 of the Act of 1999 No. 8 about Consumer Protection, an enterprise is responsible to give compensations in the form of cash money or other similar goods/services with equal value or medical treatment and/or insurance. In regard to consumer's liability, they have to provide evidence. The liability of the enterprise is classified into a liability of guilt by shifting the weight of evidence. It is mentioned in Article 28 UUPK that if an enterprise is unable to prove that it is not guilty or if it is found guilty conducting action against its liability of law, the enterprise has to give compensation to its consumers, who feel disadvantageous. The basis of applying that claim toward the enterprise points to the lack of performance or legal violence.

Keywords

relationship, sale and purchase agreement of domestic gas, consumer

3

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Introduction

The function of banks as financial collector and distributor is fundamental for economic activities, in particular to the real sectors. They allow people to do economic development activities through investments, distributions, and consumptions.

Government, as the life activator of this country, may use the natural resources of Indonesia to fulfill the people's needs. However, they are also responsible to preserve this nature for the sake of the next generation. The government's attempt to realize an equal and prosperous life for their people without causing any natural disaster is followed up by designing a sustainable development program known as sustainable development with natural insight within.

The government, through state-owned companies has launched *PGN sayang ibu* project in National Public Company Klender, East Jakarta (Heri Yusup, 2014). This project is later known as PGN project, referring to a project of one million domestic gas installation across Indonesia by PT Perusahaan Gas Negara, Tbk (i.e., later known as PGN). It has been conducted since 2014 and it is continuing to the next years until it achieves the expected goal.

In regard to domestic gas installation at people's house, the PGN informs the project through local districts to be further informed to their people. The headman of each district should inform to his subordinates in order to list the people who are willing to install the domestic gas. On Period I in 2016, particularly to Airlangga district, the cost needed for installing a domestic gas along with a stove as the compensation from the PGN reached IDR. 350.000. However, the people of Airlangga district never had any single socialization and information related to domestic gas installation from the PGN. All they knew was only about the cost for installing domestic gas pipe. No further information was provided.

In implementing this project, the government plans to build a relation with public. It aims to socialize the project to all people and provide optimal advantages. The intended relation is in the form of legal relationship that involves both the government and all citizens into this PGN project. With this legal relationship, each of the parties has some reciprocal rights and obligation. One party has right to claim to another party, and that another party is responsible to provide the claim, the vice versa (Abdulkadir Muhammad, 1990). Those right and obligation emerges as the result of the legal relationship; a law-based relationship (Riduan Syahrani, 1985). That legal

relationship may be known as engagement; a legal relationship between two parties, in which one party has right to claim something and another one has liability to fulfill that claim (Subekti, 2005).

In regard to PGN-consumer relationship, such right and obligation are not clearly set. It may cause a legal vacuum when something bad, such as gas leakage or pipe removal to another part of house, happens. Some issues may arise, including how much the cost, what kind of rights the consumer may have, as well as the PGN's liability toward their consumer. Whereas, this relationship is important as it relates to some rights of legal protection for consumers and the performance that can be sued when something bad happens.

4 Research Method

This study is a normative research. Following Peter Mahmud Marzuki, the term "normative legal research" is not necessary as the term "legal research" of in Dutch *rechtsonderzoek* is always normative (Peter Mahmud Marzuki, 2005). Legal research is finding a coherent truth by questioning some issues such as the consistency of the law with legal norms, is the norms of order or prohibition consistent with the legal principle, is an individual's act is consistent with the legal norms or the legal principle.

This study refers to a legal research using statute approach and conceptual approach. Is is reform-oriented making positive law an object of study. Thus, the author of this study fully used legal materials, both primary and secondary laws. A library research was used for data collection. it was through tracking any legal materials relevant to the studied legal issue.

