



Navigating contradiction in Indonesia's Climate Vision and Renewable Energy Plan: Analysis on The Draft Law on New Renewable Energy (*RUU EBT*)

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Article	Abstract
<p>Keywords: <i>Climate Change; UU EBT; Green Energy</i></p> <p>Article History Received: May 11, 2023; Reviewed: May 19, 2023; Accepted: June 10, 2023; Published: August 1, 2023.</p> <p>DOI: 10.33021/ph.v9i2.5304</p>	<p>Energy plays a vital role in human life, the backbone of our daily activities. One of the most commonly used types of energy is fossil energy, which has become a mainstay in fulfilling energy needs not only in Indonesia but also around the world. Despite its low cost and simple process, the use of fossil energy causes negative impacts on the environment. The government tried to address this issue by formulating the New Renewable Energy Bill (<i>RUU EBT</i>), but the bill is still bound to the old paradigm that pays more attention to non-renewable energy. This is contrary to the initial goal of dealing with climate change and environmental challenges. This research aims to identify problems in <i>RUU EBT</i> related to new energy and seek solutions that are in line with the principles of green legislation to address climate change. The research method involves statutory analysis, conceptual approach, and comparative approach. The result shows misalignment between the philosophical foundation of <i>RUU EBT</i> and its content, which is still focused on the use of non-renewable energy, including new energy. Therefore, it is necessary to reformulate the Bill that prioritizes environmental protection, in accordance with the principles of green legislation.</p>

INTRODUCTION

Energy, as the source of force, is an essential requirement for humans in their daily lives. From cooking food, turning on the fan, using the washing machine, to communicating through gadgets, various modern human activities are closely related to the need for electrical energy that powers everyday technology. Therefore, energy is a vital primary need for humans. In general, countries, including Indonesia, are still highly dependent on fossil energy. In Indonesia, fossil energy is widely used to convert into electrical energy to meet the various needs of the community, both in the industrial and household sectors.¹

¹ Melani Hilma and Wuryandani Dewi, "Potensi Panas Bumi Sebagai Energi Alternatif Pengganti Bahan Bakar Fosil Untuk Pembangkit Tenaga Listrik Di Indonesia," *Jurnal Ekonomi & Kebijakan Politik* 1, no. 1 (2010): 47-74. <<https://doi.org/10.22212/jekp.v1i1.74>>

Indonesia's heavy reliance on non-renewable energy to meet its electricity needs is inseparable from its advantages. Non-renewable energy, such as coal, has a low cost of both acquisition and management technology, making it an attractive option. In addition, other non-renewable energies such as uranium to nuclear that can last long and produce high-capacity wattage and palm oil with its low cost and large supply make non-renewable energy deeply rooted in Indonesia. However, these energies are non-renewable so that they will run out if exploited continuously (*depleting resources*).² Worse, the significant environmental damage caused by non-renewable energy results in climate change, resulting in a variety of dominant effects.

Climate Change—or lately figure it out as *Climate Crisis*—is a significant change that occurs in temperature, rainfall, and wind that lasts for quite a long time, can be in a decade or even more.³ This crucial problem gives birth to the antithesis of the urgency of environmentally oriented legal policies, namely using renewable energy. The Draft Law on New Renewable Energy (RUU EBT) is actually a legal product formed with the meaning of originality as a response to environmental damage (in this case *climate crisis*) due to the massive use of non-renewable energy. This can be clearly seen in weighing points d and e, which largely explain the urgency of using environmentally friendly and eternal energy in order to combat climate change and avoid depleting-resources.⁴ However, there is a contradiction with the content material that provides a loophole for the entry of fossil energy which is very contrary to efforts to preserve the environment. The gateway of content material that contradicts environmental preservation in RUU EBT starts from the existence of New Energy. Based on Article 1 Point 2 of RUU EBT which provides a definition of new energy as the processing of non-renewable energy sources and renewable energy using the latest technology.⁵ This content certainly raises polemics, namely the insertion of non-renewable energy that is not environmentally friendly such as coal, nuclear, and palm oil.

The formulation of UU EBT that provides a loophole for the entry of non-renewable energy that is not environmentally friendly is of course contrary to Article 28H (1) and Article 33 (4) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) as Indonesia's green constitution. The Green Constitution, of course, gave birth to a derivative concept, namely green legislation, which in essence is a philosophical rule of pouring environmental policies oriented towards the protection and management of the environment in every legislation.⁶ As an implementation of green legislation, it is necessary to formulate a draft law that can provide legal certainty on energy that is more environmentally friendly. This axiom is reinforced by Mattias Finger's statement that the way to eradicate the environmental crisis can be achieved by making better policies along with environmentally friendly technologies that are different from before.⁷ Renewable energy is the closest answer to the solution of the climate change crisis so it should be a priority supported by legal instruments.

