Alauddin Law Development Journal (ALDEV)
Vol. 8, No. 1, 2026

CONSTITUTIONAL INSUFFICIENCY IN RENEWABLE ENERGY GOVERNANCE: RETHINKING STATE CONTROL DOCTRINE UNDER THE INDONESIAN CONSTITUTION

Raditya Nur Sya'bani*, Muchammad Ali Safa'at, Riana Susmayanti
Universitas Brawijaya, Indonesia
*Correspondent Email: radityanurzz9@student.ub.ac.id

Abstract

This article examines Indonesia's renewable energy governance deficit from a constitutional law perspective. Despite possessing renewable energy potential of approximately 3,686 GW, Indonesia achieved only 15.75% of its targeted 23% renewable energy mix by 2025. The article argues that this gap stems from the normative insufficiency of Article 4(2) of Law No. 30/2007, which provides that renewable energy is merely "governed by the state," unlike fossil energy, which is "controlled by the state" under Article 4(1). Using normative legal research and the Constitutional Court's five-function doctrine of Hak Menguasai Negara (HMN), the study introduces the concept of "constitutional insufficiency." It finds that Article 4(2) reflects only the regulatory function of state control, limiting active state involvement and fostering "off-taker state" and "contract state" governance models that hinder energy transition. The article recommends legislative reconstruction through the ongoing Renewable Energy Bill (RUU EBET).

Keywords: Constitutional insufficiency; Energy governance; Renewable energy; State control doctrine; The state's right doctrine.

Abstrak

Artikel ini mengkaji defisit tata kelola energi terbarukan Indonesia dari perspektif konstitusional melalui doktrin Hak Menguasai Negara (HMN). Meskipun memiliki potensi energi terbarukan sekitar 3.686 GW, Indonesia hanya mencapai 15,75% dari target bauran energi nasional sebesar 23% pada 2025. Artikel ini berargumen bahwa kegagalan tersebut berakar pada ketidakcukupan normatif Pasal 4 ayat (2) Undang-Undang Nomor 30 Tahun 2007 tentang Energi yang menggunakan frasa "diatur oleh negara" untuk energi terbarukan, berbeda dengan frasa "dikuasai oleh negara" untuk energi fosil. Dengan menggunakan penelitian hukum normatif dan merujuk pada doktrin lima fungsi HMN yang dikembangkan Mahkamah Konstitusi, artikel ini memperkenalkan konsep constitutional insufficiency sebagai kategori yang berbeda dari inkonstitusionalitas. Temuan menunjukkan bahwa Pasal 4 ayat (2) hanya merepresentasikan fungsi pengaturan, sehingga membatasi peran aktif negara dan melahirkan model tata kelola off-taker state serta contract state yang menghambat transisi energi berkelanjutan.

Kata Kunci: Ketidakcukupan konstitusi; Tata kelola energi; Energi terbarukan; Hak menguasai negara; Doktrin penguasaan negara.

DOI: 10.24252/aldev.v8i1.68590

This is an open-access article under the CC BY-SA license.

Alauddin Law Development Journal (ALDEV)
Vol. 8, No. 1, 2026

INTRODUCTION

The global energy transition has placed renewable energy at the centre of contemporary climate governance discourse. Indonesia, home to approximately 270 million people and positioned among the world's ten largest economies, occupies a particularly consequential position in this transition. According to the Ministry of Energy and Mineral Resources, Indonesia commands an estimated 3,686 gigawatts of renewable energy potential, encompassing geothermal, solar, wind, hydro, ocean, and biomass sources a figure that would, if fully harnessed, place the country among the world's foremost renewable energy producers (International Energy Agency [IEA], 2023, p. 45). Yet the empirical record tells a strikingly different story. As of the close of 2025, the realization of Indonesia's national renewable energy mix stood at a mere 15.75%, falling significantly short of the 23% target mandated by the National Energy Policy (Kebijakan Energi Nasional, or KEN) for that year a target that had been formally enshrined in Government Regulation No. 79/2014 (Kementerian Energi dan Sumber Daya Mineral Republik Indonesia [KESDM], 2023, p. 94). This gap was subsequently acknowledged through the issuance of Government Regulation No. 40/2025, which revised the energy mix targets downward, signalling an institutional recognition of the failure that the regulatory framework had produced (Indrawan, 2026, para. 4).

The temptation to attribute this failure exclusively to technical or economic factors grid infrastructure deficits, high capital costs, or absence of concessional financing is understandable but analytically insufficient. Indonesia's commitment under the Paris Agreement demands a deeper examination of the normative architecture within which renewable energy governance operates, because it is within that architecture that the structural impediments to energy transition are most durably embedded (United Nations Framework Convention on Climate Change [UNFCCC], 2015). The present article proceeds from the claim that a significant dimension of Indonesia's renewable energy governance deficit is constitutionally rooted, and that its origins can be traced to a statutory phrase that has received remarkably little doctrinal scrutiny. That phrase is found in Article 4(2) of Law No. 30/2007 on Energy (hereinafter, the Energy Law), which provides that "new and renewable energy sources shall be governed by the state and utilised for the greatest welfare of the people." This formulation stands in deliberate contrast to Article 4 (1) of the same statute, which stipulates that fossil energy, geothermal energy, large-scale hydropower, and nuclear energy are "controlled by the state." The textual divergence between "governed" (diatur) and "controlled" (dikuasai) is not a matter of stylistic variation. Read against the constitutional mandate of Article 33(2) and (3) of the 1945 Constitution, which unambiguously commands that strategically important production branches and natural resources be "controlled by the state," this differentiation generates a normative puzzle of substantial constitutional significance.

