



# The Legal Aspects of Privatization in Electricity Business Sector\*

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## Abstract

Privatization is a crucial issue for third-world countries such as Indonesia. In the electricity sector, which is the lifeblood of the community, the involvement of the private sector is a crucial concern. Two judicial reviews of the electricity law in 2003 and 2015 proved the significant issue of privatization in Electricity. This study analyzes how the state regulates the privatization policy of the electricity sector in Indonesia. This study, a normative or doctrinal legal research model, explores electricity regulations and doctrines such as Laws Number 20 of 2002 and Number 30 of 2009, Law Number 11 of 2020 on Job Creation, and two decisions of the Constitutional Court number 001-021-022/PUU-I/2003 and 111/PUU-XIII/2015. In conclusion, this study explains that Indonesia allows the privatization of the electricity sector throughout the role of private companies is still under state control. Privatization, which is a reduction in the role of the state and an increase in the role of the private sector, has been well implemented by state-owned enterprises, including the electricity sector. Both decisions of the Constitutional Court emphasize the strong role of the state and become the majority in controlling the electricity business, but do not reject the role of the private sector. Furthermore, state-owned enterprises have a top priority as a provider of Electricity for the community.

**Keywords:** privatization, Electricity, Indonesian legal perspectives

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## Aspek Hukum Privatisasi di Bidang Usaha Ketenagalistrikan

### Abstrak

Privatisasi merupakan isu krusial bagi negara dunia ketiga seperti Indonesia. Di sektor ketenagalistrikan yang menjadi urat nadi masyarakat, keterlibatan pihak swasta menjadi perhatian krusial. Dua kali uji materi undang-undang ketenagalistrikan pada tahun 2003 dan 2015 membuktikan isu privatisasi ketenagalistrikan yang signifikan. Studi ini menganalisis bagaimana negara mengatur kebijakan privatisasi sektor ketenagalistrikan di Indonesia. Kajian ini merupakan model penelitian hukum normatif atau doktrinal, menggali regulasi dan doktrin ketenagalistrikan seperti Undang-Undang Nomor 20 Tahun 2002 dan Nomor 30 Tahun 2009, Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja, dan dua putusan Mahkamah Konstitusi nomor 001-021- 022/PUU-I/2003 dan 111/PUU-XIII/2015. Kesimpulannya, penelitian ini menjelaskan bahwa Indonesia mengizinkan privatisasi sektor ketenagalistrikan sepanjang peran perusahaan swasta masih dalam penguasaan negara. Privatisasi yang merupakan pengurangan peran negara dan peningkatan peran swasta telah dilaksanakan dengan baik oleh badan usaha milik negara, termasuk sektor ketenagalistrikan. Kedua putusan MK tersebut menekankan kuatnya peran negara dan menjadi mayoritas dalam penguasaan bisnis ketenagalistrikan, namun tidak menolak peran swasta. Selanjutnya, BUMN memiliki prioritas utama sebagai penyedia tenaga listrik bagi masyarakat.

**Kata kunci:** Privatisasi; Listrik; Perspektif Hukum Indonesia

### Правовые вопросы приватизации электроэнергетики

#### Абстрактный

Приватизация является серьезной проблемой, стоящей перед странами третьего мира, такими как Индонезия. В электроэнергетическом секторе, источнике жизненной силы общества, участие частного сектора представляет собой серьезную проблему. Два судебных пересмотра законов об электроэнергетике в 2003 и 2015 годах подтвердили важность вопроса приватизации электроэнергетического сектора. В этом исследовании анализируется, как государство регулирует политику приватизации в энергетическом секторе Индонезии. Это исследование представляет собой модель нормативного или теоретико-правового исследования, изучающего правила и теории в области электричества, такие как Закон № 20 от 2002 г. и № 30 от 2009 г., Закон № 11 от 2020 г. о создании рабочих мест и Конституционном суде. Два решения № 001-021-022/ОПУ-I/2003 и № 111/ОПУ-XIII/2015. В заключение, это исследование объясняет, что Индонезия разрешила приватизацию энергетического сектора, в то время как частные компании оставались под контролем государства. Приватизация, которая представляет собой сокращение роли государства и повышение роли частного сектора, успешно осуществляется на государственных предприятиях, в том числе в энергетическом секторе. В обоих постановлениях Конституционного суда подчеркивалась мощная роль государства, взявшего на себя контроль над энергетическим бизнесом, но не отрицалась роль частного сектора. Кроме того, государственные предприятия имеют наивысший приоритет в качестве поставщика электроэнергии для населения.

