

Electricity Regulation

Contributing editor
Daniel Hagan



2016

GETTING THE
DEAL THROUGH 

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DEAL THROUGH 

Electricity Regulation 2016

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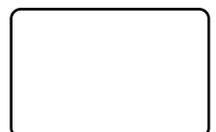


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Indonesia

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1 Policy and law

What is the government policy and legislative framework for the electricity sector?

Law No. 30 (2009) on Electricity (Electricity Law) is the main law that governs the electricity sector in Indonesia. Its implementation is regulated under Government Regulation No. 14 (2012) on Electricity Supply Business Activity, as amended by Government Regulation No. 23 (2014) (GR 14/2012). Additional regulations are enacted at the presidential, ministerial and director general level to administer technical matters, such as the procedure for sale of power and national and transnational interconnection. Regional governments may also issue electricity regulations in line with the Electricity Law by virtue of the laws and regulations on regional autonomy.

As electricity is deemed vital and strategic, the business of electricity is controlled by the state and held by state-owned and regional government-owned enterprises, the main such company being PT Perusahaan Listrik Negara (Persero) (PLN). In order to increase electricity supply, the private sector is also given the opportunity to participate in the electricity sector. The government requires that electricity be provided in sufficient amount, reliable in quality, and reasonable in price or tariff for the welfare of the people and to achieve sustainable development.

At the policy level, there is a national electricity blueprint endorsed by the government, which outlines the development of the electricity supply system. The blueprint refers to the national energy policy, which is drafted by the National Energy Council and ratified by the government following consultation with parliament. The national energy policy includes policies on energy supply for national demand, priority of energy development, utilisation of national energy resources, and national energy support reserves. In 2014, a national energy policy was ratified under Government Regulation No. 79 (2014) (GR 79/2014 or National Energy Policy), setting the plan for national energy management to ensure domestic energy security and support sustainable development.

Based on GR 79/2014, the targets for electricity supply and utilisation are as follows:

- increase procurement of primary energy to 400 million tonnes of oil equivalent (MTOE) by 2025 and 1,000 MTOE by 2050;
- increase utilisation of primary energy per capita to 1.4 tonnes of oil equivalent (TOE) by 2025 and 3.2 TOE by 2050;
- increase power plant capacity supply to 115GW by 2025 and 430GW by 2050; and
- increase electricity utilisation per capita to 2,500kWh by 2025 and 7,000kWh by 2050.

2 Organisation of the market

What is the organisational structure for the generation, transmission, distribution and sale of power?

Licences for electrical power businesses in Indonesia are issued in the form of an electricity supply business licence (IUPTL), which is valid for 30 years and can be extended.

Power generation, transmission, distribution and sales are usually operated in an integrated manner by one business entity within a business area determined by the government. Electricity undertakings for public use may be organised by business entities owned by the state and local government, as well as by the private sector (independent power producers

(IPPs)) under an IUPTL. PLN, a state-owned enterprise, is the dominant market player in the Indonesian power industry and is the primary contributor to the public supply of electricity.

Electricity generation is also allowed for self-use, and requires an operational licence. Usually companies in Indonesian industrial zones generate electricity for self-use as IPPs, and sell any excess power to PLN for use on the Indonesian power grid.

Regulation of electricity utilities – power generation

3 Authorisation to construct and operate generation facilities

What authorisations are required to construct and operate generation facilities?

Construction and operation of a power generation facility require an IUPTL issued by the relevant governmental authority: for licences under the jurisdiction of the central government, an IUPTL is now issued by the Indonesia Capital Investment Coordinating Board (BKPM) on behalf of the Minister of Energy and Mineral Resources (MEMR), while for licences under the jurisdiction of the provincial or local government, an IUPTL is issued by the provincial or local one-stop integrated service (PTSP) on behalf of the governor or regent/mayor, respectively. A power purchase agreement between the IUPTL applicant and its buyer (commonly, PLN) is a prerequisite to obtaining an IUPTL.