² Badan Keahlian DPR RI, "Naskah Akademik Rancangan Undang-Undang Tentang Energi Baru Dan Terbarukan," DPR RI, 2018, <<https://puuekkukesra.dpr.go.id/simas-puu/detail-na/id/27>>.

³ Agung DH and Yulaika Ramadhani, "Hari Bumi 22 April Jadi Google Doodle, Bagaimana Asal Mulanya?," *Tirto.id*, April 22, 2020, <<https://tirto.id/hari-bumi-22-april-jadi-google-doodle-bagaimana-asal-mulanya-eQba>>

⁴ Kemenkeu RI, "Ini Upaya Pemerintah Tangani Isu Perubahan Iklim," *Kemenkeu.go.id* (Kemenkeu RI, 2021), <<https://www.kemenkeu.go.id/publikasi/berita/ini-upaya-pemerintah-tangani-isu-perubahaniklim/>>

⁵ See Article 1 point 2 of "Law on New and Renewable Energy" (UU EBT)

⁶ Eko Nurmandiansyah, "Konsep Hijau: Penerapan Green Constitution Dan Green Legislation Dalam Rangka Eco-Democracy," *Veritas et Justitia* 1, no. 1 (June 30, 2015), p. 212 <<https://doi.org/10.25123/vej.1422>>

⁷ Jacob Park, Ken Conca, and Matthias Finger, *The Crisis of Global Environmental Governance: Towards a New Political Economy of Sustainability* (New York: Routledge, 2008). p. 125.

The manifest of the *ius constituendum* of green legislation necessitates the need for a rigorous scientific study. If we look at the previous ones, there are several studies related to RUU EBT, randomly but considering compatibility with this research, there is a study conducted by the Indonesian Center for Environment Law (ICEL) by its researcher Grita Anindarini and her friends entitled "*Policy Brief: Two Crucial Issues in the Draft New Renewable Energy Law*" and "*Problems of Energy Transition in Indonesia: Between New Energy and Renewable Energy*" by Grita Andindriani—personally. The first study focuses on contradiction or repetition of arrangement in RUU EBT with Law Number 30 Year 2007 on Energy as well as Law Number 30 Year 2009 on Electricity. In addition, UU EBT is considered not to answer the latest problems regarding energy management as well as the polemics over the inclusion of nuclear energy in it.⁸ It is different with the second study which discusses the transition to renewable energy which is not the main focus in UU EBT.⁹ The research in this paper has a difference, namely the focus of the problem on the term "*new energy*" which becomes the entrance to non-environmentally friendly energy such as coal, nuclear, and palm oil and renewable energy as the focus of substance achievement in order to realize green legislation as its theoretical basis.

Based on the preliminary explanation, the author will focus the discussion in this research on two problem formulations, namely *How the Problems of New Energy Provisions in the Draft Law on New and Renewable Energy in the Middle of the Climate Change Crisis?*, and *How is the Reformulation of the Draft Law on New and Renewable Energy align with Indonesia's Climate Vision—which are Green Legislation?*. This research aims to understand the problematic provisions of new energy in the draft law on new and renewable energy in the midst of the climate change crisis and to make reformulation of the draft law on new and renewable energy in accordance with green legislation.

RESEARCH METHODS

The research conducted used normative juridical research. Normative juridical research is legal research by placing law as the formation of a normative system in statutory regulations.¹⁰ In addition, normative juridical research is also based on the topic of primary law and secondary law based on the rules in statutory regulations.¹¹ As for the approach of this research, it uses statute approach which will examine RUU EBT and other related regulations on energy (particularly new and renewable energy), conceptual approach which will correlate it with the concept of green legislation, and comparative approach¹² which will compare renewable energy regulations in Indonesia with those abroad.

⁸ Adiputro Arif, "Masyarakat Sipil Sebut RUU EBT Tak Menjawab Persoalan Utama Energi Terbarukan," Indonesian Parliamentary Center, 2021, <<https://ipc.or.id/masyarakat-sipil-sebut-ruu-ebt-tak-menjawab-persoalan-utama-energi-terbarukan/>>

⁹ Verda Nano Setiawan, "Kontroversi Di Balik Pembahasan Draf RUU Energi Terbarukan," *Katadata.Co.Id*, January 26, 2021, <<https://katadata.co.id/ekonomi-hijau/energi-baru/60100d76515f2/kontroversi-di-balik-pembahasan-draf-ruu-energi-terbarukan.>>

¹⁰ Sukismo, *Karakter Penelitian Hukum Normatif Dan Sosiologis* (Yogyakarta: Penerbit Puskumbangsi Leppa UGM, 2008). p. 8

¹¹ Sulistyowati Irianto and Shidarta, *Metode Penelitian Hukum: Konstelasi Dan Refleksi* (Yayasan Pustaka Obor Indonesia, 2011). p. 124-128.

¹² Dr. Bachtiar M.H. S.H., *Mendesain Penelitian Hukum* (Deepublish, 2021). p. 85-86.