**Ключевые слова:** Приватизация; Электроэнергия; Правовые Перспективы Индонезии

## A. INTRODUCTION

Privatization is a crucial issue, especially for developing countries that have experienced colonialism in the past. Often, privatization seems like a government policy to sell state assets and wealth to foreign investors. As a result, state sovereignty is reduced or lost due to the inability to control significant sectors related to people's livelihoods.

The word privatization is often the opposite of the word nationalization. Nationalization and privatization describe how assets and enterprises are transferred into public and private ownership. Nationalization is also used to refer to the transfer of assets and/or enterprises from the hands of municipal and local governments into the ownership of central Government. Meanwhile, privatization means selling at least 50% of those state-owned enterprises to the public ([Chick & Nelles, 2007](#)). Some empirical studies consider privatizations and liberalizations as a whole under the comprehensive umbrella of pro-market policies. Some countries have focused more on decreasing barriers to entry such as liberalization policies in previously state-owned monopolies, and others have been much more concerned with reducing state ownership in incumbent firms, such as privatization policies.

Moreover, privatization is also related to deregulation, which is related to market-oriented economics. Therefore, the state should intervene as little as possible in the economy, confining itself to maintaining the legal framework necessary for a market system. State intervention is justified in this context only if it attacks or restricts obstacles to efficient market behaviour or counteracts "market failure". ([Potrafke, 2010](#))

Indonesia's economic ideology is based on Pancasila, which is strikingly different from the liberal financial system. However, it is also different from the socialist economic system, which does not recognize the state of individual ownership ([Mubyarto, 1987](#)). The constitutional basis for the Pancasila financial system is Article 33 of the 1945 Constitution of the Republic of Indonesia ([Madjid, 1988](#)). After undergoing four amendments, the following are the contents of Article 33. First, the economy shall be structured as a joint enterprise by virtue of the principles of kinship. Second, the state shall control production sectors necessary for the state and vital for the livelihood of the people at large. Third, the land and waters and the natural wealth contained in it shall be controlled by the state and utilized for the optimal welfare of the people. Fourth, the national economy shall be conducted by virtue of economic democracy under the principles of togetherness, efficiency with justice,

sustainability, environment insight, and autonomy, as well as by safeguarding the balance of progress and national economic unity. Finally, laws shall regulate fifth, further provisions regarding the execution of this article. ([MKRI, 2015](#))

This paper will analyze the concept and experience of privatization in Indonesia, particularly in the electricity sector, as one of the most significant needs of people. The privatization policy in Indonesia is also influenced by the decision of the Constitutional Court, which provides an interpretation of Law Number 20 of 2002 and Law Number 30 of 2009 on Electricity. Moreover, this paper will also elaborate on two decisions of the Constitutional Court on two laws on Electricity. In the latest development, the Job Creation Law Number 11 of 2020 also changed the electricity policy, which is essential to be criticized in this paper.

## **B. METHODS**

The study applied normative or doctrinal legal research. This method will elaborate on the secondary data from several resources such as books, verdicts, journals, and other theoretical references. Moreover, it will analyze the principles of privatization issues based on the Indonesian legal perspective. The research aims to explore two Constitutional Courts' decisions on privatization issues of the electricity business. Those decisions are of great significance as the leading commentary of the constitution. On the other hand, the Job Creation Act, as the new legal policy which modified the rule of Law concerning Electricity, must be discussed.

## **C. RESULT AND DISCUSSION**

### **1. The Meaning of Privatization**

E.S. Savas defined privatization as any shift of activities or functions from the state to the private sector, and, more specifically, any production of goods and services from public to private ([Savas, 1987](#)). Many pictures describe the meaning of privatization. In general, privatization means reducing the role of the Government or increasing the part of the private institutions of society in satisfying people's needs; it means relying more on the private sector and less on Government ([Savas, 1999](#)). More clearly, Patrick Dunleavy stated that privatization is the permanent transfer of service or goods production activities

previously carried out by public service bureaucracies to private firms or other forms of non-public organization, such as voluntary groups. ([Dunleavy, 1986](#))

Public service or public sector, according to Paul Starr explanation, includes agencies administered as part of the state and organizations owned by it, whereas the private benefit or private industry has not only commercial firms but also informal and domestic activities, voluntary associations, cooperatives, and private nonprofit corporations. ([Starr, 1989](#))