In addition, regulations on general construction apply to power generation facilities. In accordance with Law No. 18 of 1999 on Construction Services, construction of a power plant must be performed in an integrated way through engineering, procurement and construction (EPC) contracts.

Prior to the commencement of construction, an IUPTL holder must obtain an environmental licence from the local government or the Ministry of Forestry and Environmental Affairs and compensate any party whose assets (ie, land, buildings, or plants) are directly or indirectly affected.

4 Interconnection policies

What are the policies with respect to interconnection of generation to the transmission grid?

According to the Electricity Law, the term ‘interconnection’ means interconnection between systems within the territory of Indonesia or transnational interconnection.

Generation facilities are connected to the transmission grid subject to a power purchase agreement or lease agreement in accordance with an electricity supply business plan from the transmission operator.

Before connecting to the grid, an electricity installation must satisfy safety and equipment standards determined by the MEMR.

5 Alternative energy sources

Does government policy or legislation encourage power generation based on alternative energy sources such as renewable energies or combined heat and power?

The use of renewable energy sources is encouraged at the policy level through the endorsement of the National Energy Policy, which aims to achieve the best possible energy mix for power production in Indonesia. The National Energy Policy provides that by 2025 diversified energy consumption from new and renewable energy (biomass, nuclear, solar,

wind, etc) should reach more than 23 per cent of total energy consumed and that the use of oil should be reduced to less than 25 per cent.

The government also encourages utilisation of alternative energy by granting business feasibility guarantees for renewable energy, coal, and gas-fired power plants in a private-public partnership scheme through PLN as regulated under Minister of Finance (MOF) Regulation No. 173/PMK.011/2014. This regulation was issued to ensure the development of alternative-energy power plants by granting guarantees to financiers or lenders of power plant projects in a private-public partnership scheme.

Since 2010, PLN has been provided with a fast-track programme for the development of coal-fired power plants, as well as the use of renewable energy and gas. Pursuant to MEMR Regulation No. 21 of 2013, there are 59 power plant projects and 40 transmission projects listed as fast-track Private Public Partnerships involving coal, geothermal, water and gas-fired power plants.

There are also tax incentives from the government specifically for geothermal-fired power plants, as regulated under MOF Regulation No. 179/PMK.011/2013 on Income Tax Covered by the Government, and MOF Regulation No. 142/PMK.02/2013 on Procedure for Reimbursement of Value Added Tax. Moreover, the government supports geothermal power plants through MEMR Regulation No. 17 of 2014, under which PLN is obliged to purchase electricity from geothermal power plants. The regulation also regulates the benchmark purchase price of electricity from geothermal power plants. These regulations were issued to maintain the development of alternative energy, especially geothermal, and to create a good business environment for investors in Indonesia.

6 Climate change

What impact will government policy on climate change have on the types of resources that are used to meet electricity demand and on the cost and amount of power that is consumed?

As part of a commitment to reduce the CO₂ emissions from deforestation and forest degradation, since 2010 the government implemented a policy to suspend the issuance of new mining licences in areas that are specified as primary natural forest and peat land (including conservation and protected forest areas). This reduced the potential amount of coal that can be produced for coal-fired power plants in Indonesia. However, given the abundance of cheap coal in Indonesia it is arguable whether this policy will have a substantial impact on the construction and use of coal-fired power plants.

7 Government policy

Does government policy encourage or discourage development of new nuclear power plants? How?

Both legislation on nuclear energy and the National Energy Policy encourage and provide the opportunity to develop nuclear power plants. However, to date, Indonesia has no commercial nuclear power plants, mainly due to public resistance to nuclear power due to health, safety and liability issues and the historical recognition of nuclear waste as a hazardous material. The development of nuclear power plants in Indonesia so far goes no further than for the purpose of research under the supervision of the national nuclear agency (BATAN).

Regulation of electricity utilities - transmission

8 Authorisations to construct and operate transmission networks

What authorisations are required to construct and operate transmission networks?

