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Progressive Law Analysis of Injustice in Asset Value Requirements for Construction Services

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ABSTRACT: The Minister of Public Works and Housing Regulation No. 8 of 2022 establishes an asset value requirement of IDR 5 billion for M2 qualification in the installation sector, consequently marginalizing 88% of small-scale construction service enterprises. This research employs qualitative methodologies incorporating juridical-normative and juridical-empirical approaches to analyze the regulatory injustice through the lens of Satjipto Rahardjo's Progressive Law Theory. Data were collected through in-depth interviews with 25 respondents representing diverse stakeholder categories. The findings demonstrate that asset value requirements lack adequate philosophical, juridical, and sociological foundations for the installation sector, which functions as a knowledge-intensive industry. The regulatory implementation engenders distributive, procedural, and interactional injustice, contradicting the fundamental principle of "law for humanity." The regulation has resulted in the displacement of 131,000 employment positions and a 64.3% reduction in government project accessibility, without establishing any empirically validated correlation between asset value and technical competency. This study recommends an implementation moratorium and the development of competency-based qualification models more consonant with the installation industry's distinctive characteristics.

results.

KEYWORDS Progressive law, asset value, construction services, regulatory justice, installation sector

INTRODUCTION

The Indonesian construction services industry has undergone significant regulatory transformation following the promulgation of the Minister of Public Works and Housing Regulation No. 8 of 2022 concerning Construction Services Business Licensing. This regulation establishes an asset value requirement of IDR 5 billion for M2 qualification in the installation sector, thereby affecting 88% of small-scale construction service enterprises that previously demonstrated competency in managing governmental projects (LPJK, 2023).

The installation sector exhibits distinctive characteristics as a knowledge-intensive industry that demonstrates greater dependency on specialized expertise than on physical asset accumulation. Research conducted by Hermawan and Hadiwibawa (2023) indicates that 23% of small-scale installation construction service enterprises experienced business opportunity losses within the initial six months of regulatory implementation. This situation raises fundamental questions

regarding the equity of regulations that employ a singular asset value parameter to assess specialized enterprise capacity.

Through Progressive Law Theory, Satjipto Rahardjo (2009) emphasizes that "law serves humanity, rather than the converse," which necessitates regulatory responsiveness to the socio-economic realities of society. Within this context, the IDR 5 billion asset value requirement merits examination through the perspectives of distributive, procedural, and interactional justice to ensure that regulations do not create structural impediments detrimental to competent small-scale enterprises. This research aims to analyze the regulatory foundations governing asset value provisions within the Minister of Public Works and Housing Regulation No. 8 of 2022 and to evaluate the justice dimensions of these requirements from a progressive law perspective concerning small-scale installation construction service enterprises.

RESEARCH METHOD

This research utilizes qualitative methodologies incorporating juridical-normative and juridical-empirical approaches. The juridical-normative approach was applied to examine the normative dimensions of the Minister of Public Works and Housing Regulation No. 8 of 2022 through legal document analysis, hermeneutic interpretation, and legislative approaches. The juridical-empirical approach was implemented to analyze regulatory implementation and impact through field studies.

Research data sources encompass primary legal materials (the 1945 Constitution, Law No. 2 of 2017, Government Regulation No. 14 of 2021, Minister of Public Works and Housing Regulation No. 8 of 2022), secondary legal materials (scientific journals, textbooks, research findings), and field data. Field data were collected through in-depth interviews with 25 respondents comprising 12 small-scale installation sector entrepreneurs, 5 Ministry of Public Works and Housing officials, 3 construction service association representatives, 3 legal academics, and 2 legal practitioners.

Data collection techniques employed library research, semi-structured in-depth interviews, document analysis, and observation. To ensure validity and reliability, source, method, data, and investigator triangulation were implemented. Data analysis utilized qualitative analytical techniques with deductive-inductive reasoning through stages of data processing, data classification, legal interpretation using grammatical-systematic-historical-teleological methods, legal construction, and conclusion formulation.

This research employs Satjipto Rahardjo's Progressive Law Theory as the primary analytical framework to evaluate regulatory justice from a humanistic perspective that prioritizes substantive justice over formal certainty. Analysis was conducted across dimensions of distributive justice (opportunity allocation),

procedural justice (policy formation processes), and interactional justice (treatment quality) in asset value requirement implementation.

RESULTS AND DISCUSSION

Regulatory Foundations of the IDR 5 Billion Asset Value Requirement

Examination of the regulatory hierarchy structure indicates that provisions concerning the minimum asset value of IDR 5 billion, as established in Government Regulation No. 14 of 2021 and further elaborated in Minister of Public Works and Housing Regulation No. 8 of 2022, represent a restrictive interpretation of the originally multidimensional spirit of Law No. 2 of 2017. Rather than assessing enterprise capability based on diverse aspects including technical competence, experience, and managerial capacity, the new regulation emphasizes the singular dimension of asset value. This transformation reflects a paradigmatic shift from a comprehensive approach to more quantitative and limited criteria.