Privatization in several countries has similar motives, but certain tendencies can nonetheless be confirmed. Based on Organization for Economic Co-operation and Development (OECD) publication in 2018, there are two main dividing factors as motives of privatization: 1) whether the privatizing country has a large and sophisticated economy, and 2) whether or not the Government has issued a state ownership policy. Where an ownership policy exists, the privatization of State-Owned Enterprises (SOEs) will typically be justified because the company no longer falls within the rationale for state ownership established by the policy. In mature economies, the rationales for ownership are mostly limited to the need to remedy the market failure and to provide goods and services for which there is no likely private supplier. Privatization has typically been motivated by changing market conditions where SOEs operate, typically including the entrance of private competitors. ([Organisation for Economic Co-operation and Development, 2018](#))

## **2. Privatization in Indonesia**

Indonesia started to privatize State-Owned Enterprises in 1988, that regulated by Presidential Instruction Number 5 of 1988 on Guidelines for Restructuring and Management of State-Owned Enterprises. The purpose of privatizing SOEs based on presidential instructions is to improve the poor, inefficient and ineffective performance of SOEs ([Presidential Instruction Number 5 Year 1988](#)). Furthermore, the presidential education ordered the Minister of Finance to issue technical regulations on privatizing SOEs in a Decree of the Minister of Finance. For example, the change in the status of SOEs from a service company to a public company and a public company to a limited liability company. In addition, the Government has also classified SOEs into several categories, such as very good, good, less good, and not good. As a result, from 1988 to 1994, the number of SOEs that became corporate companies increased from 120 to 142 units. ([Ma'arif, 2019](#))

After the reformation era, which began in 1998, privatization did not end. The implementation of the privatization of SOEs is regulated by Law Number 19 of 2003 on SOEs and Government Regulation Number 33/2005 amended to Number 59 of 2009 on Procedures for the Privatization of Limited Liability Companies. Based on the rules, the Government cannot decide on the privatization of SOEs before consulting with the House of Representatives. Previously, the Government selected SOEs that met the requirements for privatization based on laws and regulations. Subsequently, the Government consulted with the House of Representatives on a list of eligible SOEs for privatization. ([Law Number 19 of 2003 on State-Owned Enterprises](#))

In Article 78 of Law Number 19 of 2003, the privatization of SOEs can be carried out by three methods. First, an initial public offering (IPO) refers to offering shares of a private corporation to the public in a new stock issuance. Second, a private placement is a sale of stock shares or bonds to pre-selected investors and institutions rather than on the open market. Third, an employee buyout occurs when employees purchase the SOEs they work for ([Law Number 19 of 2003 on State-Owned Enterprises](#)). However, the implementation of the privatization of SOEs has resulted in violations that are not following the original purpose—for instance, market manipulation, insider trading, conflicts of interest, and poor corporate governance. ([Siahaan & Hartono, 2013](#))

The privatization of SOEs in Indonesia, as well as happened in many countries, has several reasons. First, reducing the Government's large role in the economy and encouraging private participation in development. So that the Government focuses more on policy formulation and monitoring of economic activities in the community. Second, Indonesia needs money to pay its sizeable debt. Disposal of ownership of SOEs to private companies can increase tax revenue because the tax rate of private companies is higher than that of state companies. Third, increasing efficiency because many state companies suffer losses due to poor corporate governance. So that every year the Government is burdened with the placement of state capital to SOEs that suffer losses. Fourth, the reduction of political interest in SOEs carried out by government officials. Fifth, expansion of ownership to invite domestic and foreign investors. Sixth, increasing the competitiveness of SOEs due to private ownership will encourage better performance. ([Hartono, 2005](#))

Indonesia has recorded a successful history of privatization based on the evaluation results of the Asian Development Bank in 2008. In the aspect of good corporate governance, the Ministry of State-Owned Enterprises has achieved several main achievements. First, negotiate and sign an appointment agreement

for all newly appointed directors and commissioners. Second, accept the Statement of Corporate Intents from 37 SOEs in 2002 and 46 SOEs in 2003. Third, the achieve the filling of annual reports which are in full compliance with the legal requirements. The Ministry of State-Owned Enterprises also implemented a performance incentive system in all profitable SOEs, assessed corporate governance in listed SOEs, and determined the quality and composition of the board of commissioners in about 30 SOEs. Moreover, public service obligations were identified in 15 SOEs and recommendations were developed for their financing and sustained delivery. ([Asian Development Bank, 2008](#))