Main permit

Based on GR 14/2012, an IUPTL is required for an entity engaging in the transmission business. This may be an IUPTL specifically for transmission, or an integrated IUPTL for power generation that also permits transmission activities. In order to obtain an IUPTL, the applicant is required to submit a transmission network lease or joint use agreement with the candidate user of the transmission network, in addition to other administrative and technical requirements regulated under MEMR Regulation No. 35 of 2013 on Licensing Procedures for Electricity Business.

Issuing authority

In accordance with the issuance of the new regional autonomy law in 2014 and the delegation of authority for issuing business licences from relevant government institutions to BKPM, the issuing authority of an IUPTL is now the BKPM or the provincial or local PTSP, based on their respective authority.

BKPM is authorised to issue an IUPTL to entities whose business areas are cross-province, state-owned enterprises, and those who sell electricity or lease off the electricity grid to an IUPTL holder whose licence was granted by the central government. The provincial PTSP is authorised to issue an IUPTL to entities whose business areas are cross-regency and who sell electricity or lease off the electricity grid to an IUPTL holder whose licence was granted by the provincial government. The local PTSP is authorised to issue an IUPTL to entities whose business areas are within the regency or city and who sell electricity or lease off the electricity grid to an IUPTL holder whose licence was granted by the local government.

Other licences

In addition to the above, the IUPTL applicant must secure an environmental licence from the local government and must compensate any party whose assets (ie, land, buildings, or plants) are directly or indirectly affected by the transmission network.

Please note that investment in the power transmission sector (and power distribution sector) by private entities in Indonesia is very rare to date, as power transmission (and distribution) have been historically monopolised by PLN.

9 Eligibility to obtain transmission services

Who is eligible to obtain transmission services and what requirements must be met to obtain access?

Any party that provides power to the grid (including an IPP) and that holds an IUPTL may have access to the transmission or distribution grid, in order to supply power to the public. Access to the grid requires a lease between the holder of the IUPTL for transmission and the user of the grid. The fee for such lease must be approved by the MEMR, governor or regent/mayor, according to their jurisdiction.

An IUPTL holder who produces power and owns and operates a transmission network is also eligible to access a transmission or distribution network.

Utilisation of electricity transmission or distribution networks for telecommunications, multimedia and information purposes is permissible, subject to a licence issued by the BKPM (on behalf of the MEMR), provided that such utilisation does not compromise power supply in the area.

10 Government incentives

Are there any government incentives to encourage expansion of the transmission grid?

To date, there are no government incentives to encourage the development of transmission networks. Despite the relatively low percentage of end users with electricity in Indonesia (70.1 per cent in 2011), according to PLN's 2015–2024 Electricity Supply Plan, the expansion of transmission networks by the private sector is not likely any time soon, and the historical monopoly on transmission by PLN is expected to continue for some time.

11 Rates and terms for transmission services

Who determines the rates and terms for the provision of transmission services and what legal standard does that entity apply?

The tariff for leasing transmission services is regulated by the government (ie, MEMR, governor or regent/mayor, depending on the location of the transmission network).

Transmission services may be leased through a network lease agreement between the transmission operator and another transmission operator.

The parties to the network lease agreement may propose the price of power transmission by submitting a written application to the MEMR, governor or regent/mayor for approval. The approved price or fee from the relevant authority may be in the form of a benchmark price.

12 Entities responsible for assuring reliability

Which entities are responsible for assuring reliability of the transmission grid and what are their powers and responsibilities?

The MEMR, through the DGE, is responsible for assuring the reliability of the transmission grid. An inspector from an accredited inspection institution will issue a certificate of operational reliability in connection with the installation and operation of the transmission grid.

In the event of noncompliance, the inspector may recommend suspension of the activities of the service provider, which may result in revocation of its operational licence.

Regulation of electricity utilities – distribution

13 Authorisation to construct and operate distribution networks

What authorisations are required to construct and operate distribution networks?

