

Open Access for Pipeline Gas Industry on Competition Law in Indonesia

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ABSTRACT

That the gas trading practice through this pipeline is still monopolized by a business actor or business entity. With the monopoly nature of this gas pipeline is detrimental to the owner of the gas where the take it of leave it principle emerges, inevitably it must be sold to the owner of the pipe at the price desired by the pipe owner, so that the gas price is detrimental to consumers. That there is power to monopolize prices so that the price of gas in consumers is very expensive. The emergence of traders due to slow investment in pipelines and makes gas prices more expensive for non-pipeline consumers. Temporary gas cannot be stockpiled for long so that it is immediately discharged in the lifting must be immediately transmitted to consumers by LNG, CNG or LPG. That the concept of natural monopoly is inappropriate to be used in Indonesia to achieve economic growth and fair business competition.

Keywords: *Competition Law, gas, pipeline, business*

1. INTRODUCTION

The gas industry through its development pipeline has shifted to no longer absolutely protected by the principle of natural monopoly[1]. The policy now directs to build competition and open access to transportation networks. Gas companies are now shifting from full bundling systems to end to end ala carte services, along with the emergence of a natural monopoly neck bottle.

Natural monopoly is a natural market condition where demand in a given market will incur the lowest cost with only one business actor compared to two or more business actors[2].

The 1945 Constitution Article 33 mandates that natural resources, including natural gas, must be controlled and used to the maximum extent possible for the prosperity of the people. Unfortunately, the supply of gas for industry and electricity generation is still a classic problem that seems without solution. Discussion of the Gas Industry Forum in Jakarta entitled "Open Access for the Sustainability of National Industries and the Competitiveness of Domestic Products", a number of groups offered a solution to overcome the problem of gas supply. The solution is the use of an open access doctrine system on natural gas pipeline infrastructure that has been owned by a number of companies, especially state-owned enterprises that are the main managers.

The use of open access doctrine is considered to be able to prevent gas monopolistic practices by certain companies, including SOEs, which also have implications for the economic price of gas, while also meeting the needs of industry and power plants[3]. PT Perusahaan Gas Negara (Persero) Tbk is one of the long-standing players, and one of the owners of a large gas pipeline network in Indonesia. In the

Minister of Energy and Mineral Resources Decree No. 27 / K / 11 / MEM / 2012 concerning the Master Plan for the 2012-2025 National Natural Gas Transmission and Distribution Network (RIJTDGBN)[4], it is explained that open access is one of the regulated gas network types.

2. ANALYSIS

This research begins its relevance to the following theories: The Tragedy of Common Theory was first introduced by Garret Hardin in 1968 Tragedy of the common "using the word tragedy as the views of philosophers who often use it. The essence of this tragedy is the unhappiness where the unhappiness lies in the cruelty in working to seize something.

The Tragedy of Joint Ownership arises when every human being tries to take the natural wealth that belongs together to his personal interests to the detriment of other living things. Therefore, the Tragedy of Joint Ownership generally occurs in resources that are public property.

The Tragedy of Joint Ownership is a view of the desire to gain a lot of profit for personal gain rather than handing it out to other human beings and each gets a little ration. This view will initially feel beneficial for those who use a lot of natural resources, but in the end the availability of natural resources will run out and it will have a negative impact on those who use it and for other humans.

Tragedy of the common can be described as a meadow that is open to all. Without exception, each shepherd can keep some of his cows in the area that is considered common property. Such work is carried out on the grounds of fulfilling satisfaction that has been delayed for centuries due to tribal warfare, poaching and disease for humans and wild animals

that are highly dependent on the carrying capacity of land availability.

Finally it was time for calculations with the aim of fulfilling a desire for social integrity to become a reality. At this point, the logic attached to "common property" is cruelty, greed which results in tragedy. Rationally, every shepherd will look for maximum profit. Explicitly or implicitly, consciously or not, he said, "What are the benefits for me if I add one or more to my pastoralism?" This assumption has both positive and negative things.

Management of downstream natural gas currently uses the open access and unbundling skepa

Open access has historically originated from the concept of transporting natural gas through pipelines that start with the principle of shared utilization of transportation facilities.

Oil and Gas Law article 8 paragraph (3) reads:

GasBumi transportation business activities through pipes that concern the public interest, the exploitation is regulated so that its utilization is open to all users.

The explanation reads: "... its utilization needs to be regulated and monitored in order to guarantee the same service treatment of its users."

Joint use in Government Regulation No. 67 of 2002 there is an explanation; "... natural gas transportation activities so that their utilization is open to all users"

Government Regulation No. 36 of 2004 explanation of article 31 paragraph (1); reads; "... With regard to transport facilities through pipelines that have more capacity, other parties can exploit them without disrupting the operations of the other parties. Other parties who will take advantage of facilities must consider the economic interests of the facility owner, including the rate of return.

3. CONCLUSION

That the gas trading practice through this pipeline is still monopolized by a business actor or business entity. With the monopoly nature of this gas pipeline is detrimental to the owner of the gas where the take it of leave it principle emerges, inevitably it must be sold to the owner of the pipe at the price desired by the pipe owner, so that the gas price is detrimental to consumers. That there is power to monopolize prices so that the price of gas in consumers is very expensive. The emergence of traders due to slow investment in pipelines and makes gas prices more expensive for non-pipeline consumers. Temporary gas cannot be stockpiled for long so that it is immediately discharged in the lifting must be immediately transmitted to consumers by LNG, CNG or LPG. That the concept of natural monopoly is inappropriate to be used in Indonesia to achieve economic growth and fair business competition.