The Legal Relationship between State Gas Company and Consumers of Domestic Gas

a. The Definition of Engagement

The definition of engagement is not set in Book III BW, but set in such a way by some experts of legal study. Following Hoffman, engagement or *verbintenis* is a legal relationship among a limited number of legal subjects and thus, one may get involved to behave in particular ways toward another party, especially ones with such right of behaving (R. Setiawan, 1987). Similarly, Sudikno Mertokusumo argues that engagement is a legal relationship (i.e., *vermogensrechtelijke rechtbetrekking*) containing some rights and obligation on behalf of other parties and it emerges due to the relationship between two parties (i.e., a legal relationship) (Salim, 2009).

On the other hand, A. Pitlo defines the term 'engagement' as a legal relationship that points to the properties of two or more people; one is the creditor and another one is the debtor, over a performance (Simanjutak, 1999). Similarly, Subekti defines that the term 'engagement' is a legal relationship (dealing with properties) between two parties in which one of them provides rights and another one claim those rights (Subekti, 2001).

b. The Source of Engagement

Article 1233 BW mentions that an engagement is based on agreement and law. Based on Article 1352, the engagement derived from law is classified into engagements that only come from law and ones that derive from law due to people's behavior (Riduan Syahrani, 1985). For the later, based on Article 1353 BW, it is classified into two types, including engagements derived from behaviors that corresponds to law (*rechtmatige*) and ones derived from behavior against the law (*onrechtmatige*).

Some differences exist among agreement-based engagements that derive from law. Engagements derived from law are made without the will from the concerned parties, while engagements derived from agreement among the concerned parties are free to make any engagements, both so-called engagements, as mentioned in Book III BW, and not-so-called engagement (Riduan Syahrani, 1985).

c. The Definition and Aspect of Agreement

Some legal experts commonly argue that the definition of agreement in BW is incomplete and too broad (Mariam Darus Badruzaman, 2001). It is considered 'incomplete' as it is merely around unilateral agreements, and considered 'too broad' as the term 'behavior' may include many aspects beyond property issue such as domestic law, although it is different, and even seen as behavior against the law. Thus, the legal experts give some boundaries on its definition in Article 1313 BW.

Setiawan gives a critical argumentation on the definition of agreement mentioned in Article 1313 BW and then provides some refinement, as follow.

- a. The behavior should be defined as legal actions, aiming to result in legal consequences;
- b. Adding the notion "or engaging to one another".

Therefore, the definition becomes "agreement is legal action, in which one or more parties engage themselves to others." (R. Setiawan, 1987).

From the principle of law in the law of agreement, there are four principles considered as the fundamental legal base of agreement. Those are the principle of being free to have contract, the principle of consensualism, the principle of *pacta sunt servanda*, and the principle of having good faith (Agus Yudha Hernoko, 2014).

d. The Characteristics of Relationship between State Gas Company and Consumer of Domestic Gas

The legal relationship between the PGN and citizens is in the form of sale and purchase agreement. This sale-and-purchase is an agreement in which one party engages themselves to provide rights of ownership over things and another party has liability to pay some money as agreed (Subekti, 2005). The seller's agreement (in this case, the seller is the PGN) is whether providing or removing the rights of its ownership over the proposed natural gas, while citizens promise to pay some money as agreed based on the definition of sales and purchase mentioned in Article 1457 BW.

In regard to sales and purchase of domestic gas, it remains legal and may establish the rights as well as obligations to each of the parties although the sales-and-purchase procedures between the PGN and citizens are not explicitly mentioned in the form of written agreement. Following civil law, making a written agreement is not a must, but for particular agreements as mentioned in law. For instance, any agreements intended to divert or charge the right of ownership over particular area should be made in written (in the form of deeds) by the deed officials/PPAT (Janus Sidabalok, 2006). Thus, based on Article 1320 BW, the general condition to legalize an agreement does not point to particular terms. As an agreement is made between consumers and the PGN, an engagement along with particular rights and obligations among them emerges.