The success story of privatization in 2008 continued into the next few years. The Director of Separated State Assets at the Ministry of Finance, Dedi Syarif Usman, said that privatization could increase company performance and value, increase benefits for the state and society and expand company ownership to the public. Boumediene H. Sihombing from Danareksa Sekuritas also supports his opinion that privatization is a broad alternative to funding and increases company value through market development. The benefits of privatization for the state are strengthening the capital market and sources of state income and improving the investment climate and the real sector. In addition, the community will benefit from company ownership, employment opportunities, improvement in the quality of services and products, and control participation. The testimony of the President Director of Waskita Karya, M. Choliq supports both opinions. Through privatization in 2012, Waskita Karya increased its net profit to 254 billion in 2012 from 172 billion in 2011. Choliq also stated that the State Capital Placement to PT Waskita Karya succeeded in increasing the value of government ownership from 3.974 billion to 15.237 billion. ([www.djkn.kemenkeu.go.id](http://www.djkn.kemenkeu.go.id))

### **3. The Constitutional Court Restricted Privatization in Electricity Sector**

This section of this paper describes and analyzes two decisions of the Constitutional Court of the Republic of Indonesia related to the judicial review of Laws Number 20 of 2002 and Number 30 of 2009 on Electricity. These two decisions become significant references to the legal policy of privatizing the electricity sector in Indonesia.

Law Number 20 of 2002 on Electricity is a replacement regulation for Law Number 15 of 1985. This new regulation has the concept of the involvement of the private sector in providing Electricity to the community. From several

previous definitions of privatization, this Law gives way to the privatization of the electricity sector previously closed to the private sector.

One of the pieces of evidence regarding the privatization of the electricity sector in this Law is the articles that regulate the role of private companies in the electricity business. For instance, article 8 mentioned several types of the electricity business. Compared with the opinion of Paul L. Joskow, who stated that there are four primary components of electricity supply: generation, transmission, distribution, and retail supply, article 8 is more comprehensive. ([Joskow, 2003](#))

Next, article 9 explains the business licenses for electricity supply open to business entities. Finally, article 1 point 27 explains the definition of a business entity which is any legal entity that can be in the form of a State-Owned Enterprise, Regional-Owned Enterprise, cooperative or private, established following the applicable laws and regulations, runs a type of business that is permanent and continuous work and domiciled in the territory of the Unitary State of the Republic of Indonesia. ([Law Number 20 of 2002 on Electricity](#))

#### Article 8

- 1) The electricity business consists of Electricity Supply Business and Electric Power Support Business.
- 2) The business of providing Electricity, as referred to in paragraph (1), includes the following types of companies:
  - a. Power plant;
  - b. Power Generation Transmission;
  - c. Electric Power Distribution;
  - d. Electricity Sales;
  - e. Electricity Sales Agent;
  - f. Electricity Market Manager; and
  - g. Electric Power System Manager.
- 3) Electricity Supporting Business, as referred to in paragraph (1) consists of Electric Power Support Services Business and Electric Power Support Industry.
- 4) Electricity Support Services Business as referred to in paragraph (3) includes the following types of business:
  - a. consulting in the field of electric power;
  - b. construction and installation of electric power installations;
  - c. electrical power installation testing;
  - d. operation of electric power installations;
  - e. maintenance of electrical power installations;
  - f. research and development;
  - g. education and training; and
  - h. other service businesses that are directly related to the provision of Electricity.



- 5) Electricity Support Industry, as referred to in paragraph (3), includes the following types of business:
  - a. Electric Power Equipment Industry; and
  - b. Electricity Utilization Industry.

Article 9

- 1) Business activities for the provision of Electricity, as referred to in Article 8 paragraph (2) in areas where competition applies, can be carried out by the Business Entity after obtaining a Business License for the Provision of Electricity following the type of business from the Electricity Supervisory Agency.

The Constitutional Court annulled Law Number 20 of 2002 on Electricity because the Law was declared to be contrary to Article 33 of the 1945 Constitution. Ultimately, the Constitutional Court decided it no longer had binding legal force. The panel of judges of the Constitutional Court read out the verdict on the application for judicial review of Law Number 20 of 2002 against the 1945 Constitution submitted by BHI, the PLN Workers Union, and the State Electricity Pensioner Family Association (IKA PLN) at the Constitutional Court's office, Jl. Medan Merdeka Barat, Central Jakarta, Wednesday, December 15 2004. The decision of the Constitutional Court Number 001-021-022/PUU-I/2003, among others, reads as follows: ([www.mkri.id](http://www.mkri.id))

- 1) Law Number 20 of 2002 concerning Electricity is declared to have no binding legal force.
- 2) All contracts or permits that have been issued based on Law Number 20 of 2002 are considered valid until the validity of the contract or access expires.
- 3) To declare that Law Number 15 of 1985 concerning Electricity shall be reinstated.
- 4) The Government should prepare a draft law that is new about Electricity and whose contents are appropriate to the spirit of Article 33 of the 1945 Constitution.