The source of legal material used comes from literature studies which are included in secondary data in normative juridical research.¹³ The legal materials are divided into: First, primary legal materials derived from legislation; Second, secondary legal materials that provide explanations of information or matters related to primary legal materials and implementation such as books, journal articles, reports; Third, tertiary or non-legal legal materials as a complement¹⁴ in the form of non-legal journals, articles, encyclopedias.

The data collection method used is the literature study technique which explores written information about the law in a publication.¹⁵ Meanwhile, the method of data processing and analysis uses descriptive-analytical and prescriptive. The descriptive-analytical method serves to describe the problem in detail in order to get the right solution.¹⁶ The prescriptive method aims to provide an assessment of alternative regulations that are more perfect or that should be according to the law.¹⁷ Finally, the conclusion is drawn by deductive thinking from general to specific based on reasonable logic rules. This research will also provide suggestions with practical input to be implemented in problem solving.¹⁸

ANALYSIS AND DISCUSSION

Problematics of Renewable Energy Provisions Draft amid the Climate Crisis

The energy, as a term is basically not something that can be easily defined precisely. Energy has a very broad scope where in physics, the word energy itself is defined as a quantity that is conceptually related to the transformation, process, or change that occurs.¹⁹ While energy in the conception of nature can be said to be an eternal quantity (the first law of thermodynamics), where energy cannot be created or destroyed, but can be converted into other new forms.²⁰ According to Sumantoro, energy is the ability that can push or move an object.²¹ Simply put, energy is an ability or effort to perform various actions or other activities.

The concretization of the notion of energy is elaborated in Article 1 number 1 of Law Number 30 of 2007 concerning Energy (Energy Law) where the definition of energy is the ability to do work which can be in the form of heat, light, mechanics, chemistry, and electromagnetics.²² The normative definition of the notion of energy has eliminated the abstractness of the intended meaning of energy so that it is only limited to energy to meet electricity needs. Furthermore, regulations in Indonesia have divided energy into three types, namely Renewable Energy, Non-Renewable Energy, New Energy.²³ Among these types of energy, Non-Renewable Energy along with other energy that is still

¹³ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (PT Grafindo Persada, 1985). p. 23.

¹⁴ Bambang Sugono, *Metode Penelitian Hukum*, 5th ed. (2003; repr., Jakarta: PT Grafindo Persada, 2003).

¹⁵ Muhaimin, *Metode Penelitian Hukum*, 1st ed. (Mataram: Mataram University Press, 2020). p. 64-65.

¹⁶ Soerjono Soekanto and Sri Mamudji, *Op.Cit.* p. 69.

¹⁷ Muhaimin, *Op.Cit.* p. 71.

¹⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1984). p. 260.

¹⁹ Faridah, "Analisis Penghematan Daya Listrik Di PT. Daikin Air Conditioning Makassar," *Jurnal Teknik* 16, no. 2 (December 3, 2018): 85-92, <<https://doi.org/10.37031/jt.v16i2.30>>

²⁰ Ambiyar, *Thermodinamika* (Padang: UNP Press, 2009). p. 15.

²¹ Achmad Zaki and Heru Agus Santoso, "Model Fuzzy Tsukamoto Untuk Klasifikasi Dalam Prediksi Krisis Energi Di Indonesia," *Creative Information Technology Journal* 3, no. 3 (September 23, 2016): 185, <<https://doi.org/10.24076/citec.2016v3i3.76>>

²² See Article 1 number 1 Law No. 30 Year 2007 on Energy, LN No.96 Year 2007, TLN No. 4748.

²³ See Article 1 numbers 5, 7, 9 of "Law Number 30 Year 2007 on Energy, LN No.96/TLN No. 4748"

related to it becomes a hindrance to environmental preservation. This is because Non-Renewable Energy or often referred to as fossil energy comes from the remains of ancient organisms trapped for a long time in the bowels of the earth.²⁴ Its non-renewable nature can be found from one of its samples, namely coal and petroleum, which often clashes with the concept of Green.

The Green concept is actually a philosophical foundation that can be applied to various aspects of life. These aspects can be in the form of green democracy, green budgeting, green constitution, green legislation.²⁵ According to Thomas L. Friedman, green is an effort to grow, design, produce and work in order to lead to a better life.²⁶ The main essence of the green concept is to require the application of policies that are pro-environment as a tool for the improvement process, not just a green label on a policy which is often known as eco-myopia.²⁷ Therefore, one of the derivative concepts of green is green legislation or can be understood as legislation that is a tool for the environmental improvement process in order to realize a green constitution, which is a constitution that requires rights and obligations for environmental protection by the state.²⁸

Indonesia itself adopts a green constitution as stated in Article 28H (1) and Article 33 (4) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Article 28H (1) of the 1945 Constitution has provided a constitutional guarantee of the right to a good and healthy environment for the entire community.²⁹ In addition, Article 33 (4) of the 1945 Constitution also regulates the provisions for the orientation of the national economy with the principles of efficiency and environmental insight.³⁰ The consequence of the inclusion of these two provisions in the constitution as the highest social contract is the birth of the absolute responsibility of the government to formulate legal products based on green legislation. Green legislation strongly considers the interests of public health and safety through ensuring environmental quality in every industrial development and others. Thus, any formulation that does not accommodate these two essential interests of society is a violation of the ethics of the rule of law.