Interviews with Ministry of Public Works and Housing officials revealed that this policy was intended to support construction sector modernization and alignment with international standards. However, research findings demonstrate that the term "international standards" lacks detailed explanation, and no cross-national comparative study provided substantive foundation for this policy. The assumption that asset value magnitude reflects construction project execution capacity has proven inapplicable within the installation sector context, which constitutes a knowledge-based sector.

Empirically, the installation sector encompasses 13 sub-classifications (IN001–IN014) possessing significant technical differences, yet all are subjected to uniform asset value provisions. Sub-sectors including mechanical installation, telecommunications, electronics, and meteorology exhibit differential requirements between technology mastery and physical assets. Unfortunately, the regulatory approach prioritizing asset accumulation fails to adequately capture this complexity.

Injustice from a Progressive Law Perspective

Implementation of the IDR 5 billion asset value requirement engenders systemic distributive injustice toward small-scale installation construction service enterprises. Statistical data from July 2025 demonstrates that of 92,367 total construction service business entities, 80,283 (86.9%) constitute small-scale qualifications, predominantly excluded from governmental projects valued above IDR 5 billion.

Field findings reveal dramatic implementation impacts: average project number reduction from 15 to 8 projects annually (-46.7%), governmental project access reduction from 70% to 12% (-83%), and displacement of 131,000 specialized installation employment positions (-41.6%). This condition creates a vicious cycle

wherein asset limitations impede large project access, which subsequently constrains asset accumulation capacity.

According to John Rawls, inequality can only be justified if it advantages the least advantaged parties. The asset value regulation demonstrably disadvantages small-scale enterprises to benefit large corporations that already possess superior resource access (Rawls, 1971).

Policy formation process analysis reveals significant procedural injustice. Stakeholder interviews demonstrate that despite consultation occurrence, small-scale enterprise participation remained symbolic without capacity to influence final decisions. No evidence exists of comprehensive regulatory impact analysis concerning small-scale installation sector enterprises conducted prior to asset value requirement establishment.

Power imbalance in consultation processes is clearly evident, wherein large corporations possess superior legal team and consultant capacity for argument presentation. This contradicts Jurgen Habermas's ideal discourse principle (Habermas, 1996), which requires equal opportunity for all affected parties to participate in policy formation.

Research identifies dignity deficits in regulatory implementation through communication patterns implicitly undermining small-scale enterprise capacity. Discourse analysis of official documents demonstrates terminology usage such as "filtering" and "ensuring," which implies that small-scale enterprises are inherently unqualified.

Phenomenological findings from interviews reveal dehumanization themes through capacity reduction, self-determination capacity loss, and professional dignity loss. One respondent stated: "Those of us who have spent decades in the installation field are suddenly considered incompetent merely because our assets fail to reach IDR 5 billion."

Regulatory implementation produces market oligopolization with Herfindahl-Hirschman Index increases from the 800-2,800 range to 1,800-4,500 across different project segments. Innovation impact is highly significant, with 60-71% reductions across various installation technology innovation indicators.

Based on the progressive law principle of "law for humanity," more contextual justice meaning reconstruction is required for the installation sector. Contextual justice must encompass: (1) recognition justice toward the unique value of small-scale installation enterprises, (2) capability justice focusing on capacity development, (3) genuinely inclusive procedural justice, and (4) substantive equality in outcomes.

Findings indicate the necessity for paradigmatic shift from asset-centered approaches toward competency-centered approaches more aligned with installation industry characteristics as a knowledge-intensive sector. The recommended alternative model constitutes a competency-based qualification

system with the following structure: technical competence (40%), experience portfolio (30%), quality track record (20%), and financial stability (10%).

CONCLUSION

The IDR 5 billion asset value requirement in the Minister of Public Works and Housing Regulation No. 8 of 2022 for the installation sector lacks adequate philosophical, juridical, and sociological foundations. This regulation creates distributive, procedural, and interactional injustice contradicting the progressive law principle of "law for humanity." Regulatory implementation results in systemic marginalization of 88% of technically competent small-scale installation enterprises without proven correlation between asset value and installation project management capability.

This research recommends: (1) temporary moratorium on IDR 5 billion asset value requirement implementation for the installation sector, (2) development of competency-based qualification systems prioritizing technical expertise and experience, (3) revision of Government Regulation No. 14 of 2021 to adopt multidimensional approaches not dominated by asset parameters, and (4) implementation of mandatory regulatory impact analysis for all significant policy changes. These reforms align with constitutional mandates to realize economic democracy with social justice for all Indonesian citizens.

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