In their consideration, the panel of judges of the Constitutional Court believes that electric power is a vital production branch for the state and affects many people's livelihoods. Therefore, based on the provisions of Article 33, paragraph (2) of the 1945 Constitution, the electricity sector must be controlled by the state. The interpretation of the Constitutional Court on state control must be assessed based on Article 33, including the implementation of the national economy based on economic democracy, the principle of togetherness, efficiency with justice, and environmental insight. Furthermore, regarding the interpretation of state control, state ownership is not required to be 100%. Government ownership in the form of shares in business entities involving production branches that are important to the state and control the livelihoods of many people can be the absolute majority (100%) or relative majority (50%). In conditions of close majority share control, the Government is legally obliged

to retain the position of determining decision-making in the business entity. ([Joskow, 2003](#))

One of the main issues in the electricity sector in Law Number 20 of 2002 is the system of business activities. Theoretically and practically, there are two types of electricity business activity systems, namely bundling and unbundling. According to Neelie Kroes, unbundling refers to the effective separation between the operation of electricity and gas networks from supply and generation activities ([Kroes, 2007](#)), while Douglas N John explained that unbundling is separating generation from transmission to distribution for the electrics ([John, 2001](#)). From the two definitions, unbundling is the separation between the generation, transmission, distribution, and sale of Electricity with different business actors. Enforcement that applies in a country, whether bundling or unbundling, can affect the state's control over the electricity sector. The state controls all electricity business activities if the generation, transmission, distribution, and sales are bundling. On the other hand, unbundling opens the opportunity for the private sector to control part of the electricity business owned by the state.

After the Constitutional Court annulled all articles in Law Number 20 of 2002, the House of Representatives drafted and ratified Law Number 30 of 2009 on Electricity. However, in 2016, the State Electricity Company Workers Union submitted a judicial review of several articles of Law Number 30 of 2009 as follows: ([Law Number 30 of 2009 on Electricity](#))

Article 10

- 2) The business of providing Electricity for the public interest as referred to in paragraph (1) can be carried out in an integrated manner.

Article 11

- 1) The business of providing Electricity for the public interest, as referred to in Article 10 paragraph (1) shall be carried out by state-owned enterprises, regionally-owned enterprises, private enterprises, cooperatives, and non-governmental organizations operating in the field of electricity supply.

Article 16

- 1) Electricity support service business as referred to in Article 15 letter a includes:
  - a. consultation in the field of electricity supply installation;
  - b. construction and installation of electricity supply installations;
  - c. inspection and testing of electrical power installations;
  - d. operation of electric power installations;
  - e. maintenance of electrical power installations;
  - f. research and development;
  - g. education and training;

- h. laboratory testing equipment and utilization of electric power;
- i. certification of electrical power equipment and users;
- j. electrical engineering competency certification; or
- k. other service businesses that are directly related to the provision of Electricity.

Article 33

- 1) The selling price of electricity and electricity grid rental is determined based on sound business principles.

Article 34

- 5) As referred to in paragraphs (1) and (2), the electricity tariff for consumers may be determined differently in each region within a business area.

Article 56

- 2) Within a maximum period of 2 (two) years, the Government has arranged and stipulated a business license for the provision of Electricity to state-owned enterprises as referred to in number 1, following the provisions of this Law.

The petitioners for reviewing the articles in Law Number 30 of 2009 mentioned several reasons. First, the phrase "right to control the state" in Article 33 of the 1945 Constitution legitimated State-Owned Enterprises. By their nature, SOEs engaged in a competitive business, public service obligation, and a combination of both. Therefore, the State Electricity Company, a special SOEs in charge of providing Electricity to society, carried out the Government's roles and responsibilities in the electricity sector. Second, the judges of the Constitutional Court issued Decision Number 001-021-022/PUU-I/2003 on December 21, 2004, regarding the historical interpretation of Article 33 of the 1945 Constitution. They stated that the private sector could only organize electricity supply business in Indonesia by investing capital or joining business activities with the State Electricity Company. ([www.mkri.id](http://www.mkri.id))