Existing scholarship has engaged with Indonesia's renewable energy challenges from a variety of disciplinary angles. Studies have examined investment barriers, tariff mechanisms, and permitting procedures others have addressed the concept of Hak Menguasai Negara (hereinafter, HMN, or State Control Rights) in the context of mineral resources, water, and petroleum (Setiawan, Koeswahyono, & Qurbani, 2024). More recent contributions have begun to interrogate the application of HMN doctrine to the renewable energy sector (Handayani & Angrayni, 2023), and constitutional scholars have explored the implications of energy law for Indonesia's green constitutional aspirations (Hasiholan, 2022). What has not yet been systematically articulated, however, is the specific relationship between the normative framing of Article 4 (2) and the governance mechanisms that have emerged from it or, more precisely, the relationship between the constitutional insufficiency of that framing and the structural failure of energy transition policy (Arizona, 2025).

Alauddin Law Development Journal (ALDEV)
Vol. 8, No. 1, 2026

This article seeks to fill that gap by introducing the concept of "constitutional insufficiency" as a distinct analytical category within Indonesian constitutional law, and by demonstrating how the normative insufficiency of Article 4 (2) has produced structurally deficient governance mechanisms that preclude the active state participation required by Article 33 of the 1945 Constitution. The article addresses two interconnected research questions: first, whether the phrase "governed by the state" satisfies the constitutional standard of HMN as elaborated by the Constitutional Court; and second, how this normative insufficiency manifests in concrete governance mechanisms and thereby contributes to the failure of national renewable energy targets. The analysis proceeds in four parts. Following this introduction, Part II sets out the research method. Part III presents the results and discussion, structured around the two research questions: it first reconstructs the constitutional standard of HMN through an analysis of the Constitutional Court's jurisprudence (Section 3.1), before subjecting Article 4 (2) to a systematic insufficiency analysis (Section 3.2), and then tracing the governance consequences of that insufficiency in policy practice (Section 3.3). Part IV offers the article's conclusions.

METHOD

This article employs normative legal research (penelitian hukum normatif), a doctrinal methodology that takes as its primary object of analysis the legal norms contained in positive law legislation, constitutional provisions, and judicial decisions rather than the empirical behaviour of legal actors (Marzuki, 2016, p. 57). Peter Mahmud Marzuki has described this approach as a process of discovering legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand, with the aim of producing prescriptive propositions about what the law ought to be (Soekanto & Mamudja, 2001, pp. 13–14). Normative legal research is the appropriate methodological choice for this article because the research questions are fundamentally normative in character, they concern the constitutional adequacy of a statutory phrase and the structural consequences of that inadequacy within a system of hierarchical norms.

Within this methodological framework, the article employs three complementary research approaches. The statute approach (pendekatan perundang-undangan) involves a systematic analysis of all legislation and regulations relevant to the research problem, including the 1945 Constitution, the Energy Law, the Water Resources Law, the Mineral and Coal Mining Law, the Electricity Law, the Basic Agrarian Law, Government Regulation No. 79/2014 and Government Regulation No. 40/2025 on the National Energy Policy, and Presidential Regulation No. 22/2017 on the National Energy General Plan. The conceptual approach (pendekatan konseptual) draws upon scholarly doctrine, constitutional theory, and economic analysis of law to construct the analytical framework through which the primary legal materials are evaluated (Kornelius & Azhar, 2020, p. 26). The historical approach (pendekatan historis) examines the legislative history of the Energy Law, particularly the records of parliamentary deliberations (risalah sidang) on the Bill on Energy, in order to identify the ratio legis the legislative purpose of the phrase "governed by the state" and to assess whether that purpose is consistent with the constitutional mandate of HMN.

The legal materials used in this research are classified into three categories. Primary legal materials comprise the normative sources that are binding in character: the 1945 Constitution. The Energy Law and cognate sector legislation; Constitutional Court decisions No. 002/PUU-I/2003, No. 001-021-022/PUU-I/2003, No. 058-059-060-063/PUU-II/2004, No. 36/PUU-X/2012, and No. 85/PUU-XI/2013 and the legislative records of the Energy Law. Secondary legal materials include academic books, journal articles, and scholarly commentaries that explicate and interpret the primary sources. Tertiary legal materials include legal dictionaries and encyclopaedias. The analysis technique

Alauddin Law Development Journal (ALDEV)
Vol. 8, No. 1, 2026

applied is prescriptive analysis (analisis preskriptif), which moves beyond descriptive exposition of the normative condition to evaluate whether the law as it stands is constitutionally adequate and to recommend the normative reform that the constitutional standard requires.