Green legislation is not only a regulatory obligation in Indonesia based on the constitutional mandate, but also on international obligations stated in the Paris Agreement. Indonesia has ratified the Paris Agreement in Law Number 16 of 2016 concerning Ratification of the Paris Agreement To The United Nations Framework Convention On Climate Change so that it is obliged to improve energy management regulations based on the spirit of the concept of green legislation. The Paris Agreement is an international convention that has become the world's landmark decision in responding to emissions from human activities that cause climate change and global warming.

Based on article 2 paragraph 1 of the Paris Agreement, it has outlined the objectives of this convention to create an obligation for countries that ratify it to try to reduce world temperatures at a minimum of 1.5°C and below 2°C as in pre-industrial times, increase adaptive capacity by creating climate resilience and reducing greenhouse effect emissions.³¹ As for how to realize these targets, it is inseparable from two important components, namely legal policies and science technology which are long-term pillars. The ideals and goals stated in the Paris Agreement are of course accompanied by setting mechanisms to realize them which must be implemented by each ratifying country.

²⁴ Rama Prihandana and Roy Hendroko, *Energi Hijau: Pilihan Bijak Menuju Negeri Mandiri Energi* (Jakarta: Penebar Swadaya, 2008). p. 16.

²⁵ Eko Nurmardiansyah, *Op Cit*, p. 183–219.

²⁶ Thomas L. Friedman, *Hot, Flat, and Crowded: Why We Need Green Revolution* (Jakarta: PT Gramedia Pustaka Utama, 2009). p. 237.

²⁷ Daniel Goleman, *Ecological Intelligence: The Coming Age of Radical Transparency* (London: Penguin Books Ltd, 2009), p. 25.

²⁸ Bagus Hermanto and I Gede Yusa, "Implementasi Green Constitution Di Indonesia: Jaminan Hak Konstitusional Pembangunan Lingkungan Hidup Berkelanjutan," *Jurnal Konstitusi* 15, no. 2 (2018). p. 307. <<https://erepo.unud.ac.id/id/eprint/22746>>

²⁹ See Article 28 H Paragraph 1 of the 1945 Constitution of the Republic of Indonesia.

³⁰ See Article 33 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

³¹ See article 2 paragraph 1 of the Paris Agreement 2015.

Green Legislation is strongly encouraged to be formulated in energy regulations both national and international obligations because this concept is an antithesis to the very chronic environmental problem of climate change. The climate change polemic can certainly result in domino effects such as damage to marine ecosystems, food needs problems, extreme weather and natural disasters, disrupting health and spreading diseases, melting polar ice, and storms will be stronger and more intense.³² All of these phenomena are clearly visible in Indonesia where based on research from the Climate Change Knowledge Portal for Development Practitioners and Policy Makers which shows that in 1999 the average temperature in Indonesia was 26.05 Co, while in 2020 it has reached 26.38°C.³³ These temperature changes occur not without causing cases that harm the community so that the right to a good and healthy environment in Article 28 H of the 1945 Constitution of the Republic of Indonesia as has occurred in Indonesia such as the long drought that occurred in 2020, causing forest and land fires in a number of sub-districts in Bengkalis Regency Riau.³⁴

Climate change occurs partly due to the widespread use of non-renewable energy that produces pollution such as coal energy and nuclear energy from mining to processing. Given that climate change is strongly influenced by the greenhouse effect caused by air pollution, the use of coal energy is very problematic. Unfortunately, Indonesia is still addicted to coal energy where this is evident based on data from Our World which shows that 86.95% of Indonesia's total electricity production in 2020 comes from fossil fuels.³⁵ In line with this data, a report from Ember Climate also noted that coal-fired power plants (PLTU) in Indonesia have increased from 2015 by 117 Terawatt (TWh) to 168 TWh in 2020. This increase shows the increasing dependence on fossil energy reaching 44% in the 2015-2020 period.³⁶ Of course, coal as part of fossil energy is only one of the many other non-renewable energy options chosen by the state to meet its electricity needs. Coal energy is also an option to be used as an electric energy plant in Indonesia, which is very lyrical by the state. This is inseparable from the BP Statistical Review of World Energy report which shows that nuclear energy consumption in 2020 worldwide has reached 23.98 exajoules or covers 4.3% of total consumption in the world in that year.³⁷ As for Indonesia, it has 3 nuclear reactors where all three only function for research. The reactors are located including the Triga Mark Reactor in Bandung, the Kartini Reactor in Yogyakarta, and the Siwabessy Reactor in Serpong.³⁸ At first glance, it seems that the development of nuclear energy in Indonesia is still in the discourse stage only, but there is an inevitable future where other non-renewable energy such as petroleum supplies