The PGN's Liability toward Citizens when Something Bad Happen

a. The Aspect of Liability

Based on Article 1365 BW, one may only have liability over other's disadvantage due to several causes, including:

- a. Disadvantageous Behavior that against the law (legal violence);
- b. The disadvantages is the result of that behavior (causal relationship);
- c. The perpetrator is guilty; and

- d. The violence of norms has *strekking* to parry any disadvantages (relativity)

The liability based on civil law is classified into several principles, as follow (Busyra Azheri, 2008):

1. The principle of liability based on the element of guilty (*liability based on fault*).
2. The principle of liability based on presumption (*presumption of liability*). In this case, it will be considered as a liability over any disadvantages, however, the defendant can be free from any liabilities if he/she may prove that he/she is not guilty (the absence of guilt). Basically, this principle refers to the liability based on fault with more emphasis on shifting the weight of evidence toward the defendant.
3. The principle of absolute liability (*strict liability*). This kind of liability is in relation to the doctrine of *onrechtmatige daad* as mentioned in Article 1365 BW which prioritizes the element of guilt/fault.

Noted that liabilities may emerge due to:

- a. Guilt because of an agreement that puts one party at a disadvantage, as mentioned in Article 1365 BW (actions against the law).
- b. Law. it implies that one party is responsible not due to the guilt he/she did, but more due to the provision of law.

Toward the liability of fault, it is classified into:

- a. Liability of fault. In this regard, one party may become disadvantageous if another pertinent party acts against the law/norms (violence of law) and the perpetrator may feel guilty of his/her fault.
- b. Liability of fault by shifting the weight of evidence. This kind of liability is not quite different from the first one. However, the disadvantaged party does not need to prove any evidence of legal violence.

b. The PGN's Liability toward People's Disadvantages

Based on Article 19 UUPK, an enterprise should be responsible and provide compensation, whether in the form of cash-back or other compensations such as similar goods or services with equal value, or such a medical treatment and/or insurances.

As consumers' liability is proving the evidence, the enterprise's liability is classified into liabilities of fault by shifting the weight of evidence. The disadvantaged party does not need to prove any actions against the law.

The kind of liabilities based on UUPK is liabilities of fault by shifting the weight of evidence. It is mentioned in Article 28 UUPK that "the liability to prove evidence of whether or not the element of fault emerges in a claim of compensation as mentioned in Article 19, 22, and 23 belongs to the enterprise." Thus, if an enterprise is unable to prove that they are not guilty or if they are found guilty, they have to give compensation to the consumers as the disadvantaged party.

c. The Insurance of Liability as Compensation Risk Transfer

The insurance of liability is a kind of liabilities providing insurance in the form of compensation toward the insured suffering from any disadvantages as the result of negligence, fault, or ignorance in implementing activities and according to the applied law, the perpetrators should be responsible for the damages. With this liability, an individual or enterprise should do their best to manage the risk of their liabilities, in which the claim of compensation is often high, and thus, it needs to be transferred into insurance companies (Erfano Junjung Bhakti, 2011).

Different from the kinds of insurance for other damages, this insurance of liability has specific criteria, including:

1. The insurance of liability has no object to be insured. The compensation to be paid to the insured is not for the damage of particular object, but due to any disadvantages suffered by the third party.
2. The amount of claim of compensation is commonly unlimited. In other word, the insurer is responsible to compensate any disadvantages the third party suffered from. This insurance of liability assures to cover the compensation of any legal expenses that may emerge during the claim between the insured and the third party, but other compensation that belongs to the insured.
3. The insurance of liability (especially for public liability) only covers the legal-based compensation, not moral-based. The insured's negligence that may cause particular disadvantages to the third party will commonly be covered by the insurance policy of liability, excluding other disadvantages due to the insured's intentional behavior.