The Panel of Judges of the Constitutional Court partially granted the applicant's request in Decision Number 111/PUU-XIII/2015 on December 14, 2016, with the following verdict: ([www.mkri.id](http://www.mkri.id))

1. Granting the Petitioner's application in part.
2. To state that Article 10 paragraph (2) of Law Number 30 of 2009 concerning Electricity (State Gazette of the Republic of Indonesia of 2009 Number 133, Supplement to the State Gazette of the Republic of Indonesia Number 5052) contradicts the 1945 Constitution of the Republic of Indonesia conditionally and does not have binding legal force if the formulation in Article 10 paragraph (2) of Law Number 30 of 2009 concerning Electricity is interpreted as justifying the practice of unbundling in the business of providing Electricity for the public interest in such a way as to eliminate state control following the principle of "controlled by the state".
3. To state that Article 11 paragraph (1) of Law Number 30 of 2009 concerning Electricity (State Gazette of the Republic of Indonesia of 2009 Number 133,

Supplement to the State Gazette of the Republic of Indonesia Number 5052) contradicts the 1945 Constitution of the Republic of Indonesia conditionally and does not have binding legal force if the formulation in Article 11 paragraph (1) of Law Number 30 of 2009 concerning Electricity means the loss of the principle of "controlled by the state."

4. Reject the Petitioner's application for other than and the rest.
5. Order the loading of this decision in the State Gazette of the Republic of Indonesia as appropriate.

Head of the State Electricity Company's Corporate Communications Unit, Made Suprateka, believes that the Constitutional Court's decision strengthens the position of the Government (State Electricity Company) as the holder of exclusive rights in the supply of Electricity, including the business of generating, transmitting, distributing, and selling Electricity. He emphasized that the practice of unbundling, an integrated electricity business from generation, and distribution to sales the Electricity to the public, carried out by the State Electricity Company, was not problematic. Therefore, the Government still controls electricity business/projects even though it involves the private sector. ([www.hukumonline.com](http://www.hukumonline.com))

Meanwhile, according to Jefri Porkonanta Tarigan, the Constitutional Court Decision Number 111/PUU-XIII/2015 reaffirms the unconstitutionality of implementing the unbundling system to provide Electricity for the public. The unbundling system causes the electricity supply business to be separated. It opens opportunities for the loss of state control and guarantees the availability of Electricity to Indonesian citizens. Indeed, state control over the lives of citizens is the mandate of Article 33 of the 1945 Constitution. ([Tarigan, 2018](#))

#### **4. Job Creation Act Strengthened the Privatization of the Electricity Sector**

Indonesia's omnibus Law has promulgated through Law Number 11 of 2020 on Job Creation on November 2 2020. The Law introduces significant adjustments to Indonesia's laws by establishing new investment ecosystem provisions and amending 78 (seventy-eight) existing laws. Law Number 11 of 2020 aims to improve the ease of doing business in Indonesia to attract more investments, generate more jobs, and thus support Indonesia's economic recovery and long-term goal of becoming a wealthy country. ([Law Number 11 of 2020 on Job Creation](#))

In the electricity sector, Law Number 11 of 2020 also revised Law Number 30 of 2009. The following is a comparison table between the two laws

that regulate the electricity sector, but are limited to articles related to the issue of privatization of the electricity sector:

Number	Law Number 30 of 2009	Law Number 11 of 2020
1	<p>Article 3</p> <p>1) The state controls the electric power supply, whose operation is carried out by the Government and Regional Governments based on the principle of regional autonomy.</p> <p>2) For the implementation of electricity supply as referred to in paragraph (1), the Government and Regional Governments under their respective authorities shall establish policies, regulations, and supervision, and carry out the business of providing Electricity.</p>	<p>Article 3</p> <p>1) The supply of Electricity is controlled by the state, whose operation is carried out by the Central Government and Regional Governments based on the principle of regional autonomy under the norms, standards, procedures, and criteria set by the Central Government.</p> <p>2) For the implementation of the provision of Electricity, as referred to in paragraph (1), the Central Government and the Regional Government under their respective authorities shall establish policies, regulations, supervision, and carry out the business of providing Electricity.</p>
2	<p>Article 4</p> <p>1) The implementation of electricity supply business by the Government and Regional Government is carried out by state-owned enterprises and regional-owned enterprises.</p> <p>2) Private business entities, cooperatives, and non-governmental organizations can participate in the electricity supply business.</p> <p>3) For the provision of Electricity as referred to in Article 3 paragraph (1), the Government and Regional Government shall provide funds for:</p> <p>a. Poor community</p>	<p>Article 4</p> <p>1) The implementation of electricity supply business by the Central Government and Regional Governments, under their respective authorities based on norms, standards, procedures, and criteria, is carried out by state-owned enterprises and regional-owned enterprises.</p> <p>2) Regional business entities, private companies, cooperatives, and non-governmental organizations can participate in the electricity supply business.</p> <p>3) For the provision of Electricity as referred to in Article 3 paragraph (1), the Central Government and Regional Governments provide funds for:</p>