³² Sri Fadhilah Utami, "Yang Perlu Kamu Ketahui Mengenai Climate Change," *Zero Waste Indonesia*, January 30, 2020, <<https://zerowaste.id/zero-waste-lifestyle/yang-perlu-diketahui-mengenai-climate-change/>>

³³ World Bank Climate Change Knowledge Portal, "Climate Change Overview on Indonesia," *Climate Change Knowledge Portal*, accessed May 10, 2024, <<https://climateknowledgeportal.worldbank.org/country/indonesia>>.

³⁴ Retno Hemawati, "Kemarau Panjang, Bengkalis Alami Kebakaran Hutan Dan Lahan," *Media Indonesia*, March 4, 2020, <<https://mediaindonesia.com/nusantara/294259/kemarau-panjang-bengkalis-alami-kebakaran-hutan-dan-lahan>>

³⁵ Dzulfiqar Fathur Rahman, "Hampir 87% Listrik RI Berasal Dari Bahan Bakar Fosil Pada 2020," *Databoks*, December 4, 2022, <<https://databoks.katadata.co.id/datapublish/2022/04/12/hampir-87-listrik-ri-berasal-dari-bahan-bakar-fosil-pada-2020>>

³⁶ Vika Azkiya Dihni, "Pembangkitan Listrik Tenaga Batu Bara Indonesia Naik 44%, Tertinggi Di Antara Negara G20," *Databoks*, September 12, 2021, <<https://databoks.katadata.co.id/datapublish/2021/12/09/pembangkitan-listrik-tenaga-batu-bara-indonesia-naik-44-tertinggi-di-antara-negara-g20>>

³⁷ Reza Pahlevi, "Konsumsi Tenaga Nuklir Amerika Serikat Terbesar Di Dunia Pada 2020," *Databoks*, November 15, 2021, <<https://databoks.katadata.co.id/datapublish/2021/11/15/konsumsi-tenaga-nuklir-amerika-serikat-terbesar-di-dunia-pada-2020>>

³⁸ Vika Azkiya Dihni, *Op.Cit.*

are running low, so the construction of nuclear power plants is a matter of course.³⁹ Apart from the impacts caused by non renewable energy as a new energy label in the EBT Bill.

RUU EBT is actually not in line with green legislation that prioritizes "process" rather than mere "jargon". The philosophical foundation of green legislation that requires pro-environmental "process" becomes the orientation of a legislation. However, RUU EBT actually enacts a problematic phrase, namely "*new energy*" which becomes the entrance to non-renewable energy which is counter sustainable. Article 1 point 2 of RUU EBT broadly explains new energy as energy derived from new technology regardless of its source from renewable energy or non-renewable energy.⁴⁰ Meanwhile, Article 1 point 6 of RUU EBT explains that what is meant by new energy source can be derived from renewable or non-renewable energy source as long as it is produced from new technology.⁴¹ The normative definitive definition of the two phrases shows the ineffectiveness in substance drafting technique as well as the creation of new phrase that becomes the entrance of energy that is contrary to green legislation.

The ineffectiveness of drafting RUU EBT can be seen from the meaning between "*new energy*" and "*new energy source*". Before that, it is necessary to know that energy is the ability to perform work where this explanation can be seen in Article 1 point 1 of RUU EBT,⁴² while the meaning of energy source in Article 1 point 5 of RUU EBT is any conversion or transformation process that produces such energy. In line with that, there are essentially only two sources of energy in RUU EBT, namely renewable energy sources and non-renewable energy sources.⁴³ Ineffectiveness arises in Article 1 point 6 related to new energy sources which are actually sourced from renewable energy sources and non renewable energy sources but from new technology. In fact, the definition of new energy sources actually refers more to "*processing results*" so that it is the same as the definition of "*new energy*". The ineffectiveness of these two normative definitive phrases is contrary to the rules of the formation of good and correct laws and regulations, namely the use of proper and standardized formats and techniques for writing laws (kenvorn and drafting).⁴⁴

In addition, the term new energy itself also produces various polemics because it becomes the entrance of non-renewable energy that is not environmentally friendly such as Coal and Nuclear. This is because non-environmentally friendly energy sources such as mineral and mining products can still be used as long as they use new technology. This axiom is proven when we look at Article 9 Paragraph 1 along with the explanation section which states that new energy sources consist of nuclear and coal managed with new technologies such as *coal bed methane* (CBM), *liquefied coal* (LC) and *gasified coal* (GC).⁴⁵ Despite its destructive nature,⁴⁶ coal is maintained because the Indonesian Government's income comes from coal energy. This can be proven from the data obtained by the Ministry of Finance which proves that in 2018 the Government earned a profit of 31 trillion Rupiah, but this contribution to the state budget is relatively low at around 1.5% - 2% of total revenue so the government's reason for maintaining it is not profitable for the country.⁴⁷