An IUPTL is required to construct and operate distribution networks. The IUPTL can be issued specifically for distribution, or distribution can be included in an integrated IUPTL that covers generation, transmission and sales. BKPM (on behalf of the MEMR), or the provincial or local PTSP, depending on the jurisdiction, is the relevant authority to issue an IUPTL.

An IUPTL for distribution requires:

- stipulation of electricity business area by the BKPM (on behalf of the MEMR);
- approval of electricity selling price or transmission lease price by the MEMR;
- approval of the applicant's electricity supply business plan; and
- a distribution network lease or joint-use agreement with the candidate user of the distribution network.

Similar to the transmission sector, the distribution applicant must also obtain an environmental licence from the local government and settle with any party whose assets (ie, land, buildings or plants) are directly or indirectly affected by the distribution network.

14 Access to the distribution grid

Who is eligible to obtain access to the distribution grid and what requirements must be met to obtain access?

Any party that provides power to the grid (including an IPP) and that holds an IUPTL may have access to the distribution grid in order to supply power to the public. Access to the grid must be evidenced by a lease between the holder of the IUPTL for distribution and the user of the grid. The fee for such a lease must be approved by the minister, governor or regent/mayor.

Utilisation of electricity distribution networks for telecommunications, multimedia and information purposes is permissible, subject to a licence from the BKPM or provincial/local PTSP, provided that such utilisation does not compromise power supply in the area.

15 Rates and terms for distribution services

Who determines the rates or terms for the provision of distribution services and what legal standard does that entity apply?

The tariff for the lease of distribution services is regulated by the government (ie, MEMR, governor or regent/mayor depending on the location of the distribution network).

Distribution, as well as distribution services, may be leased through a network lease agreement between the distribution operator and another distribution operator.

The parties to the network lease agreement may propose the price of power distribution by submitting a written application to the MEMR, relevant governor or regent/mayor for approval. The approved fee may be in the form of a benchmark price.

Regulation of electricity utilities – sales of power

16 Approval to sell power

What authorisations are required for the sale of power to customers and which authorities grant such approvals?

Indonesia recognises two types of power sales: from one IUPTL to another IUPTL, and from an IUPTL holder to end-users.

An IUPTL is required for all entities engaging in the power sales business. However, particularly for from one IUPTL to another IUPTL, the purchaser must conduct a public tender and the proposed purchase of power must conform to the electricity supply business plan approved by the MEMR. The public tender requirement does not apply, and the purchaser may directly appoint its desired party, under the following circumstances:

- where the power originates from a generator using renewable energy, marginal-gas, mine-mouth coal or other local energy;
- in connection with the purchase of excess electricity;
- in a power supply crisis or emergency; and
- expansion of power plant capacity in the same operating power station in the same area.

In the event that power sales are in the framework of diversification of energy for non-fuel power generation, then the purchaser may compare and choose from at least two bidders that have submitted proposals.

17 Power sales tariffs

Is there any tariff or other regulation regarding power sales?

Yes. As mentioned in question 16, there are two types of power sale and therefore there are two types of tariff. Basically, for on-grid power sales (from one IUPTL to another IUPTL), the tariff is developed through a public tender process with the agreed price approved by the relevant authority.

In Indonesia, the term 'tariff' is used in connection with the price of electricity to end users. Pursuant to GR 14/2012, tariffs for electricity sold to consumers are determined by the MEMR, governor or regent/mayor, subject to approval by the regional or national house of representatives. For PLN, as a state-owned enterprise whose licence is granted by the central government, the tariffs are determined by the MEMR. The prevailing tariff for PLN is stipulated from time to time and lastly under MEMR 9/2015. In such regulation, tariffs vary depending on the use of the electricity (for example, for household, business, or industrial purposes, or for wholesale) and the power of electricity (for example, 450VA).

In Indonesia, the electricity supply sector is monopolised by PLN and the electricity tariff provided by PLN is divided into two categories: a regular post-paid tariff, which is paid after the use of electricity by consumers; and a prepaid tariff.