REFERENCES

1) Curtis Cramer ' Natural Gas Pipeline and Monopoly " K Nowotny et.al. Public Utility Regulation, Kluwer Academic Publishers 1989 . pages 137.

- 2) Richard Wish David Bayley "Competition Law " 7th edition Oxford Universty Press (2008: London) pages 19
- 3) <http://www.kemenperin.go.id/artikel/5846/Dilema-Sistem-Open-Access>, 15 access 25 Oktober 2019.
- 4) <http://www.cnnindonesia.com/ekonomi/20160102093315-85-101691/industri-pengguna-gas-sebut-pgn-setengah-hati-buka-akses-pipa>/access by 25 October 2019
- 5) Joel B Eisen (Professor Of Law University Of Richmond School Of Law). *An Open Access Distribution Tarrif : Removing Barries To Innovation On Smart Grid*. Ucla Law Review No 61 Ucla L.Rev.1712 (2014)
- 6) Philip M Martson.Vice President Of Hadson Gas System *Pipeline Restructuring: The Future Of Open-Access Transportation*. Energy Law Journal Vol 12:53. Jstor 1991
- 7) Hary G Broadman , Joseph P Kalt *How's Natural Monopoly ? The Case Of Bypass In Natural Gas Distribution Market*. Yale Journal On Regulation Volume 6 Issue 2 Yale Journal On Regulation (1989).
- 8) Jose A Gomez Ibanez. (Prof Public Polic Harvard University) *The Simple Analitic Of Open Access With Illustration From Railroads*
- 9) Michael J Doane , Daniel F Spulber *Open Access And The Evolution Of The U.S. Spot Market For Natural Gas*.
- 10)Robert J Michael Ans Arthur S Devani *Market Base Rate For Interstate Gas Pipeline: The Relevant Market And The Real Market Energy Law Journal Vol 16 Elg 299 Federal Energy Bar Association Sring 1995*.
- 11)John Burrit Mc Arthur *The Irrencociable Diferrencess Between Ferc'c Natural Gas And Electricity Standarded Cost Treatments Bufallo Law Review Vol 46.B.L.Rev 71 1998*
- 12)Donald F Santa, Jr, And Clifford S Sikora *Open Access And Transaction Costs: Will The Electricity Industry Transition Track The Natural Gas Industry Restructuring? Federal Energy Bar Association Energy Law Journal Vol 15 Energy .L.J.273 Spring 1994. (2004 Rev)*
- 13)Sean Hennesse, William : *Gas Processing Gulf Coast Company , Lp.V. Ferc; Remedies For Producers In The Absence Of Ferc Regulation*.

- 14) Gearold L Knowles Liquefied Natural Gas: Regulation In A Competitive Natural Gas Market. *Energy Law Journal* Vol 24 *Energy L. J.* 293 (2003) . Federal Energy Bar Association.
- 15) Elisabeth Pendley: Deregulation Of The Energy Industry University Wyoming Land And Water Law Review Vol 31 *Law & Water L Rev* 27 (1996)
- 16) Joseph Fagan Article: From Regulation To Deregulation: The Diminishing Role Of The Small Consumer Within The Natural Gas Industry The University Of Tulsa Law Journal Summer 1994 29 *Tulsa L.J.* 207
- 17) David V Bryce Pipeline Gathering In An Unbundled World: How Ferc's Response To "Spin Down" Threatens Competition In The Natural Gas Industry. *Minnesota Law Review* 89 *Minn. L. Rev.* 537 December 2004
- 18) Heidi Werntz Lets Make A Deal : Negotiated Rate For Merchant Transmission Pace University Of Law . *Pace Law Review* 28 *Pace Envtl.L.Rev.* 412 Winter 2011
- 19) Cody L Graves., Maria Mercedes Seidler The Regulation Of Gathering In A Federal System Federal Energy Bar Association *Energy Law Journal* Spring 1994 Vol 15 *Energy L.J.* 405
- 20) William F Demarest Jr. Gas Marketing By The Operator Under A Joa-Unrecognized Regulatory Risks And Practical Solutions *Oklahoma Law Review* Vol 64 *Okla. L.Rev* 135 Winter 2012
- 21) Garry M Rubman , Recent Decisions Of The United States Court Of Appeals For The District Of Columbia: *Energy Law The George Washington Law Review* Vol. 67 *Geo. Wash. L. Rev.* 951
- 22) Adam D Samuel The D.C. Circuit Review: September 1992 - August 1993: *Energy Law: Reliability Of Natural Gas Service For Captive End-Users Under The Federal Energy Regulatory Commission's Order No. 636 The George Washington Law Review* Vol 67 *Geo. Wash. L. Rev.* 718
- 23) Robert J Michaels Market Power In Electric Utility Mergers: Access, Energy, And The Guidelines Federal Energy Bar Association *Energy Law Journal* Spring 1994 Vol 17 *Energy L.J.* 401
- 24) Harvey Raiter The Contrasting Policies Of The Fcc And Ferc Regarding The Importance Of Open Transmission Networks In Downstream Competitive Markets *Federal Communications Law Journal* March 2005 Vol 57 *Fed L.J.* 243
- 25) Scott Hampling Regulating Public Utility Performance: The Law Of Market Structure, Pricing And Jurisdiction Federal Energy Bar Association *Energy Law Journal* Spring 1994 Vol 34 *Energy L.J.* 709