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The Implementation of the Presidential Regulation on Renewable Energy: The Beginning of the Transition from Coal Fired Power Plants to Renewable Energy Power Plants

President Joko Widodo has just issued Presidential Regulation No. 112 of 2022 on the Acceleration of Renewable Energy Development for the Supply of Power (“**PR on Renewable Energy**”) which came into effect on 13 September 2022. This regulation demonstrates the government of Indonesia’s commitment to energy transition approached as early as 2014 under Government Regulation No. 79 of 2014 on The National Energy Policy (“**GR 79/2014**”). The PR on Renewable Energy introduces key major provisions which may significantly affect the electric power industry, especially with the phasing out of coal-fired power plants, (“**CFPPs**”) and urges prioritizing the development of renewable energy power plants. We highlight the key provisions below.

The Phasing Out of CFPPs

The Early Retirement of Existing CFPPs. The PR on Renewable Energy provides for the early termination of CFPPs through 2 (two) schemes:

- (a) the early termination of the operation of CFPPs owned by PLN; and
- (b) the early termination of Power Purchase Agreements (“**PPA**”) for CFPPs which have been developed by Independent Power Producers (“**IPPs**”).

Either scheme must take into account the supply of and demand for electric power that may be affected.

The Criteria for the Termination of CFPPs	The CFPPs to be closed down will be determined by considering their capacity, how long they should operate, their utilization, their greenhouse gas emissions, the added economic value, the availability of onshore and offshore funding and technological support from domestic and foreign parties.
Required Approval	The CFPPs to be closed down will be determined by the Minister of Energy and Mineral Resources (“MEMR”) after securing written approval from the Minister of State-Owned Enterprises (“MSOE”) and the Minister of Finance (“MOF”).
Government Incentives	Both PLN’s and IPP’s CFPPs to be closed down <u>may</u> receive fiscal incentive support through funding and financing sourced from the national budget and other legal sources to accelerate the energy transition required by the MOF.

Aside from the potential fiscal support, the PR on Renewable Energy does not provide any further details of the early termination of PPAs on CFPPs. It is expected that a further implementing regulation providing a more detailed procedure for the early termination of PPAs will be issued.

No New CFPPs. The PR on Renewable Energy prohibits the development of new CFPPs, except for the following:

- (a) CFPPs that are included in PLN’s current Electric Power Supply Business Plan (“RUPTL”) attached to MEMR Decree No. 169.K/HK.02/MEM.M/2021 (commonly known as “RUPTL 2021-2030”); or
- (b) CFPPs that satisfy the following requirements:
 - (i) they are integrated with an industry which is developed to be oriented towards adding value to natural resources or is a national strategic project contributing largely to job creation or national economic growth;
 - (ii) they are committed to reducing greenhouse gas emissions by at least 35% of the average emissions by CFPPs in Indonesia in 2021 within 10 years of the Commercial Operation Date (COD) through technological development, carbon offsetting or a renewable energy mix; and
 - (iii) they will only operate until 2050, at the latest.

The New Tariff Mechanism for Electric Power from Renewable Energy Plants

One of the main changes introduced in the PR on Renewable Energy is an electric power tariff that will be negotiated by the parties based on a **ceiling tariff** (*harga patokan tertinggi*) replacing the cost of generation (*Biaya Pokok Penyediaan Pembangkitan* – “BPP Pembangkitan”) that has applied for the past 5 years since the issuance of MEMR Regulation No. 50 of 2017 on the Use of Renewable Energy for the Provision of Electric Power, as amended by MEMR Regulation No. 53 of 2018 and lastly by MEMR Regulation No. 4 of 2020 (“MEMR Reg 50/2017”). Although the ceiling tariff is quoted in USD, payment will still be made in IDR at the JISDOR at the time agreed to under the PPA.

We highlight below the key points of the use of the ceiling tariff specifically for electric power purchases from IPPs:

Subject	The PR on Renewable Energy	The Previous Regime (MEMR Reg 50/2017)
The Tariff Mechanism	<p>To be set in negotiations between the parties subject to the ceiling tariff which is distinguished according to the type of renewable energy and will be multiplied by the location factor for each region in Indonesia ranging from 1.00 – 1.5 for the first ten years of the plant’s operating life.</p> <p>Specifically for purchases of electric power from hydro peakers, biofuel and tidal power plants, the ceiling tariff does not apply, and it will be set through negotiations between the parties.</p> <p>The ceiling tariff is usually higher for small capacity power plants, and lower for higher capacity power plants.</p>	<p>The 2020 national BPP Pembangkitan was USD7.05 per kWh and there was a regional BPP Pembangkitan for each region in Indonesia ranging from USD6.23 – 19.25 per kWh.</p> <p>If the regional BPP Pembangkitan was greater than the average national BPP Pembangkitan, the maximum tariff was (i) 85% of the regional BPP Pembangkitan (for solar, wind, biomass, biogas and wind & tidal projects); or (ii) 100% of the regional BPP Pembangkitan (for hydro, municipal solid waste and geothermal projects).</p> <p>If the regional BPP Pembangkitan was equal to or less than the national BPP Pembangkitan, the applicable tariff was set under an agreement between PLN and the IPP (<i>business to business</i>).</p>
Tariff Modelling	<p>The following tariff staging applies:</p> <ul style="list-style-type: none"> (a) the first stage from year 1-10, (b) the second stage from year 11 onwards for biomass with a 25-year period, biogas with a 20-year period; and others with a 30-year period. <p>The second stage price will be lower than the first stage price.</p>	<p>The parties could agree to apply the following several types of tariff modelling:</p> <ul style="list-style-type: none"> (a) a staging tariff; (b) a flat tariff; (c) a base tariff.
The Pricing Mechanism	<p>A fixed price mechanism applies without any price escalation except for geothermal power plant projects.</p>	<p>A purchase price escalation was possible for specific variable components and was allowed for any type of renewable energy.</p>
Price Components for Special Facilities	<p>Separately and in addition to the agreed electric power purchase price negotiated by the parties based on the ceiling threshold pricing:</p> <ul style="list-style-type: none"> (a) for battery and other energy storage systems for solar or wind power plants the price is up to 60% of the electric power purchase price; and 	<p>There was no specific determination of the price components for special facilities.</p>