	<p>groups.</p> <p>b. Construction of electricity supply facilities in undeveloped areas.</p> <p>c. Development of electric power in remote and border areas.</p> <p>d. Rural electrification.</p>	<p>a. Poor community groups.</p> <p>b. Construction of electricity supply facilities in undeveloped areas.</p> <p>c. Development of electric power in remote and border areas.</p> <p>d. Rural electrification.</p> <p>4) Further provisions regarding the provision of funds as referred to in paragraph (3) shall be regulated by a Government Regulation.</p>
3	<p>Article 7</p> <p>1) The general plan for national Electricity is drawn up based on the national energy policy and determined by the Government after consulting with the House of Representatives of the Republic of Indonesia.</p> <p>2) The general plan for national Electricity referred to in paragraph (1) is prepared by involving the Regional Government.</p> <p>3) The general plan for regional Electricity is prepared based on the general plan for national Electricity and is determined by the Regional Government after consulting with the Regional People Representative Council.</p> <p>4) Guidelines for the preparation of general electricity plans as referred to in paragraphs (1) and (3) shall be stipulated by the Minister.</p>	<p>Article 7</p> <p>1) The general national electricity plan is prepared based on the national energy policy and determined by the Central Government.</p> <p>2) The general plan for national Electricity referred to in paragraph (1) is prepared by involving the Regional Government.</p> <p>3) Provisions regarding guidelines for the guidance of general electricity plans as referred to in paragraph (1), shall be regulated by a Government Regulation.</p>
4	Article 11	Article 11

	<p>1) The business of providing Electricity for the public interest as referred to in Article 10 paragraph (1) shall be carried out by state-owned enterprises, regional-owned enterprises, cooperatives, and non-governmental organizations operating in the field of electricity supply.</p> <p>2) State-owned enterprises as referred to in paragraph (1), are given the priority to carry out electricity supply business for the public interest.</p> <p>3) For areas that have not yet received electricity service, the Government or Regional Government by their respective authorities shall provide opportunities for regional-owned enterprises, private enterprises, or cooperatives as providers of integrated electricity supply business.</p> <p>4) If there are no regional-owned enterprises, private enterprises, or cooperatives that can provide Electricity in the area, the Government is obliged to assign state-owned enterprises to provide Electricity.</p>	<p>1) The business of providing Electricity for the public interest as referred to in Article 10 paragraph (1) shall be carried out by state-owned enterprises, regional-owned enterprises, cooperatives, and non-governmental organizations operating in the field of electricity supply.</p> <p>2) State-owned enterprises as referred to in paragraph (1) are prioritized to carry out electricity supply business for the public interest.</p> <p>3) State-owned enterprises, regional-owned enterprises, private enterprises, cooperatives, and non-governmental organizations in carrying out the business of providing Electricity for the public interest must prioritize domestic products and potentials.</p> <p>4) For areas that have not yet received electricity service, the Government or Regional Government by their respective authorities shall provide opportunities for regional-owned enterprises, private enterprises, or cooperatives as providers of integrated electricity supply business.</p> <p>5) If there are no regional-owned enterprises, private enterprises, or cooperatives that can provide Electricity in the area, the Government is obliged to assign state-owned enterprises to provide Electricity.</p>
5	<p>Article 34</p> <p>1) The Government by its authority, shall determine the electricity tariff for consumers with the approval of the House of Representatives of the Republic of Indonesia.</p> <p>2) The Regional Government, by</p>	<p>Article 34</p> <p>1) The Government shall determine the electricity tariff for consumers according to the approval of the House of Representatives of the Republic of Indonesia.</p> <p>2) The electricity tariff for consumers referred to in paragraph (1) is</p>