In domestic gas sales and purchases between the PGN and consumers, the PGN should be responsible when something bad happens toward their consumers due to the PGN's negligence or fault. The damage can be so high. With this risk insurance, the PGN may divide the risk with the insurance company in giving compensation for any legal expense that may emerge due to the consumers' disadvantages.

d. The Basis of Claim

1. Lack of Performance (*wanprestasi*)

The term '*wanprestasi*' which means 'bad performance' derives from Dutch (Subekti, 2001). Wirjono Prodjodikoro argues that *wanprestasi* is the lack of performance in a legal agreement, and it points to an issue to be implemented as the content of an agreement (Wirjono Prodjodikoro). Therefore, it is apparent that one unable to fulfill or implement an agreement he/she made with others is considered as one violating the content of the agreement and thus, he/she did *wanprestasi*.

Wanprestasi (negligence or carelessness) of an individual is classified into four types, as follow (Wirjono Prodjodikoro):

- a. Not implementing any of obligation agreed;
- b. Implementing the deal, but not as it is supposed to be;
- c. Implementing the deal but it is late to do;
- d. Conducting something not supposed to do.

Consumers of domestic gas may file a claim of *wanprestasi* toward the PGN as they have a contractual relationship. This contractual relationship may occur due to the existence of sales-and-purchase agreement between two parties. In this case, the object of agreement between the PGN and consumers is natural gas for domestic purposes.

The consumers' disadvantages in having the needs of natural gas for domestic purposes may occur, such as: they have to pay some bills with high amount more than the usage, any leakage and damage on pipes, or other disadvantages that make them must pay some money not due to their fault, etc.

2. Behavior against The Law

Since 1919 (⁸HR 31-1-1919, NJ 1919, 161; Lindenbaum/Cohen) behavior against the law refers to "any actions or inaction that (1) violate other's rights; or (2) against the perpetrator's legal obligation; or (3) against morality; or (4) against any aspect of

carefulness that should actually be applied in society toward self, and other's things." (Mr. J. H. Nieuwenhuis, 1985).

Any behaviors against the law are set under Article 1365 up to Article 1380 BW. Article 1365 mentions that "each behavior against the law and disadvantage others make the perpetrator have a liability to recoup any of those damages."

This article sets some criteria of behavior to be against the law. Those are as follow.

1. Behavior against the law;
2. Due to fault;
3. Due to any disadvantages that occur;
4. Due to a causal relationship between behavior and the disadvantage.

Thus, when the PGN is found behaving against the law, they can be sued based on the violence they did if:

1. The PGN violates the consumers' rights, as mentioned in Article 4 UUPK;
2. The PGN is found breaking any of their legal liabilities, as mentioned in Article 7 UUPK;
3. The PGN wrecks the consumer's house for installing the gas pipe without having permission from the owner.
4. The PGN takes some payment as domestic gas usage monthly bill which amount does not correspond to the gauge.
5. The PGN does not periodically control and supervise the condition of domestic gas pipes along with the gauge, which may cause particular damages or leakage.

3. *Class Action*

Class Action (CA) claim is a synonym of *class suit* or *representative action* (RA), defined as (M. Yahya Harahap, 2007):

- a. claims containing lawsuit through the process of trial session proposed by one or more parties acting as the class representative;

- b. the class representative acts to file the claim, not only for and on behalf of their own name, but also to and on behalf of the group they represent without requiring any authorized letter from the members of the group;
- c. in filing the claim, it does not need to individually mention each of the members' identity they represent;
- d. The important is the origin of the group may define the identity of its member in specific manner;
- e. Besides, both the representative and the members of the group have a factual similarity or legal base which may create:
 - common interest
 - common grievance, and
 - mutual benefit as the claim meets the requirements.

The consumers' disadvantage of domestic gas installation is likely to impact on more than one individual as it is about gas which may rapidly spread out due to the leakage. When this happens, a number of people put at that disadvantage may file a *class action* claim to the court through a representative, the member of the group, or the combination of both in order to file a claim of particular disadvantages they suffer from.

e. People's Legal Attempt toward the PGN

When such disadvantages happen, consumers using the natural gas for domestic purposes provided by the PGN may do some legal attempts toward the PGN in order to seek for the solution. Based on the regulation set in UUPK, the solution of such dispute is explained in Chapter X of Article 45 up to Article 48 UUPK.