³⁹ BAPETEN, "BAPETEN Raih Penghargaan Bergengsi Dalam Penerapan Sistem Pemerintahan Berbasis Elektronik," *Badan Pengawas Tenaga Nuklir*, 2021, <<https://www.bapeten.go.id/berita/bapeten-raih-penghargaan-bergengsi-dalam-penerapan-sistem-pemerintahan-berbasis-elektronik-155805?lang=id>.>

⁴⁰ See Article 1 point 2 of the Draft on New and Renewable Energy Law.

⁴¹ See Article 1 point 6 of the Draft on New and Renewable Energy Law

⁴² See Article 1 point 1 of the the Draft on New and Renewable Energy Law.

⁴³ See Article 1 point 7 and 8 of the Draft on New and Renewable Energy Law.

⁴⁴ Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan 1: Jenis, Fungsi, Dan Materi Muatan* (PT Kanisius, 2007). p. 29.

⁴⁵ See Article 5 of the Draft New and Renewable Energy Law

⁴⁶ EIA, "Coal and the Environment," *U.S. Energy Information Administration (EIA)*, accessed May 10, 2024, <<https://www.eia.gov/energyexplained/coal/coal-and-the-environment.php>.>

⁴⁷ Deon Arinaldo and Julius Christian Adiatama, *Dinamika Batubara Indonesia: Menuju Transisi Energi Yang Adil* (Jakarta: Institute for Essential Services Reform, 2019). p. 5.

This polemic is reinforced by Satjipto Rahardjo's opinion that the rule of law should be returned to the principles and objectives of the law which is the reason for the birth of the law or ratio legis of legal regulations.⁴⁸ New coal energy has been proven to have a negative impact on the environment. This can be learned from the experience of the United States using CBM such as surface water becoming high in salt content, groundwater decreasing its surface so that there is a decrease in land surface, noise from manufacturing and exploitation and air pollution from its activities. As for *CBM, LC* and *GC*, they have an impact in the form of pollution such as *CO, NOx, SOx, CH, tar, soot, ash*, various liquid and solid wastes and toxic polycyclic aromatic hydrocarbons and residual elements that can affect natural and semi-natural ecosystems which in general can cause various damage and diseases to the human body."⁴⁹

Not only coal, nuclear energy itself also causes various problems that make it not aligned with green legislation. This is inseparable from the impact of nuclear energy on the environment which is far more dangerous than coal energy. Waste from nuclear energy can lead to gaseous waste and radiological fluids whose impact is even felt up to 80 km from the nuclear reactor. The wastes produced also vary, ranging from *strontium-90, iodine-131, caesium-137, americium-241*, and *isotopes of plutonium* where all of these are very dangerous for humans (causing cancer) and even civilization for up to hundreds of years."⁵⁰

The intrusion of coal and nuclear as part of new energy is actually something that contradicts other articles in RUU EBT itself. This contradiction largely contradicts the principles of usefulness, efficiency, environmentally sound and sustainable, as well as resilience of RUU EBT as stated in Article 2 points a, b, d, and e.⁵¹ Furthermore, the intrusion of coal and nuclear also contradicts the objectives stated in Article 3 points a and d, namely to ensure resilience, independence, national energy sovereignty, efficiency and effectiveness.⁵² These listed principles and objectives are the concretization of green legislation. Unfortunately, a draft law that is in line with green legislation can not only be supported by the enactment of principles and objectives, but also the mechanism in it.

The mechanism that should be the main discussion in RUU EBT is the transition effort to renewable energy which has been proven to be in line with the transition effort to prevent climate change and depleting-resources. This axiom is also in line with the discussion in weighing points d and e of RUU EBT⁵³ so that the only answer to realize it is a transition mechanism for the use of renewable energy in stages. However, there is Chapter V consisting of Article 9 to Article 29 where the focus of the discussion is on new energy.⁵⁴ Even nuclear-related discussion is made its own section in the second part of Chapter V starting from Article 10 to Article 15.⁵⁵ Furthermore, other sections relating to licensing, exploitation, provision, utilization which also relate to nuclear take up a lot of space in the content material of RUU EBT. In contrast, more diverse renewable energy sources which are listed in Article 30 from point a to j⁵⁶ are not explained one by one until a separate section is made in Chapter VI related to renewable energy. This is a very clear sign of the absence of the spirit of renewable energy transition.

⁴⁸ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2006). p. 50.

⁴⁹ D. Vamvuka, *Clean Use of Coals, Low-Rank Coal Technologies* (Brentwood: Multi-Science Publishing CO, Ltd, 2000). p. 583.