In relation to VAT in Indonesia, electricity is considered a good with a strategic purpose and is therefore exempted from VAT. However, VAT is imposed on electricity used in housing with capacity of more than 6,600W.

18 Rates for wholesale of power

Who determines the rates for sales of wholesale power and what standard does that entity apply?

Similar to power sale tariffs mentioned in question 17, wholesale power tariffs are determined by the MEMR, governor or regent/mayor, subject to approval from the regional or national house of representatives, depending on where the wholesale power is generated and sold. For wholesale electricity provided by PLN pursuant to MEMR 9/2015, the threshold for wholesale electricity is electricity above 200kVA.

19 Public service obligations

To what extent are electricity utilities that sell power subject to public service obligations?

In accordance with the Electricity Law, electricity should be:

- supplied in sufficient amount;
- reliable in quality;
- reasonable in price and tariff;
- for the welfare of the people; and
- able to achieve sustainable development.

Other than the general policy objectives, there are no specific public service obligations.

Regulatory authorities

20 Policy setting

Which authorities determine regulatory policy with respect to the electricity sector?

At the central government level, the highest authority is the House of Representatives, which has full authority to promulgate laws on electricity. Second is the President, who has authority to determine policies, regulations, management, and implementation of the electricity supply. The MEMR monitors and supervises the electricity sector and implements the policies, law and regulations, and maintenance of electricity supply, including but not limited to establishing technical regulations and issuing licences. Under the MEMR is the DGE, who has the authority to formulate and carry out policies and technical standards under the MEMR.

The National Energy Council is responsible for developing the National Energy Policy for the House of Representatives' approval, most recently the National Energy Policy for the period 2014-2050.

In some regions in Indonesia, the regional government may promote electricity development by giving support to certain types of IPP, such as mine-mouth coal-fired power plants, in the form of accelerated issuance of permits, licences, approvals and recommendations. For example, in April 2014, the Governor of Sumatera Selatan issued a letter supporting the development of mine-mouth coal-fired power plants that utilise low-rank coal (below 3,000kcal/kg) and offering to assist in the process of obtaining location permits and environmental licences. Such preference is not recognised by the MEMR, which gives the same treatment for every type of IPP.

21 Scope of authority

What is the scope of each regulator's authority?

The regional and national houses of representatives reserve the right as consultation regulatory bodies for the central and regional governments when drafting the national electricity master plan and giving approval of electricity tariffs. As for the central government, the main authorities are allocated between the MEMR and the BKPM, as follows.

MEMR

- stipulate electricity guidelines, standards and criteria;
- set guidelines in determining consumer electricity tariffs;
- set electricity tariffs for certain consumers and electricity network leasing from IUPTL holders determined by the central government; and
- approve the sale of excess electricity from operational licence holders determined by the central government.

BKPM

- stipulate IPP business areas;
- issue IUPTLs for cross-province IPPs;
- issue cross-province operational licences (for self-use);
- issue power support service licences;
- issue cross-border power purchase and sale licences;
- issue geothermal preliminary survey assignments;
- issue geothermal licences;
- issue geothermal support service approvals;
- issue explosives storage licences for the geothermal industry;
- issue IUPTLs for state-owned enterprises, foreign investors or foreign majority share ownership;
- issue licences for implementation of electricity networks for telecommunications, multimedia and informatics; and
- impose administrative sanctions on business entities whose licences are issued by the central government.

The DGE has the authority to stipulate implementing regulations of MEMR regulations and to supervise and monitor the electricity sector.

At the regional level, the provincial and local PTSPs hold similar licensing authorities with the BKPM, but as apply within the limits of their respective jurisdictions.

22 Establishment of regulators

How is each regulator established and to what extent is it considered to be independent of the regulated business and of governmental officials?

The electricity sector is regulated exclusively by central and regional governments. There is no independent regulatory authority.

23 Challenge and appeal of decisions

To what extent can decisions of the regulator be challenged or appealed, and to whom? What are the grounds and procedures for appeal?