RESULT AND DISCUSSION

1. *The Constitutional Standard: The Five-Function Doctrine of Hak Menguasai Negara*

The concept of Hak Menguasai Negara (HMN) is the pivotal constitutional construct through which the relationship between state authority and natural resources is mediated in Indonesian law. Its textual foundation lies in Article 33(2) and (3) of the 1945 Constitution, which command, respectively, that production branches that are important to the state and that govern the livelihood of many people shall be controlled by the state, and that the land, waters, and natural resources contained therein shall be controlled by the state and used for the greatest welfare of the people (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945). Yet the precise juridical content of HMN what it requires of the state in functional terms was not articulated in detail until the Constitutional Court elaborated it through a series of landmark decisions spanning more than a decade.

The foundational statement of the five-function HMN doctrine was delivered in Constitutional Court Decision No. 002/PUU-I/2003, which reviewed the constitutionality of Law No. 22/2001 on Oil and Gas. The Court held that the concept of HMN is a concept of public law derived from the principle of popular sovereignty: natural resources are in essence a collective ownership of the people, entrusted to the state to be controlled and utilised to the greatest extent for the welfare of the people. The Court then specified five cumulative functions that constitute the exercise of HMN: (1) the policy function (*beleid*) the state formulates national policy; (2) the administrative function (*bestuursdaad*) the state issues, manages, and revokes licenses and concessions; (3) the regulatory function (*regelendaad*) the state enacts legislation and subordinate regulations; (4) the management function (*beheersdaad*) the state directly participates in the management and operation of natural resource enterprises, typically through state-owned enterprises; and (5) the supervisory function (*toezichthoudensdaad*) the state monitors compliance by all actors in the sector. This five-function elaboration was reaffirmed and deepened in Constitutional Court Decisions No. 001-021-022/PUU-I/2003 and No. 058-059-060-063/PUU-II/2004. In both decisions, the Court consistently held that the five functions are cumulative and mutually reinforcing, not a menu from which the legislature may selectively choose. Each function addresses a distinct dimension of state authority, and the absence of any one of them constitutes an impairment of the constitutional mandate of HMN (Pusat Studi Hukum Energi dan Pertambangan [PUSHEP], 2020).

A critical refinement of the HMN doctrine was introduced in Constitutional Court Decision No. 36/PUU-X/2012, which reviewed Law No. 22/2001 on Oil and Gas following the dissolution of the executing agency BP Migas. In this decision, the Court introduced a hierarchical reading of the five functions, holding that when they cannot all be exercised simultaneously, they must be evaluated and prioritised according to their effectiveness in achieving the greatest welfare of the people. Within this hierarchy, direct management by the state (*beheersdaad*) occupies the apex: the Court explicitly stated that direct state management through a state-owned enterprise generates the most optimal economic benefit because it allows the state to appropriate the full economic surplus from natural resource exploitation.The Court further held and this is the proposition of the greatest relevance to the present inquiry that the meaning of "controlled by the state" under Article 33 cannot be reduced to a mere right to regulate. The Court reasoned that the right to regulate already inheres in the nature of the state and would exist even without any express constitutional provision: even in a liberal state, the government

possesses regulatory authority. If Article 33 of the 1945 Constitution merely authorised the state to regulate, it would be normatively redundant. The constitutional architects of Article 33 therefore intended something more substantial, a mandate for active state participation in the management of natural resources (Redi, 2015, pp. 370–377). The regulatory function (*regelendaad*), while a genuine component of HMN, sits at the lowest rung of the hierarchical ladder. It represents the minimum threshold of state involvement, not the constitutional standard.

Drawing on the foregoing jurisprudential reconstruction, this article proposes the concept of "constitutional sufficiency" as the appropriate standard for evaluating statutory norms that purport to implement Article 33 of the 1945 Constitution. A norm is constitutionally sufficient when it provides an adequate normative foundation for the state to exercise the full spectrum of HMN functions including, crucially, the beheersdaad function in a manner that is capable of achieving the greatest welfare of the people. Constitutional sufficiency is analytically distinct from constitutionality in the conventional sense. A norm may be constitutional in the sense that it does not directly contradict the text of the 1945 Constitution, while still being constitutionally insufficient in the sense that it fails to provide the normative basis for the state to discharge its constitutional obligations. This distinction has significant practical consequences, a constitutionally insufficient norm will not be struck down by the Constitutional Court in a direct review, but it will structurally constrain the state's capacity to act in the manner that the constitution demands. It is, in other words, a form of normative failure that operates below the threshold of unconstitutionality but above the threshold of mere policy sub-optimality (Sasmitha, Budhiawan, & Sukayadi, 2014, pp. 8–9). This concept constitutes the principal theoretical contribution of the present article to the literature on Indonesian constitutional law.

2. *Constitutional Insufficiency Analysis of Article 4(2) of the Energy Law*

The first dimension of Article 4(2)'s constitutional insufficiency is textual and systematic. A close reading of the Energy Law reveals three layers of internal normative inconsistency, each of which illuminates the conceptual confusion embedded in the provision. The first inconsistency is between the statute's preamble and its substantive body. The Whereas clauses (konsiderans) of the Energy Law cite Article 33(2) and (3) of the 1945 Constitution as the statute's constitutional foundation, invoking the principle that energy resources are "controlled by the state." Yet Article 4(2), the statute's core normative provision on renewable energy, substitutes the phrase "governed by the state" for the constitutional standard of "controlled by the state." This is a textually significant regression: the statute's own premises acknowledge the constitutional mandate of state control, but its operative provision fails to reflect it (Manan, 1995,).