⁵⁰ Ajay Kumar Singh and Nalnish Chandr Singha, "Environmental Impact of Nuclear Power: Law and Policy Measures in India," *Humanities & Social Sciences Reviews* 4, no. 2 (November 20, 2016): 88, p. 86. <<https://doi.org/10.18510/hssr.2016.424>> .

⁵¹ See Article 2 points a, b, d, e of the Draft Law on New Renewable Energy.

⁵² See Article 3 points a and d of the Draft Law on New Renewable Energy.

⁵³ See Points of Consideration points d and e of the Draft on New Renewable Energi Law.

⁵⁴ See Article 9 to Article 29 of the Draft on New and Renewable Energi Law.

⁵⁵ See Article 10 to Article 15 of the Draft on New and Renewable Energi Law.

⁵⁶ See Article 30 of the Draft on New and Renewable EnergyLaw.

Various problems in RUU EBT which are serial with each other show the need for improvement of this *ius constituendum* before it becomes *ius constitutum* in order to prevent legalization of laws that are contrary to green legislation. As an effort to improve, RUU EBT must be directed to support the development of renewable energy that is more in line with green legislation. This can be seen in reference to other countries that have formulated laws that support the transition to renewable energy such as Norway.

Beyond Contradictions, navigating Indonesia's Green Legislation Vision via existing Legal regime.

Green legislation as the cornerstone in the formation of laws and regulations actually has a *conditio sine qua non* relationship with the green constitution. It's just that green legislation is a harmonization of each legislation that must support the green concept.⁵⁷ This has also been concretized in Article 44 of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH) which basically requires the preparation of laws and regulations at both national and regional levels to pay attention to the functions and principles of environmental protection and management in the law.⁵⁸ The explanation shows that green legislation must be implemented as a whole and harmonize between rules both vertically and horizontally.

Seeing RUU EBT with new energy problems that become the entrance to non-renewable energy that is not environmentally friendly such as coal and nuclear shows the need for re-orientation. Reference to energy management regulations can be seen in two countries that have implemented green legislation well, namely Norway. In this country, at first glance, the target to be achieved by it is the same as Indonesia where Norway strives to achieve net carbon neutrality by 2050 and reduce the greenhouse effect by 40% by 2030 where all of this has been regulated in the Climate Change Act as a reference for other laws. Furthermore, Norway is also trying to regulate not only energy management at the production level, but also consumption by targeting a shift in vehicles to zero-emission by 2025 and making the sector neutral to all climate impacts by 2050.⁵⁹

All of these targets are given a comprehensive legal umbrella in various laws which do not contradict each other or harmonize with the Climate Change Act. The laws include the Energy Act, the Electricity Certificate Act, the Watercourse Regulation Act, the Waterfall Rights Act, the Offshore Energy Act.⁶⁰ If we look at the formation of the applicable laws, it can be seen that Norway is oriented towards renewable energy as a way to implement the mandate of the Paris Agreement. Even the seriousness in the development of renewable energy regulations is made to the point of creating separate laws from types of renewable energy such as Waterfall Rights, Watercourse Regulation Act, and The Offshore Energy Act.

In the Waterfall Rights Act, the Norwegian government has regulated the ownership of renewable energy management from waterfalls which aims to ensure that hydro power can be managed for the benefit of the state both on a regional and national electricity supply scale.⁶¹ As for the Watercourse Act, regulations have been set regarding the diversion of river flows according to

⁵⁷ Fatma Ulfatun Najicha, Doctoral Dissertation in Law titled "*Model Green Legislation Dalam Tata Kelola Lingkungan Pada Pengaturan Pertambangan Mineral Dan Batubara Di Indonesia*" (Surakarta: Universitas Sebelas Maret, 2021). p. 83-84.

⁵⁸ See Article 44 of Law No. 32/2009 on Environmental Management and Protection, LN. 2009/ No. 140, TLN NO. 5059

⁵⁹ See Act No. 60 of 16.06.2017 Relating Climate Change Act, Norway

⁶⁰ GlobalData UK Ltd., "Norway Renewable Energy Policy Handbook, 2024 Update," *Market Research Reports & Consulting | GlobalData UK Ltd.*, accessed May 10, 2024, <<https://www.globaldata.com/store/report/norway-renewable-energy-government-regulation-policy-analysis/>>.