Article 45 subsection (1) UUPK mentions that "each of the disadvantaged consumers may claim the enterprise through an official which function is to solve the dispute between consumer and enterprise or through a juridical official in their public court." The official seeking for the solution of such dispute is BPSK, while UUPK sets two legal attempt of seeking for solution by consumer, including:

1. The solution of dispute occurs outside the court (Article 47 UUPK)
2. The solution of dispute occurs through public court(Article 48 UUPK)

Which line to be selected depends on the agreement between parties and it has been set in the clause of agreement. It is set under Article 45 subsection (2) UUPK, that “the solution of consumers’ dispute can be filed through court or outside the court, and it depends on the pertinent parties.”

1. Dispute Solution outside the Court

A dispute between consumers and the PGN may happen outside the court, as previously described. Article 47 UUP states that “the solution of consumers’ claim outside the trial session is held to reach a deal on kinds of compensation as well as its amount and/or on particular treatment to assure that the disadvantage will never be happen to the consumers.” In this regard, it can be through some ways, including:

1. Through Reconciliation

The definition of dispute solution through reconciliation is set under the description of Article 45 subsection (2) UUPK that “the solution of dispute through reconciliation is a solution conducted by both pertinent parties (the enterprise and the consumer) without having either trial session or any other officials of consumers’ solutions and as long as it is not against this law.”

The solution through reconciliation is set in Book III Chapter XVIII BW about reconciliation. Article 1851 BW mentions about the definition of reconciliation, that it is an agreement by providing, promising, or retain particular object, and both pertinent parties will end the case proceeded in the court or make a written agreement to prevent any other dispute.”

From that article, it reveals that the solution of dispute through reconciliation by providing compensation over any damages in such a way, which includes providing, promising, or retaining particular object as long as it is reasonable and accepted by the consumers as ones put at a disadvantage. Article 1851 BW also sets that in holding the reconciliation, a written agreement should be made to legalize the reconciliation.

2. Through BPSK

Another solution of dispute outside the trial session is through BPSK (i.e., an official of consumers’ dispute solution). It is an alternative official to solve consumers’ dispute. When reconciliation fails to solve the dispute between consumers and the PGN, they may probably use this second option.

In UUPK, the regulation of BPSK is set under Article 49 up to Article 58 UUPK. Article 49 subsection (1) UUPK states that “the government organizes a regional official of consumers’ dispute solution to solve the consumers’ dispute outside the court.”

The solution through BPSK is gone through several stages, as follow (Ahmadi Miru and Sutarman Yodo, 2010).

1. Strived that the solution of the dispute is through mediation. It is a process of negotiation to solve particular problems in which the impartial may get involved to seek for the best solution for both parties (Celina Tri Siwi Kristiyanti, 2010). In this process, the mediator is not allowed to make decision, but solely assisting the disputing parties to solve their problems. In this case, BPSK acts as a mediator. BPSK should be active in mediation forum by, for instance, giving suggestions and advices. When a solution has been found by both parties, it will be used as a compromise which may become effective as final award (arbitrage) or appeal for both parties.
2. If mediation fails to find a solution, it will be further shifted into conciliation. It is a process of seeking for the solution through reconciliation without having any trial session. The third party, as a reconciliatory (i.e., BPSK) does not need to attend the conciliation. Commonly, BPSK will not be fully involved in the substance of dispute (Celina Tri Siwi Kristiyanti, 2010). In this level, BPSK should be passive. When both pertinent parties accept the conciliator’s solution, its function shifts into arbiter, and the solution made will be the final award and binding among the pertinent parties. In this case, such award has executorial power as like arbitrage.
3. When the conciliation fails to reach the solution, it will shift into arbitrage. The definition of arbitrage is set under Article 1 subsection (1) UU APS that “arbitrage is ways of finding a solution for a civil dispute outside the public court. The agreement of arbitrage is made in written by the disputing parties.” In this case, BPSK acts as an arbiter with an authority to investigate and make judgment for the dispute. The judgment is final in nature, and will be binding among the pertinent parties. The one authorized to decide and solve the dispute is the committee of BPSK. Article 54 subsection (1) and (2) UUPK set about the Committee of BPSK. The content of each of the subsections is as follow.