The forum to challenge or appeal a regulation or decision of a regulatory body (regional and national houses of representatives, MEMR, governor, regent/mayor and DGE) depends on whether the decision affects public or private interests. Permits, licences and approvals affecting private interests are challenged through the administrative court based on Law No. 15 of 1985 on Administrative Court, as amended. In the event a regulatory instrument affects the public interest (ie, issuance of a law or regulation), judicial review can be requested in the Constitutional Court (for laws) or Supreme Court (for regulations).

Acquisition and merger control - competition

24 Responsible bodies

Which bodies have the authority to approve or block mergers or other changes in control over businesses in the sector or acquisition of utility assets?

It is important to note that to engage in electricity business in Indonesia the investor must establish a single purpose company, which cannot engage in multiple business sectors. Therefore, merger with or acquisition of a company in another sector is not allowed.

However, it is possible for an electricity company to be acquired by a company that engages in another sector. In general, the acquisition procedures will require the company to obtain an in-principle licence for change of shareholders of the target company from BKPM, in the event that the company is a foreign investment company or a local investor registered with BKPM (Penanaman Modal Dalam Negeri (PMDN)).

In the event that an acquiring company that holds a company engaging in the electricity sector intends to acquire another company engaging in the electricity sector, (ie, a parent company of a transmission network company intends to acquire a distribution network company), it may be subject to review by the Commission for Supervision of Business Competition (Komisi Pengawas Persaingan Usaha (KPPU)), which has the authority to unwind mergers and acquisitions that lead to monopoly or anti-competitive business practices or market concentration. Under the Electricity Law, PLN as a state-owned enterprise has been prioritised to conduct electricity business in Indonesia, including generating and providing electricity. As such, PLN is exempt from the Anti-Monopoly Law (Law No. 5 of 1999).

Besides KPPU, under Indonesian investment regulations acquisition transactions shall always refer to the negative investment list based on Presidential Regulation No. 39 of 2014, which regulates foreign share ownership of specific sectors in Indonesia, including electricity.

25 Review of transfers of control

What criteria and procedures apply with respect to the review of mergers, acquisitions and other transfers of control? How long does it typically take to obtain a decision approving or blocking the transaction?

Based on Government Regulation No. 57 of 2010 on Merger or Consolidation of Business Entities, KPPU's assessment is based on the resulting asset value of the company after merger or acquisition. Transactions resulting in combined assets exceeding 2.5 trillion rupiah or combined sales turnover exceeding 5 trillion rupiah are required to notify KPPU no later than 30 days after the transaction takes effect. KPPU will review the transaction within 90 days of receiving notification. Delay in notifying KPPU can result in fines of 1 billion rupiah per day, up to 25 billion rupiah.

Notification to KPPU is not required for merger or acquisition between affiliated companies.

Update and trends

The government of Indonesia updated and issued several new regulations on electricity during 2014 and 2015. Under the presidency of Joko Widodo, the government has expressed a commitment to develop 35,000MW of new power plants in the next five years. As much as 10,000MW will be executed by PLN, while the other 25,000MW will be coordinated by PLN together with IPPs. To facilitate price negotiations between PLN and IPPs, MEMR has regulated procedures and standard prices for power purchase from mine-mouth, coal, gas, hydro power plants and others.

In line with its commitment to accelerate electricity development, the government recently delegated authority to issue electricity business licences from MEMR to BKPM. The delegation aims to foster a centralised electricity licensing process. In addition, the government is granting incentives to the private sector, such as an infrastructure guarantee provided by a state-owned enterprise (the Indonesia Infrastructure Guarantee Fund) and flexibility with regard to foreign ownership of IPP operators for specific generation capacity or in special economic zones.

Land acquisition is infamous for being one of the most frustrating obstacles to implementing infrastructure projects in Indonesia.