The second inconsistency is internal to Article 4 itself. Article 4(3) provides that the "control and regulation" (penguasaan dan pengaturan) of energy resources by the state as referred to in paragraphs (1) and (2) shall be implemented by the government. The legislator's use of the compound phrase "control and regulation" in Article 4 (3) to describe the aggregate legal regime established by both paragraphs (1) and (2) implies that even the legislative drafter recognised a dimension of "control" (penguasaan) in the governance of renewable energy. Yet Article 4(2) itself employs only "regulation" (pengaturan). The subordinate provision thus acknowledges a normative element that the principal provision fails to instantiate (Law Number 30 of 2007 concerning Energy, 2007, Article 4 paragraph (3)). The third inconsistency is between Article 4(2) and the substantive obligations that the Energy Law elsewhere imposes on the state with respect to renewable energy. Articles 20(4), 21(2), and 30(3) of the Energy Law assign to the state affirmative obligations to develop, to guarantee, to provide that clearly exceed the regulatory function. These obligations presuppose a degree of active state

Alauddin Law Development Journal (ALDEV)
Vol. 8, No. 1, 2026

participation that the normative foundation of Article 4(2) is incapable of sustaining. The result is a statutory architecture in which the superstructure of state obligations rests on a normative foundation too narrow to support it. Finally, when Article 4(2) is compared with cognate sector legislation, the anomaly of the Energy Law becomes unmistakable. The Water Resources Law, the Mineral and Coal Mining Law, and the Electricity Law all retain the phrase "controlled by the state" as the expression of HMN applicable to their respective resource sectors (Law Number 17 of 2019 concerning Water Resources, 2019, Article 5; Law Number 4 of 2009 concerning Mineral and Coal Mining, 2009, Article 4; Law Number 30 of 2009 concerning Electricity, 2009, Article 3). The Energy Law's departure from this legislative consensus, and its use of the lesser phrase "governed by the state" specifically for renewable energy sources, is an isolated normative anomaly that has no parallel in the broader body of Indonesian natural resource law.

The historical approach to statutory interpretation requires an examination of the legislative records (risalah sidang) of the Energy Bill to determine the ratio legis of the phrase "governed by the state" in Article 4(2). This examination reveals that the differentiation was predicated on a conceptual misunderstanding of the nature of HMN one that is incompatible with the Constitutional Court's authoritative jurisprudence. The parliamentary records of the Energy Bill deliberations disclose that the principal argument advanced by the legislators in support of differentiated treatment was essentially physical in character: renewable energy sources such as solar radiation, wind, and tidal forces cannot, by their nature, be "owned" or "possessed" by the state in the same physical sense as a petroleum reservoir or a mineral deposit. Because these sources are diffuse, freely flowing, and incapable of physical appropriation, the argument ran, it would be constitutionally anomalous or practically impossible for the state to exercise "control" over them in the manner contemplated by Article 33 of the 1945 Constitution (House of Representatives of the Republic of Indonesia, n.d.).

This argument, however, fundamentally misreads the nature of HMN as clarified by the Constitutional Court. The Court has consistently and emphatically held that HMN is a concept of public law, not a concept of private property ownership. The "control" that Article 33 mandates is functional control the exercise of regulatory, administrative, managerial, and supervisory authority over the exploitation and utilisation of natural resources not physical possession or private title to the resources themselves. The fact that solar radiation cannot be appropriated like a tonne of coal is legally irrelevant to the question of whether the state must exercise the five functions of HMN with respect to the governance of solar energy infrastructure. The legislature's conflation of physical non-appropriability with legal non-controllability reflects a category error that lacks any foundation in the constitutional framework (Asshiddiqie, 2016). The absence of sustained constitutional deliberation in the legislative records is itself telling. The differentiation between "controlled" and "governed" was not the product of careful constitutional analysis or of a considered policy judgment about how Article 33 should apply to the distinctive characteristics of renewable energy. It was, rather, the product of a technically-motivated intuition about physical appropriability that was never subjected to rigorous constitutional scrutiny (Law Number 12 of 2011 concerning the Formation of Laws and Regulations, 2011, Article 5 letter f). A norm born of conceptual error cannot serve as a constitutionally adequate foundation for the governance of a sector of such strategic and ecological importance.

The third dimension of Article 4(2)'s constitutional insufficiency is its hierarchical position within the five-function doctrine of HMN. If the phrase "governed by the state" is read as mandating only the regulatory function (regelendaad) which is the most natural reading of the verb "governed" (diatur) in the context of the five-function taxonomy then Article 4(2) situates the state's involvement in renewable energy governance at the lowest position in the HMN hierarchy. This reading is reinforced

by Article 4(5) of the Energy Law, which provides that in the development of new and renewable energy sources the state "may" provide incentives and facilities to business actors. The use of the permissive modal "may" (dapat) rather than the mandatory "shall" (wajib) with respect to the bestuursdaad dimension of state involvement confirms that the statute frames active state participation in renewable energy governance as discretionary rather than obligatory. The contrast with the mandatory character of state involvement in fossil energy governance where the state "shall" control is structurally significant (Law Number 30 of 2007 concerning Energy, 2007).