- (1) To handle and solve consumers' dispute, the official of consumers' dispute solution organizes a committee.
- (2) The number of the members of the committee as mentioned in subsection (1) should be odd, and at least consisting of 3 (three) people as the representatives of the all elements as mentioned in Article 49 subsection (3), and assisted by a registrar.

2. Through Public Court

As previously described, the solution of consumers' dispute may be through public court. The disputing parties may seek for the solution of their dispute through public court if:

1. The disputing parties have rights to decide whether having a trial session in public court or taking other ways outside the court in order to solve their dispute. it is consistent with Article 45 subsection (2) UUPK. Thus, in this case, the solution of consumers' dispute through public court is considered as an option to select by the consumers to solve their dispute with the PGN.
2. If both parties have already decided to select some attempts outside the courts as the primary option to solve their dispute, the attempt of seeking for the solution through public court cannot be selected unless one or both parties have considered that all of those attempts outside the court failed to find the solution. This is consistent with Article 45 subsection (4) UUPK. Thus, if both reconciliation and through BPSK fail to find the solution, the pertinent parties may seek for the dispute solution through public court.

Based on Article 118 subsection (1) HIR, the consumers who are willing to solve their dispute through public court may send their lawsuit to the defendant. In case of filing an objection to the public court, both disputing parties may file their petition in 14 (fourteen) workdays at most since they accepted the notification letter, as mentioned in Article 56 subsection (2) UUPK.

If the claim is about the lack of performance, some issues should be proven by evidence, including: the existence of a binding relationship between the disputing parties, the enterprise's ignorance on its own liability, as well as the amount of disadvantages the consumer get. On the other hand, if the claim is about legal violence, it should be proven by evidence that the enterprise has behaved against the

law, whether in the form of violence toward the consumers' rights or toward their own obligation of carefulness. Other issues to be proven include: The enterprise's fault, whether it is intentional or due to the company's negligence, as well as any damages the consumers get from that fault, and any causal relationship between the legal violence and those all damages.

Conclusion

The legal relationship between the PGN and the consumers derives from a sales-and-purchase agreement. With such agreement, it emerges an engagement between them. In fact, the agreement is not made in written. Nevertheless, it remains legal and brings some rights and obligations to both pertinent parties.

Toward the enterprise's liability, the consumers should previously determine the cause of any disadvantages they experience. The basis of their claim can be in the form of the lack of performance or a legal violence. UUPK has set the attempts to be applied to sue the enterprise. These attempts help the consumers to get their rights from the PGN. UUPK has classified the solution into two options; through public court and alternative attempts outside the public court. Toward the second option, it is classified into reconciliation and through BPSK. If the consumers decide to bring BPSK with them, they should go through several stages respectively from having mediation, conciliation, up to arbitration. The pertinent parties have an authority to decide which lines they are willing to choose for solving their dispute. The government should inform the procedures as well as rights and obligation set in a sales-and-purchase agreement of domestic gas installation in order to make people see their own rights and obligation. Therefore, this sales-and-purchase agreement should be made in written, and the prospective consumers should have chance to understand the content before dealing the agreement. In order to do so, the enterprise should provide a copy of the agreement form to each consumer. Toward the consumers' liability, the agreement should be made in written to avoid any issues or problems leading them into a disadvantage and to clearly assure the rights and obligation among both parties. In regard to suing the enterprise due to any disadvantages they experience, the consumers should clearly see whether the base of lawsuit they file corresponds to the actual facts. It is important to maximize their legal action and thus, it may lead to the expected compensation.

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