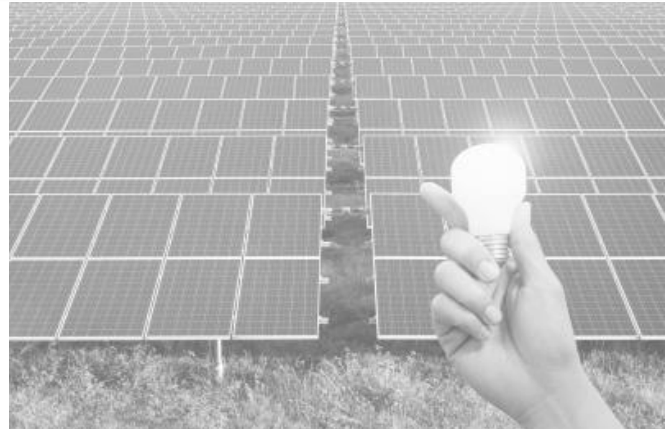


Better Investment Climate in Indonesia's Renewable Energy Business

Following the enactment of Minister of Energy and Mineral Resources (“MEMR”) Regulation No. 50 of 2017 on Use of Renewable Energy for Electricity Supply (as lastly amended by MEMR Regulation No. 53 of 2018) (“MEMR Reg 50/2017”), which has been viewed by independent power producers (“IPP”) and investors as inadequate and controversial, the Government of Indonesia (“GoI”) and relevant stakeholders have been focusing on preparation of a Presidential Regulation regulating the mechanism for investing in new and renewable energy (“RE”) business and the determination of tariffs.



However, in the midst of anxiety of IPPs waiting for the enactment of such Presidential Regulation, RE business investors and associations were surprised by the enactment of MEMR Regulation No. 4 of 2020 that provides a second amendment to MEMR Reg 50/2017 (“MEMR Reg 4/2020”) on 24 February 2020.

Key Changes in MEMR Reg 4/2020

As the GOI is aiming to resolve all obstacles created by MEMR 50/2017 and demonstrating its intention of perfecting its regulations by increasing the economic value of development of RE projects, MEMR Reg 4/2020 provides 5 significant amendments to MEMR Reg 50/2017 as follows:

1. Opportunity for Purchase through Conditional Direct Appointment

Long before the passing of MEMR Reg 50/2017, in 2012, Government Regulation No. 14 of 2012 on Electricity Supply Business Activities (as lastly amended by Government Regulation No. 23 of 2014) (“GR 14/2012”) through its Article 25(4) provides that certain events will allow electricity purchase through direct appointment, as follows:

- a. purchase of electricity through power plants using renewable energy, marginal gas, mine-mouth coal, and other local energy;
- b. purchase of excess power;
- c. the local electrical system is in crisis or emergency condition for electricity supply¹ ; and/or
- d. additional generation capacity at a power plant that is already in operation at the same location.

However, MEMR Reg 50/2017 requires purchase of electricity from power plants using solar, wind, hydro, biomass, biogas, movement and temperature differences of the sea, and biofuel (liquid vegetable oil) to be performed through a direct selection (limited tender) process and it has been creating uncertainty over which regulation the IPP should comply with for the expansion of RE-based power plant projects.

In line with Article 25 of GR 24/2012, MEMR Reg 4/2020 gives PLN the option to purchase electricity from RE-based power plants through direct appointment but only on the occurrence of the following events:

- i. the local electrical system is in a crisis or emergency for electricity supply;
- ii. the purchase of excess power, including purchase of excess power through cooperation with the holder of n electricity supply business area (*wilayah usaha penyediaan tenaga listrik*);
- iii. additional generation capacity at a power plant that is already in operation at the same location; or
- iv. where there is only one prospective electricity supplier that uses an RE-based power plant(-s).

This regulation also provides that the direct appointment process (including the process for qualification, submission, proposal evaluation and execution of the relevant power purchase agreement (“PPA”)) must be completed within 90 calendar days. Furthermore, electricity must be purchased by PLN through direct appointment for a maximum contract period of 30 years.

¹Pursuant to elucidation of Article 25(4)c of GR 14/2012, ‘crisis or emergency condition for electricity supply’ means a condition where the electricity supply capacity is not sufficient to fulfill the load (*beban*) requirement in such area that may be caused by, among others, the growth of load that goes beyond the electricity supply capability, natural disasters, and/or the occurrence of a conflict/riots.

Despite the foregoing, the direct appointment scheme cannot be implemented for RE-based power plants using high-technology equipment, with very variable efficiency, and that are highly dependent on radiation levels or local weather (intermittent), because for such cases, MEMR Reg 4/2020 still requires PLN to purchase the electricity therefrom through direct selection based on capacity quota².

In addition to the foregoing, in respect of the direct selection, MEMR Reg 4/2020 also provides further clarification on the direct selection process for RE-based power plants projects, as follow:

- a. the direct selection process (including the process for qualification, submission, proposal evaluation and execution of the PPA) must be completed within 180 calendar days; and
- b. the electricity must be purchased by PLN through direct selection for a maximum contract period of 30 years.