	(b) for transmission facilities it is up to 30% of the electric power purchase price.	
Price Calculation	The ceiling price will apply from the COD. The regulation is silent on whether the price can be used for purchasing electric power during the commissioning phase.	PLN had the option of purchasing electric power from the commissioning date calculated based on the BPP.
The Purchase Price for Expansion Projects	Expansion projects have a lower ceiling price: for hydro and wind expansion projects it is up to 70% of the original ceiling price and for solar, biomass, biogas expansion project it is up to 80% of the original ceiling price.	The purchase price for expansion projects was subject to the applicable BPP.
MEMR Approval	The electric power purchase price agreed to by the parties based on the ceiling tariff mechanism will serve as MEMR approval. The price for special facilities exceeding the threshold above requires a separate MEMR approval.	The electric power price purchase required MEMR Approval.

The Procurement of Renewable Energy Power Plants

MEMR Reg 50/2017 allows the procurement of renewable energy power plants through either direct selection (including direct selection with a capacity quota for solar and wind power plants) or a direct appointment.

The same methods are still implemented under the PR on Renewable Energy although they differ depending on the ownership of the power plant (which developed by the IPPs or government). However, the table below focuses on procurement by IPPs:

Subject	Direct Appointment	Direct Selection
Procurement Source (for every capacity)	<ul style="list-style-type: none"> Hydro power plants that use reservoirs or dams or irrigation canals and are defined as multi-purpose state property by the Ministry of Public Works and Public Housing (“MPWH”) that must operate according to the system’s requirements; Geothermal power plants; An expansion of the capacity of a geothermal, hydro, solar, wind, biomass or biogas power plant; and 	<ul style="list-style-type: none"> Hydro power plants; Solar or wind power plants; Biomass and biogas power plants; and Hydro peaker, biofuel and tidal power plants. <p>According to the capacity quotas determined by the MEMR and tendered by PLN.</p>

	<ul style="list-style-type: none"> Excess power from a geothermal, hydro, biomass or biogas power plant. 	
The procurement period from bid submission until the signing of the PPA	90 calendar days	180 calendar days If there is only 1 bidder after retendering through the direct selection method, the procurement can be conducted through a direct appointment.
Pre-Qualification	Not required	Must be included in PLN's list of selected suppliers (<i>daftar penyedia terseleksi</i>)
Additional Requirements	For the procurement of geothermal power plants: (a) holders of a geothermal license must have completed their exploration activities and have sufficient geothermal reserves for the term of the PPA or steam purchase agreement; or (b) holders of an electric power business license must have a commitment to supply geothermal steam for the term of the PPA.	Biomass and biogas power plants must have sufficient feedstock for the operation of the power plant for the term of the PPA.

The Effect of the PR on Renewable Energy

The PR on Renewable Energy introduces several new measures aimed at encouraging energy source transition especially from CFPPs to renewable energy power plants. Some things, such as the procurement method, generally remain the same as under MEMR Reg 50/2017, but the new way of setting the electric power purchase price must be observed carefully when being calculated by potential investors before they invest in this renewable energy market.

Despite the possibility of the early closing down of CFPPs, it may have to wait until further implementing regulations providing more clarity about the procedure are issued. Until then, the parties must still honour the agreed to terms of their PPAs including those regarding the termination of the PPA if it is triggered and implemented by PLN due to the PR on Renewable Energy, eg it is deemed termination due to PLN's default or termination for convenience initiated by PLN, and therefore in general and due to application of the arm's-length principle, the IPP should receive a better termination payment. Otherwise, it may be seen as an unjustifiable action or nationalization which may lead to a dispute between PLN and the sponsors of the IPP.

On other hand, PPAs (and geothermal steam sale and purchase agreements) entered into before the PR on Renewable Energy came into effect remain valid until their expiry. Further, the agreed electric power purchase price still remains valid for IPPs that have developed hydro, solar, wind,

biomass or biogas power plants and have completed the procurement procedure and agreed on an electric power purchase price with PLN but have not obtained purchase price approval from the MEMR, as long as the agreed to price is lower than the current purchase price set by the PR on Renewable Energy. If the agreed to price is higher, they need MEMR approval.



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