The Constitutional Court's decision in No. 36/PUU-X/2012 provides a concrete benchmark against which to measure the constitutional adequacy of this arrangement. In that decision, the Court held that BP Migas an executing agency that exercised control and supervisory functions over petroleum operations without directly managing them had unconstitutionally degraded the HMN because its structure deprived the state of the capacity for direct management (beheersdaad) (Constitutional Court Decision No. 36/PUU-X/2012, 2012). If the mere supervisory and control functions exercised by BP Migas were constitutionally insufficient in the petroleum sector, then the even more attenuated involvement of the state in renewable energy governance predicated on a norm that mandates only regulation falls at least as far short of the constitutional standard, if not further. To be precise in the analytical claim, on Article 4(2) is not unconstitutional in the strict sense that it violates Article 33 of the 1945 Constitution. The regulatory function (regelendaad) is a genuine and recognised component of HMN, a statute that mandates state regulation of a natural resource sector does not contradict Article 33. What the article contends, rather, is that Article 4(2) is constitutionally insufficient that it represents the minimum threshold of HMN engagement rather than the constitutionally adequate standard, and that it thereby fails to discharge the legislative obligation to instantiate the full normative content of Article 33 in the governance of a natural resource sector that controls the livelihood of the Indonesian people (Faiz, n.d.).

3. From Normative Insufficiency to Governance Failure: Mechanisms and Evidence

The constitutional insufficiency of Article 4(2) does not merely remain at the level of abstract normative theory. It has produced, through the regulatory architecture it has enabled, governance mechanisms that structurally preclude the realisation of the greatest welfare of the people in the renewable energy sector. The first such mechanism is what this article terms the "off-taker state" model. Under the off-taker state arrangement, state involvement in renewable energy production takes the form of a purchasing relationship: PT PLN (Persero), the state electricity utility, acts as the single buyer (off-taker) of electricity generated by private independent power producers (IPPs) who own and operate renewable energy generation assets. The state, on this model, is essentially a passive counterparty in a commercial transaction a guaranteed buyer for the output of privately-managed renewable energy infrastructure (Institute for Essential Services Reform [IESR], 2024). Evaluated against the HMN framework, the off-taker state model is constitutionally deficient because it confines the state's role to a pale simulacrum of the bestuursdaad function the administrative issuance of purchase commitments while entirely evacuating the beheersdaad function of direct management and operational participation. The Constitutional Court's holding in Decision No. 36/PUU-X/2012 makes clear that the beheersdaad function requires the state to hold managerial authority over the strategic direction of natural resource exploitation, not merely to guarantee a market for output generated under private management. Under the off-taker model, the locus of managerial authority over renewable energy asset development site selection, technology choice, financing structure, operational standards resides entirely with private actors. The state's influence over these decisions is mediated exclusively through the regulatory

Alauddin Law Development Journal (ALDEV)
Vol. 8, No. 1, 2026

instruments (regelendaad) that Article 4(2) mandates, supplemented by the contractual leverage of the power purchase agreement (Asian Development Bank [ADB], 2020).

The causal connection between the normative insufficiency of Article 4(2) and the emergence of the off-taker model is structural rather than incidental. Because Article 4(2) mandates only state regulation of renewable energy, it creates no normative obligation for the state to engage in direct management. The off-taker model is not a policy choice made despite a clear constitutional mandate for direct management; it is the predictable institutional response to a statutory framework that does not require anything more. In Posner's terms, the legal rules created by Article 4(2) generate incentive structures that channel the state toward a passive commercial role rather than an active managerial one because that is the role that the normative architecture rewards (Posner, 1986). The second governance mechanism generated by the normative insufficiency of Article 4(2) is the "contract state" model. Under this arrangement, the state's role in renewable energy governance is primarily that of a grantor of administrative legitimacy: it issues licenses, approves environmental assessments, grants land use permits, and provides regulatory clearances to private developers. The substantive direction of energy development is determined not by state planning and management but by the investment decisions of private capital (World Bank Group, 2020). The contrast with the institutional arrangements governing fossil energy is instructive. In the fossil energy sector, where Article 4(1) mandates that resources be "controlled by the state," the normative foundation is sufficiently robust to support the deployment of PT Pertamina (Persero) as a state-owned enterprise with direct managerial authority over upstream petroleum operations. Pertamina's institutional role is not incidental to the normative architecture of fossil energy governance; it is its constitutionally-mandated expression. The beheersdaad function that the Constitutional Court has identified as the apex of HMN engagement is institutionally realised through Pertamina's direct participation in petroleum exploration, development, and production.