2. All RE-Based Power Plants Are “Must-Run”

Unlike MEMR Reg 50/2017 that previously applied a ‘must-run’ requirement only for RE-based power plants with a capacity up to 10MW, MEMR Reg 4/2020 now requires all RE-based power plants (regardless their capacity) to be ‘must-run’. The expansion of the ‘must-run’³ requirement will surely require PLN to give priority the dispatch from RE-based power plants.

3. No More BOOT Mandatory Requirement

MEMR 4/2020 has removed the Build, Own, Operate and Transfer (“BOOT”) cooperation scheme requirements for RE-based power plants that was previously provided by MEMR Regulation No. 10 of 2017 on Principles of PPA (“MEMR Reg 10/2017”) and MEMR Reg 50/2017. The removal of the BOOT requirement is expected to help boost the development of RE in Indonesia because the investor will no longer need to inject land as a part of the pricing and can offer a more competitive price.

New Article 26A of MEMR 4/2020 further provides that the BOOT scheme agreed in PPA executed according to MEMR 50/2017 may be adjusted to a Build, Own and Operate (BOO) cooperation scheme depending on the land and civil related regulations. However, the word ‘may’ suggests the decision for adjustment to a BOO scheme will require negotiations between the IPP and PLN and will ultimately be at the discretion of PLN, as the single off-taker, to decide whether or not to adjust the current BOOT cooperation scheme.

4. New Arrangement for Hydropower Plants

Electricity for hydropower plant projects (using dam or irrigation canals whose construction is multipurpose and built by the Ministry of Public Works and Public Housing) will be purchased through assignment to PLN by the MEMR. For such purpose, MEMR 4/2020 serves as the MEMR’s assignment to PLN and as a direct appointment for electricity purchase by PLN. Therefore, the implementation of the appointment scheme for this type of hydro power project will be similar to the appointment scheme for geothermal power plants and municipal waste-based power plants (or waste-to-energy power projects (“WtE Project”)), where PLN will, through assignment by the MEMR, be required to directly appoint the business entity that has been awarded the concession of the energy resource through a separate appointment process held by the relevant government authority.

To obtain the MEMR’s approvals for the purchase price of electricity from such hydropower plants, PLN will also be required to submit supporting documents to MEMR as specified in the MEMR 4/2020.

New Article 26B of MEMR 4/2020 also provides that electricity from hydropower plants that have already obtained location permits from the relevant authority prior to the enactment of MEMR 4/2020 must be purchased through direct appointment.

²Article 1(8) of MEMR Reg 50/2017 defines ‘Capacity Quota’ as the maximum amount of the power plant’s capacity offered to IPP within a period at a specified electricity purchase price.

³Pursuant to MEMR 4/2020, ‘must-run’ means a requirement where PLN must operate a RE-based power plants continuously. Therefore, the ‘must-run’ requirement requires PLN to dispatch the power according to the capacity factor.

5. Assignment for WtE Projects

In order to help regional governments in the handling of municipal waste, electricity from WtE Projects of IPPs appointed as WtE Project developers by the relevant regional government must be purchased by PLN through assignment to PLN by the MEMR. The MEMR's assignment to PLN must be performed following the proposal from the relevant governor or mayor (together with the required supporting documents) and the assignment serves as a direct appointment for PLN's purchase of electricity and approval of the electricity purchase price.

MEMR 4/2020 also revokes MEMR Regulation No. 44 of 2015 on Purchase of Electricity by PLN from Municipal Waste Based Power Plants and therefore, it revokes:

- a. the requirement for the IPP to apply to the MEMR for determination as a WtE power project developer;
- b. the requirement for determining the electricity price in accordance with the type of technology, capacity of the power plant, and voltage of PLN's electric network; and
- c. the requirement for a definite 20 contract year period for the PPA and extendable.

6. Assignment for Electricity Purchase by PLN for RE-Based Power Plants

In respect of RE-based power plants developed by GOI (other than those developed according to MEMR Regulation No. 39 of 2017 on the Implementation of Physical Utilization of New Energy and Renewable Energy as well as Energy Conservation (as amended by MEMR Regulation No. 12 of 2018)), including those that are funded by way of grant (*hibah*), electricity therefrom must be purchased based on the MEMR's assignment to PLN. The MEMR's assignment to PLN must be performed following the proposal from the relevant head of institution, governor or mayor (together with the required supporting documents) and the assignment serves as direct appointment for PLN's purchase of electricity and approval of the electricity purchase price.

Conclusion

MEMR Reg 4/2020 does have amendments that provide clarity on some provisions in the MEMR Reg 50/2017, but it does not make significant and material s to the renewable tariff framework referring to PLN's average electricity generation basic cost (*Biaya Pokok Penyediaan* (BPP)) that has been the greatest issue in the RE-based power plant sector development. Although the amendment under MEMR Reg 4/2020 may be deemed an indication of the content of the most anticipated draft Presidential Regulation on RE, investors' hope still lie in the enactment of a Presidential Regulation that hopefully will be issued shortly and change the renewable tariff framework and provide the possibility of using fees in the tariff scheme.

*The article above was prepared by **Hendra Ong (Partner)** and **Hapsari Arumdati (Senior Associate)**.*

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