⁶¹ See Act No. 16 of 14.12.1917 Relating to Acquisition Of Waterfalls, Mines, And Other Real Property Amended by Act No. 57 of 25.06.2004, Norway.

stakeholders where a license must be held. The license regulates the maximum to minimum provisions related to river water flow including for the benefit of hydropower generation from river flows that are different from waterfalls.⁶² Finally, the Offshore Energy Act regulates the legal basis for the development of renewable energy from offshore wind power which includes both government and private ownership licenses, territories that can be built wave power plants, and other general provisions.⁶³

Waterfall Rights, Watercourse Regulation Act, and The Offshore Energy Act only focus on energy source management, but for distribution and consumption management there is its own regulation, namely in the Energy Act which regulates the conversion, transmission, trade, and distribution of electrical energy which is directed at ensuring its use more effectively and efficiently.⁶⁴ Detailed and harmonious arrangements ranging from setting targets that have determined the processes in managing energy sources and managing energy use in line with green legislation make Norwegian regulations based on the concept of green as a process, not a mere label such as eco-myopia. The success of this regulation is proven by the results that show that Norway is the country with the most advanced renewable energy utilization in the world so that it has excellent environmental health quality.⁶⁵

Based on the example of Norway's successful renewable energy regulation, it is appropriate for Indonesia to follow the green process. The first thing that can be done is to revise RUU EBT before it is passed by changing its main orientation. RUU EBT should focus on renewable energy as its transition orientation, considering that it is non-decreasing and does not produce pollution. In addition, it is necessary to eliminate new energy in RUU EBT. The biggest reason why new energy is considered as the upstream problem of the betrayal of the concept of green legislation is because its meaning is too broad so that non-renewable energy which is actually not environmentally friendly but uses new technology can be included in this category. Coal and Nuclear have been evidence of this intrusion. If new energy is eliminated in the EBT Bill, then this kind of intrusion will no longer occur.

In addition to revising the main orientation of RUU EBT towards renewable energy and eliminating new energy, which will automatically close the entrance to non-renewable energy, the formation of other laws is required. The law will be harmonious and in line with RUU EBT, which will further elaborate on the regulation of types of renewable energy. Indonesia is a country rich in natural resources, so renewable energy sources are numerous and religious. This must be utilized properly, where based on Article 30 of RUU EBT, it is divided into geothermal, wind, biomass, sunlight, flow and fall of water, garbage, waste of agricultural products, garbage, waste of agricultural products, waste or animal waste, movement and temperature difference of sea layer, and other renewable energy sources.⁶⁶ All divisions of renewable energy sources will be made their own laws so that RUU EBT will act as an umbrella act or *lex generalis*, while laws related to the regulation of each renewable energy source will become *lex specialis*.

Based on the explanation of these ideas, a bright spot has been found on how to reformulate RUU EBT as a transition towards environmentally friendly energy based on green legislation. As stated by Marjaan Peeters in Faure and Niessen that "*The concept of sustainable development basically aims at upgrading the quality of both society and environment to a satisfactory level. What the optimal level of an environmentally sustainable society would be is hard to determine exactly. However, the concept of sustainable development urges that environmental concerns will be*

⁶² See Act No. 17 of 14.12.1917 Relating to Regulations Of Watercourses Amended by Act No. 57 of 25.06.2004, Norway.

⁶³ See Act No. 21 of 04.06.2010 Relating to Offshore Energy, Norway.

⁶⁴ See Act No. 50 of 29.06.1990 Relating to Energy, Norway

⁶⁵ Matt Carroll, "Norway's Leading the Charge on a Sustainable Electric Future," *Environment*, June 27, 2019, <<https://www.nationalgeographic.com/environment/article/partner-content-sustainable-electric-future>>

⁶⁶ See Article 30 of the Draft on New Renewable Energy Law.

considered within other policy areas that might affect the environment".⁶⁷ The expert's statement provides a meaningful understanding that sustainable development will always be directed at improving quality for the good of society and the environment, so that the way to fulfill it is through making legal policies that will affect the environment towards sustainable and optimal management.

CONCLUSION

Based on the previous discussion, the following conclusions can be drawn: There is a discrepancy between the Draft Law on New Renewable Energy (RUU EBT) and the concept of *green legislation*. The RUU EBT should be an instrument to combat climate change and the depletion of natural resources. However, there is a phrase "*new energy*" in the RUU EBT that opens the door to the use of environmentally unfriendly energy sources such as coal and nuclear. The impact is environmental degradation caused by coal energy and the dangers posed by nuclear energy, which contradicts constitutional principles and international commitments such as those outlined in the Paris Agreement.

To address the complexity of this issue, a change in the orientation of the RUU EBT is needed through reformulation to align it with the concept of green legislation. An example that can be used as a reference is Norway, which has successfully become a leader in the use of renewable energy. The orientation of the RUU EBT can be changed to focus solely on renewable energy and make it the legal umbrella for related regulations. Indonesia should follow Norway's lead in implementing green legislation processes.

The following steps are recommended by the author to address the above problems: First, revise the RUU EBT by removing provisions regarding new energy so that only renewable energy is used in its implementation, in accordance with environmentally friendly principles. Second, expedite the enactment of the revised RUU EBT and disseminate it to the public to create a legal product that involves meaningful public participation in its formation.

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⁶⁷ Michael Faure and Nicole Nissen, *Environmental Law in Development – Lessons from the Indonesian Experience* (Cheltenham: Edward Elgar Publishing Limited Glensanda House, 2006), p. 186-187.

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