<p>its authority, shall determine the electricity tariff for consumers with the approval of the Regional People's Representative Council based on the guidelines set by the Government.</p> <p>3) If the Regional Government cannot determine the electricity tariff as referred to in paragraph (2), the Government shall determine the electricity tariff for the area with the approval of the House of Representatives of the Republic of Indonesia.</p> <p>4) The electricity tariff for consumers as referred to in paragraph (1), paragraph (2), and paragraph (3) is determined by considering the balance of interests of the national, regional, consumer, and electricity supply business actors.</p> <p>5) The electricity tariff for consumers referred to in paragraph (1) and paragraph (2) may be determined differently in each region within a business area.</p>	<p>determined by considering the balance of national, regional, consumer and business actors' interests in providing Electricity.</p> <p>3) The electricity tariff for consumers referred to in paragraph (1) may be determined differently in each region within a business area.</p>
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*Source: Law Number 30 of 2009 and Law Number 11 of 2020.*

Based on the comparison table of legal norms of Law Number 30 of 2009 on Electricity and Law Number 11 of 2020 on Job Creation, this part of the paper analyses and explores as follows: First, the state offers a notable role to local governments to regulate policies on electricity affairs, together with the central Government. It clearly stated in article 3. The central Government does not monopolize the control of the electricity supply.

Second, article 4 confuses the meaning. Based on paragraph 1, state-owned and regional-owned enterprises take responsibility for the electricity supply business. However, in the second paragraph, the regional-owned enterprises are equal to private enterprises, cooperatives, and non-governmental organizations. Moreover, the decision of Constitutional Court Number 001-021-022/PUU-I/2003 confirms that a partnership to run an



electricity business is between the Government (state) and the national or foreign private sector. Therefore, state enterprises are not only state-owned enterprises but also regional-owned enterprises. Therefore, equating regional-owned enterprises with private enterprises is not appropriate.

Third, Article 7 removes the obligation of the Central Government to consult with the House of Representatives in preparing the National Electricity General Plan. Consultation is one of the functions of the House of Representatives' supervision of the Government's work. Regrettably, this article removed the function of legislative control. As a result, this provision can cause the loss of public participation represented by the House of Representatives in formulating electricity sector policies that are closely related to the lives of the wider community.

Fourth, Article 11 confirms that the business of providing Electricity is widely open to state and private companies. However, state-owned enterprises must receive top priority as the Constitutional Court's Decision Number 111/PUU-XIII/2015 stipulates that the electricity business must be under state control. Furthermore, article 11 requires domestic products and potentials for the business of providing Electricity. This provision aims to support domestic industries to compete with foreign products. However, this policy needs to pay attention to price competition because domestic products are often more expensive than foreign products. As a result, the electricity tariff can increase significantly due to expensive local content.

Fifth, article 34 removes the authority of the Regional Government and the Regional House of Representatives in setting electricity rates. The determination of electricity tariffs is the authority of the Central Government with the approval of the House of Representatives. The state's role is limited to the central Government by not including local governments as part of the state administration.

#### **D. CONCLUSIONS**

Privatization is the transition of the state's role to the private sector in the business of goods and services that the state previously controlled. Furthermore, the state's role decreases along with the increasing role of the private sector. Indonesia does not deny privatization because it has been implementing it since 1988. In the 1998 and 2008 economic crises, privatization was one of several solutions to save businesses and increase the productivity of state-owned enterprises.

The Constitutional Court decision number 001-021-022/PUU-I/2003 annulled Law Number 20 of 2002 concerning Electricity because it contradicted Article 33 of the 1945 Constitution. Moreover, the Constitutional Court rejected the unbundling system in the electricity supply business. On the other hand, the state must control the electricity sector, either as an absolute majority or a relative majority. Private companies can be involved in the electricity business to support state-owned enterprises.

In further development, the Constitutional Court decision number 111/PUU-XIII/2015 reaffirms that the unbundling system in the electricity sector is not following the Indonesian constitution. The involvement of private companies in the electricity business must not reduce the state's control over Electricity, which is the life of the people. In principle, the private sector may participate in the electricity business, but the majority control remains under the state electricity company.

Law Number 11 of 2020 on Job Creation changes several provisions concerning Electricity in Law Number 30 of 2009. The Law reaffirms that the Government does not monopolize the electricity sector. The state provides roles and opportunities for the private sector to participate in the electricity business. However, the Law needs to be criticized because it eliminates the involvement of the House of Representatives in the preparation of the National Electricity General Plan and eliminates the role of the Regional Government and the Regional House of Representatives in determining electricity tariffs. The absolute monopoly of the Central Government can lead to a lack of oversight from the legislature and a loss of regional autonomy.

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