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## THE MINISTER OF ENERGY AND MINERAL RESOURCES FURTHER AMENDS THE PURCHASE SCHEME FOR ELECTRIC POWER SOURCED FROM RENEWABLE ENERGY

### Overview

At the end of February 2020, the Minister of Energy and Mineral Resources (“MEMR”) issued Regulation No. 4 of 2020 (“**Reg. 4/2020**”), as a second amendment to MEMR Regulation No. 50 of 2017 on the Use of Renewable Energy for the Provision of Electric Power which was initially amended through MEMR Regulation No. 53 of 2018 (“**Reg. 50/2017**”).

Reg. 4/2020 was issued in order to accelerate the development of renewable energy in the electric power sector as well as to improve the economic value of power plants using sources of renewable energy that were partly or fully built by the Government of Indonesia (“**GoI**”).

According to Reg. 50/2017 renewable energy in Indonesia is geothermal, wind, bioenergy (i.e. biomass, biogas, and biofuel), solar, water current (hydro), and wave/tidal (sea water movement and difference in sea water temperatures) energy.

In brief, Reg. 50/2017 focuses mainly on: (i) regulating the tariffs for electric power generated by renewable energy power plants; (ii) the scheme for the procurement of renewable energy power plant projects; and (iii) the scheme for cooperation with the state electric power company (PT Perusahaan Listrik Negara (Persero) - “**PLN**”) as the off-taker.

Meanwhile, Reg. 4/2020 covers the following 5 (five) new areas previously not covered by Reg. 50/2017:

- (i) an additional scheme for the procurement of electric power generated by renewable power plants;
- (ii) the Build, Own, Operate and Transfer (“**BOOT**”) scheme no longer applies for renewable power plants;
- (iii) a new provision on hydro-electric power plants sourced from reservoirs/dams or irrigation pipes built by the GoI (through the Ministry of Public Works and Housings);
- (iv) the assignment (*penugasan*) of municipal waste-to-energy power plants; and
- (v) the assignment of projects financed by grants (*hibah*) or other finances sourced from the GoI, other than the State Budget (*Anggaran Pendapatan Belanja Negara* – “**APBN**”).

Given the above, below is a summary on the noteworthy provisions of Reg. 4/2020.

## Noteworthy Provisions of Reg. 4/2020

### 1. The Change to the Procurement Schemes

Under Reg. 50/2017, PLN could purchase electric power generated by renewable power plants through (i) direct selection (*pemilihan langsung*); or (ii) direct selection based on a capacity quota (specifically for solar power plants and wind power plants).

Now, Reg. 4/2020 adds another type of procurement scheme, i.e. a direct appointment (*penunjukan langsung*) which will apply in the following circumstances:

- a. the local electric power system is in a crisis or there is an emergency in the electric power supply;
- b. the purchase of excess power (*kelebihan tenaga listrik*), including the purchase of electric power through cooperation with the holder of a business area (*wilayah usaha*) for the provision of electric power;
- c. an increase in the generating capacity of a power plant which has been operating in the same location; or
- d. the purchase of electric power from renewable power plants in the event that there is only 1 (one) potential electric power producer.

Although introduced in Reg. 4/2020, Government Regulation No. 14 of 2012 on the Electric Power Supply Business as amended by Government Regulation No. 23 of 2014 contains similar provisions. However, we understand that generally Reg. 4/2020 aims to clarify their applicability to renewable energy power plants.

The novelty of Reg. 4/2020 is that a direct appointment (including the qualification process, bid submission and evaluation, and the signing of the Power Purchase Agreement ("**PPA**")) must be completed within 90 (ninety) calendar days.

Meanwhile, for a direct selection, Reg. 4/2020 requires the procurement process to be completed within 180 (one hundred eighty) calendar days. This also includes the qualification process, bid submission and evaluation, and the signing of the PPA.

These relatively short time periods may affect the negotiation process of the draft PPA with PLN and may imply that there will be not much room of negotiation with PLN to its template draft PPA as typically provided in the Request For Proposal (RFP). PLN may only entertain minor comments or revisions to its template draft PPA.