The renewable energy sector has no institutional equivalent of Pertamina no state-owned enterprise with a clear normative mandate to exercise direct managerial authority over renewable energy asset development and operation. The absence of such an institutional actor is not a policy oversight; it is the institutional consequence of a statutory framework that does not mandate the beheersdaad function. Where the normative foundation is limited to regulation (regelendaad), the state has no legal obligation to establish and maintain a managerial presence in the sector, and the incentives for doing so in the absence of a clear constitutional imperative are correspondingly weak (Heffron & Talus, 2016). From a Coasian perspective, the contract state model is a response to the regulatory uncertainty that the normative ambiguity of Article 4(2) generates. Where the scope and stability of state regulatory authority are unclear, transaction costs for private investors increase: developers cannot confidently predict the regulatory environment in which their projects will operate, the terms on which purchase agreements will be maintained, or the likelihood of policy reversals. These elevated transaction costs deter investment, raise the cost of capital, and reduce the expected returns from renewable energy projects precisely the conditions that Indonesia's energy transition record reflects (Institute for Essential Services Reform [IESR], 2023).

Indonesia's failure to achieve its 23% renewable energy mix target by 2025 is the most visible manifestation of the governance failure that the normative insufficiency of Article 4(2) has enabled. The empirical record is unambiguous: realization reached only 15.75% by the end of 2025, and the government responded not by intensifying policy efforts to meet the target but by revising it downward through Government Regulation No. 40/2025 (Government Regulation Number 40 of 2025 concerning National Energy Policy, 2025). The causal mechanism connecting normative insufficiency to target failure operates through multiple channels, none of which is exclusive but each of which contributes to

Alauddin Law Development Journal (ALDEV)
Vol. 8, No. 1, 2026

the structural failure. First, the normative ambiguity of Article 4(2) has produced a pattern of regulatory instability in renewable energy governance: feed-in tariff regimes have been repeatedly revised, procurement mechanisms have been reformed and re-reformed, and the terms of power purchase agreements have been subject to recurrent renegotiation (Sovacool, 2012). This instability is not an autonomous policy dysfunction, it is a symptom of a normative framework that provides insufficient basis for the state to commit credibly to stable regulatory terms. Where the state's authority in the sector rests on the regulatory function alone, the scope for discretionary adjustment is correspondingly broad, and the credibility of regulatory commitments is correspondingly limited (Presidential Regulation Number 22 of 2017 concerning the National Energy General Plan, 2017).

Second, the absence of a normative mandate for direct state management in the renewable energy sector has precluded the deployment of the risk-guaranteeing mechanisms that active state participation generates. In sectors where the state exercises the beheersdaad function through state-owned enterprises, the state's balance sheet is effectively available as a risk buffer for the sector: the state can cross-subsidise development in high-cost or geographically disadvantaged areas, absorb demand-side risks through guaranteed offtake commitments backed by sovereign capacity, and deploy concessional financing through state-owned financial institutions on terms that are unavailable in commercial markets. Where the normative framework limits the state to a regulatory role, none of these risk-mitigating mechanisms are constitutionally mandated, and the state's capacity to deploy them is dependent on policy discretion rather than statutory obligation (Stiglitz, 2000).

Third, the economic analysis of law framework illuminates the externality dimension of the governance failure. Renewable energy development generates positive externalities reduced greenhouse gas emissions, improved energy security, rural electrification that private investors cannot fully internalise and therefore have insufficient incentive to generate. Correcting this market failure requires state intervention that goes beyond regulation: it requires active state participation in investment planning, risk-sharing, and the cross-subsidisation of socially beneficial projects that are commercially sub-optimal. The normative architecture of Article 4(2), by confining the state to a regulatory role, provides insufficient basis for this more active form of market correction. The positive externalities of renewable energy development are therefore systematically underproduced (Majone, 1997).

The constitutional insufficiency of Article 4(2) also implicates Indonesia's obligations as a welfare state. The 1945 Constitution, in its preamble and in Articles 27 through 34, constitutes Indonesia as a social welfare state (negara kesejahteraan), one in which the state bears affirmative responsibility for the economic and social welfare of its citizens (Asshiddiqie, 2024). Article 33 is a central expression of this welfare state orientation: it entrusts the state with the management of natural resources precisely in order to ensure that their benefits accrue to the people collectively rather than to private capital selectively. The Bismarckian model of the welfare state, which emphasises active state provision of essential services, and the Beveridgean model, which emphasises the universalist principle that the benefits of public resources should be accessible to all citizens regardless of their economic circumstances (Beveridge, 1942), both point in the same direction with respect to renewable energy governance. Under either model, the delegation of renewable energy development to private market actors, without a normative foundation for active state management and distribution of benefits, risks producing outcomes that are inconsistent with the constitutional commitment to the greatest welfare of the people. Areas that are geographically remote, economically disadvantaged, or commercially unattractive the so-called 3T regions (terpencil, tertinggal, terluar) will be systematically underserved by market-driven renewable energy development (Elviandri, Dimyati, & Absori, 2019).

The Constitutional Court's decision in No. 85/PUU-XI/2013 provides direct authority for the proposition that the state may not surrender the management of natural resources that control the livelihood of the people to market mechanisms alone. The Court held that the state is constitutionally prohibited from fully privatising the management of resources that are essential to the basic needs of the population. Renewable energy, as a source of electricity that is foundational to economic participation and social welfare in the twenty-first century, squarely falls within this category. The normative architecture of Article 4(2), which leaves the governance of renewable energy primarily to market actors operating within a regulatory framework, is structurally at odds with the welfare state mandate that the Constitutional Court has elaborated (Constitutional Court Decision Number 85/PUU-XI/2013 concerning Judicial Review of Law Number 7 of 2004 on Water Resources, 2013).

CONCLUSION

This article has argued that Indonesia's failure to meet its constitutionally oriented renewable-energy targets is structurally rooted in the constitutional insufficiency of Article 4(2) of Law No. 30/2007 on Energy. The analysis demonstrates that the provision employs the phrase "governed by the state," which reflects only the lowest tier of the state's right of control under the five-function doctrine of *Hak Menguasai Negara* (HMN) developed by the Constitutional Court. While not unconstitutional, this formulation provides an inadequate normative foundation for the state to discharge the full spectrum of constitutional obligations mandated by Article 33 of the 1945 Constitution. This insufficiency has produced structurally weak governance models—most notably the off-taker state and contract state models—in which the state acts merely as a regulator or administrative facilitator rather than exercising sovereign managerial authority over renewable-energy development.

A constitutionally adequate framework therefore requires legislative reconstruction. Article 4(2) must be revised to employ the phrase "controlled by the state" and explicitly incorporate the five HMN functions as applicable to the renewable-energy sector. The ongoing deliberations on the Renewable Energy Bill (RUU EBET) provide the appropriate legislative vehicle for this reform, including the establishment of a state-owned enterprise mandated to directly manage renewable-energy assets. More broadly, the concept of constitutional insufficiency introduced in this article highlights a category of statutory deficiency that does not amount to unconstitutionality but nonetheless prevents the state from fulfilling its constitutional duties. In such cases, the appropriate remedy lies in legislative, rather than judicial, reconstruction—an insight with wider implications for constitutional implementation in Indonesia.

REFERENCES

Arizona, Y. (2025). Rekonstruksi pemaknaan hak menguasai negara menurut Pasal 33 ayat (3) UUD 1945. *JUSTLAW: Journal Science and Theory of Law, 2*(1), 43–59.

Asshiddiqie, J. (2015). *Konstitusi dan ideologi negara kesejahteraan Indonesia*. UI Press.

Asshiddiqie, J. (2016). *Pengantar ilmu hukum tata negara*. Rajawali Pers.

Asshiddiqie, J. (2024). Menata ulang checks and balances dalam sistem legislasi Indonesia. *Jurnal Hukum Konstitusi, 15*(2), 125–145.

Asian Development Bank. (2020). *Indonesia energy sector assessment, strategy, and road map*. Asian Development Bank.

Bagir Manan. (1995). *Pertumbuhan dan perkembangan konstitusi suatu negara*. Mandar Maju.

Bentham, J. (1823). *An introduction to the principles of morals and legislation*. Clarendon Press.

Benuf, K., & Azhar, M. (2020). Metodologi penelitian hukum sebagai instrumen mengurai permasalahan hukum kontemporer. *Gema Keadilan, 7*(1), 20–33.

Beveridge, W. (1942). *Social insurance and allied services*. His Majesty's Stationery Office.

CNBC Indonesia. (2025, October 7). *Bauran energi terbarukan RI capai 16% di semester I-2025*. https://www.cnbcindonesia.com/news/20251007111256-4-673514/bauran-energi-terbarukan-ri-capai-16-di-semester-i-2025

Coase, R. H. (1960). The problem of social cost. *Journal of Law and Economics, 3*, 1–44.

Elviandri, Dimyati, K., & Absori. (2019). Quo vadis negara kesejahteraan: Meneguhkan ideologi welfare state negara hukum kesejahteraan Indonesia. *Jurnal Hukum Universitas Gadjah Mada, 4*(2), 252–270.

Endrianto Bayu Setiawan, Koeswahyono, I., & Qurbani, I. D. (2024). Hak menguasai negara atas energi terbarukan untuk transisi energi berkelanjutan. *Majalah Hukum Nasional, 54*(1), 18–35.

Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Princeton University Press.

Faiz, P. M. (n.d.). *Penafsiran konsep penguasaan negara*. https://panmohamadfaiz.com/2006/10/08/penafsiran-konsep-penguasaan-negara/

Handayani, F., & Angrayni, L. (2023). Hak menguasai negara dalam pengaturan sumber energi baru dan terbarukan. *Eksekusi: Journal of Law, 5*(1), 40–55.

Harijanti, S. D. (2015). Khazanah: Bagir Manan. *Padjadjaran Jurnal Ilmu Hukum, 2*(3), 585–588.

Hasiholan, R. (2022). Prospective green constitution in new and renewable energy regulation. *Legality, 29*(2), 261–278.

Hayati, T. (2019). Hak penguasaan negara terhadap sumber daya alam dan implikasinya terhadap bentuk pengusahaan pertambangan. *Jurnal Hukum & Pembangunan, 49*(3), 768–787.

Heffron, R. J., & Talus, K. (2016). The development of energy law in the 21st century: A paradigm shift. *Journal of World Energy Law & Business, 9*(3), 189–202.

Henry, E., & Arsitha, D. (2022). Implementasi konsep negara kesejahteraan. *Jurnal KNIA, 5*(2), 40–55.