Further, Reg. 4/2020 now requires all purchasing of electric power, whether through a direct selection or a direct appointment to be implemented according to an Electric Power Supply Business Plan (*Rencana Usaha Penyediaan Tenaga Listrik* or RUPTL), with a maximum term of 30 (thirty) years. A prior approval to the electric power tariff from the MEMR is now also required for all renewable energy power plants, except for the Municipal Waste-to-Energy ("**MWTE**") power plants.

## 2. The Non-Applicability of the BOOT Scheme for Renewable Power Plants

Under Article 27B of Reg. 4/2020, the BOOT scheme no longer applies for all the types of renewable power plants under Reg. 50/2017. To effectuate this provision, Reg. 4/2020 allows the parties who have signed a PPA based on Reg. 50/2017 to change the cooperation scheme under the PPA to the Build, Own, Operate (“**BOO**”) scheme.

For the above purpose, Reg. 4/2020 replaces and revokes the BOOT scheme provisions of MEMR Regulation No. 10 of 2017 on the Principles of Power Purchase Agreements, as lastly amended by MEMR Regulation No. 10 of 2018.

## 3. New Provision on Hydro-Electric Power sourced from Reservoirs/Dams and Irrigation Pipes

Article 7A of Reg. 4/2020 requires hydro-electric power plants sourced from reservoirs/dams and irrigation pipes that are of a multi-functional nature, built by a selected bidder (i.e. a business entity partner utilizing a state-owned water resources for the provision of Hydro-Power infrastructure, under the auspice of the Ministry of Public Works and Housings), to be purchased based on an assignment from the MEMR to PLN. This arrangement is also deemed a direct appointment.

In the above case, the purchase price is determined under an agreement between the parties, which must first be approved by the MEMR. To obtain the approval, PLN must propose the purchase price to the MEMR, and submit the supporting documents listed in Article 7A paragraph (5) of Reg. 4/2020.

## 4. The Assignment of MWTE Power Plants

Except for the procurement from MWTE power plants located in certain cities/municipalities under Presidential Regulation No. 35 of 2018 on the Acceleration of the Development of MWTE Power Plants, Article 10 paragraph (3) of Reg. 4/2020 requires electric power to be purchased from MWTE power plants based on an assignment from the MEMR to PLN. In this scheme, PLN (as the assignee of the MEMR) will purchase the electric power from the MWTE power plant developer (appointed by the regional government) in accordance with the prevailing laws and regulations.

Upon the coming into force of the above provision of Reg. 4/2020, MEMR Regulation No. 44 of 2015 on the Purchase of Electric Power by PT Perusahaan Listrik Negara (Persero) from MWTE Power Plants is replaced and revoked.

## 5. The Assignment of Renewable Power Plant Projects Financed through Grants (*Hibah*) or Other Financing by the GoI

Article 18B of Reg. 4/2020 requires renewable power plant projects which are built either partially or wholly by the GoI, except those are built under MEMR Regulation No. 39 of 2017 on the Implementation of Physical Activities for the Utilization of Renewable Energy (as amended), including those financed from government grants or any other source of funding than the APBN, to be purchased by PLN through an assignment from the MEMR as a direct appointment.

In this scheme, heads of government agencies, governors, regents/mayors can submit a proposal (accompanied by the supporting documents listed in Article 18B paragraph (4) of Reg. 4/2020) to the MEMR for an assignment for purchasing electric power from renewable power plant projects.

## **Remarks**

Although Reg. 4/2020 does not amend the tariffs mechanism for electric power from renewable energy power plants (which use the cost of generation (*Biaya Pokok Penyediaan Pembangkitan*) as a point of reference, and considered unfavourable by investors), Reg. 4/2020 tries to overcome the issues concerning the procurement process of renewable energy power plants and the constraints of the BOOT scheme under Reg. 50/2017.

These provisions were considered less profitable for renewable energy developers in Indonesia because they affected the bankability of renewable power plants projects. However, the relatively short time period from the procurement process until the signing of the PPA will need to be considered further by the investor.

In addition, it is hoped that the existing electric power tariff mechanism for renewable power plants will be accommodated in the highly anticipated Draft Presidential Regulation (now still being drafted by the GoI), which planned to provide a more competitive feed-in tariff mechanism for the sale of electric power from renewable power plants to PLN.

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