Indrawan, R. (2026, January 9). *Hingga 2025 bauran EBT hanya 15,75%, Indonesia resmi gagal mencapai target RUEN*. Dunia Energi. https://www.dunia-energi.com/hingga-2025-bauran-ebt-hanya-1575-indonesia-resmi-gagal-mencapai-target-ruen/

Indriawati, T. (2023, December 6). *Welfare state, sebuah konsep negara kesejahteraan asal Jerman*. KOMPAS.com. https://www.kompas.com/stori/read/2023/12/06/160000979/welfare-state-sebuah-konsep-negara-kesejahteraan-asal-jerman

Institute for Essential Services Reform. (2023). *Financing the energy transition in Indonesia*. IESR.

Institute for Essential Services Reform. (2024). *Indonesia energy transition outlook 2024: Tracking progress of energy transition in Indonesia*. IESR.

International Energy Agency. (2023). *World energy outlook 2023*. IEA.

Jurnal Konstitusi MK RI. (2012). Ideologi welfare state dalam dasar negara. *Jurnal Konstitusi, 9*(3), 1–25.

Kementerian Energi dan Sumber Daya Mineral Republik Indonesia. (2023). *Handbook of energy & economic statistics of Indonesia 2023*. Kementerian ESDM.

Majone, G. (1997). From the positive to the regulatory state: Causes and consequences of changes in the mode of governance. *Journal of Public Policy, 17*(2), 139–167.

Mahkamah Konstitusi Republik Indonesia. (2004). *Putusan Nomor 001-021-022/PUU-I/2003 tentang pengujian Undang-Undang Nomor 20 Tahun 2002 tentang ketenagalistrikan*.

Mahkamah Konstitusi Republik Indonesia. (2004). *Putusan Nomor 002/PUU-I/2003 tentang pengujian Undang-Undang Nomor 22 Tahun 2001 tentang minyak dan gas bumi*.

Mahkamah Konstitusi Republik Indonesia. (2005). *Putusan Nomor 058-059-060-063/PUU-II/2004 tentang pengujian Undang-Undang Nomor 7 Tahun 2004 tentang sumber daya air*.

Mahkamah Konstitusi Republik Indonesia. (2012). *Putusan Nomor 36/PUU-X/2012 tentang pengujian Undang-Undang Nomor 22 Tahun 2001 tentang minyak dan gas bumi*.

Mahkamah Konstitusi Republik Indonesia. (2013). *Putusan Nomor 85/PUU-XI/2013 tentang pengujian Undang-Undang Nomor 7 Tahun 2004 tentang sumber daya air*.

Marzuki, P. M. (2016). *Penelitian hukum* (Rev. ed., 12th print). Prenada Media Group.

Posner, R. A. (1986). *Economic analysis of law* (3rd ed.). Little, Brown and Company.

Presidential Regulation Number 22 of 2017 concerning the National Energy General Plan. (2017).

Pusat Studi Hukum Energi dan Pertambangan. (2020, April 2). *Perkembangan tafsir "penguasaan oleh negara" pada Pasal 33 UUD 1945*. https://pushep.or.id/perkembangan-tafsir-penguasaan-oleh-negara-pada-pasal-33-uud-1945/

Rahardjo, S. (2006). *Ilmu hukum*. Citra Aditya Bakti.

Redi, A. (2015). Dinamika konsepsi penguasaan negara atas sumber daya alam. *Jurnal Konstitusi, 12*(2), 366–390.

Republic of Indonesia. (1945). *The 1945 Constitution of the Republic of Indonesia*.

Republic of Indonesia. (1960). *Law Number 5 of 1960 concerning Basic Agrarian Principles*.

Republic of Indonesia. (2007). *Law Number 30 of 2007 concerning Energy*.

Republic of Indonesia. (2009). *Law Number 4 of 2009 concerning Mineral and Coal Mining*.

Republic of Indonesia. (2009). *Law Number 30 of 2009 concerning Electricity*.

Republic of Indonesia. (2011). *Law Number 12 of 2011 concerning the Formation of Laws and Regulations*.

Republic of Indonesia. (2014). *Government Regulation Number 79 of 2014 concerning National Energy Policy*.

Republic of Indonesia. (2019). *Law Number 17 of 2019 concerning Water Resources*.

Republic of Indonesia. (2025). *Government Regulation Number 40 of 2025 concerning National Energy Policy*.

Risalah sidang pembahasan rancangan undang-undang energi. (n.d.). Dewan Perwakilan Rakyat Republik Indonesia.

Soekanto, S., & Mamudja, S. (2001). *Penelitian hukum normatif: Suatu tinjauan singkat*. Rajawali Pers.

Soeprapto, M. F. I. (2007). *Ilmu perundang-undangan: Dasar-dasar dan pembentukannya*. Kanisius.

Sovacool, B. K. (2012). The political economy of energy poverty: A review of key challenges. *Energy for Sustainable Development, 16*(3), 272–282.

Triwibowo, & Bahagijo. (2016). Negara kesejahteraan dan globalisasi. *Jurnal Sospol, Universitas Muhammadiyah Malang, 2*(1), 110–125.

World Bank Group. (2020). *Scaling up renewable energy: Public-private partnerships and financing in Indonesia*. World Bank.

Zain, A. (2014). Negara kesejahteraan dalam perspektif konstitusional. *Jurnal Hukum, 3*(1), 70–85.