Historically, investors had to conduct their own land procurement, but in 2012, Law No. 2/2012 on Land Procurement for Public Purposes was passed to facilitate IPP construction (among others) using eminent domain. Under the law and the regulations issued in 2014 and 2015 to implement it, provincial governments and the National Land Agency manage the acquisition process, from preparation through to relinquishment of existing land rights.

Also, the scheme of power wheeling is relatively new in Indonesia and recently developed by the government as a response to the inability of PLN to cope with high demand for electricity. On 6 January 2015 the MEMR issued MEMR Regulation 1/2015 concerning Electricity Supply Cooperation and Joint Utilisation of the Electricity Network. Generally, MEMR Regulation 1/2015 provides requirements for electricity supply cooperation; joint utilisation of the transmission and distribution network; electricity network interconnection; and purchase of excess power. Under this scheme, a company can develop a power plant in a specific area and then use the transmission network operated by PLN to supply an industrial area. Under the model, the private company must pay a transmission network leasing fee to PLN.

26 Prevention and prosecution of anti-competitive practices

Which authorities have the power to prevent or prosecute anti-competitive or manipulative practices in the electricity sector?

KPPU has the authority to investigate, review and sanction anti-competitive behaviour by companies. Because the only significant player in the electricity sector to date is PLN, and electricity tariffs are stipulated or approved by the government, anti-competition concerns have not arisen in Indonesia.

27 Determination of anti-competitive conduct

What substantive standards are applied to determine whether conduct is anti-competitive or manipulative?

Pursuant to the Anti-Monopoly Law, there are three prohibited categories. First, the law prohibits contracts that have elements of:

- oligopoly;
- price-fixing;
- dividing territory;
- boycotting;
- cartels;
- trusts;
- oligopsony;
- vertical integration; or
- exclusive dealing.

Second, the law prohibits activities that lead to monopoly, monopsony, market dominance, and conspiracy. The difference between prohibition of contracts and activities is the scope of the prohibition. The prohibition of contracts only applies to arrangements between two or more business entities, while the prohibition of activities could apply to a single business entity.

The third category involves prohibition of the abuse of a market dominant position. The abuse of market dominance provisions of the Anti-Monopoly Law focus on regulating interlocking directorates, share ownership, and mergers, acquisitions and dissolutions.

28 Preclusion and remedy of anti-competitive practices

What authority does the regulator (or regulators) have to preclude or remedy anti-competitive or manipulative practices?

The KPPU has the authority to preclude or remedy anti-competitive or manipulative practices by:

- appraising contracts and activities that may cause anti-competitive practices;
- giving suggestions and recommendations related to anti-competitive practices;
- investigating cases that may cause anti-competitive practices; and

- imposing administrative sanctions on business entities that violate the Anti-Monopoly Law including:
 - cancelling an agreement that causes anti-competitive practices;
 - ordering the entrepreneur to stop anti-competitive activities;
 - cancelling a merger, acquisition, or dissolution;
 - determining compensation; and
 - issuing fines up to 25 billion rupiah.

International

29 Acquisitions by foreign companies

Are there any special requirements or limitations on acquisitions of interests in the electricity sector by foreign companies?

The current negative investment list provides some limitations on foreign ownership in the electricity sector. Power generation under 1MW is closed to foreign investors. Generation from 1MW to 10MW may be conducted through a partnership with local entities in which foreign investors are limited to 49 per cent share ownership, while, for electricity generation above 10MW, electricity transmission, and distribution, the foreign investor may hold up to 95 per cent, or 100 per cent in the context of public-private partnership during the concession period. EPC and operation and maintenance are open for up to 95 per cent foreign share ownership.

The above foreign ownership limitations do not apply for power generation companies operating in special economy zones.

30 Cross-border electricity supply

What rules apply to cross-border electricity supply, especially interconnection issues?

Cross-border electricity supply through sale and purchase may be conducted by an IUPTL holder with an additional licence from the BKPM, including cross-border interconnection or joint use of network licence. Cross-border electricity sales may be conducted on the condition that:

- the domestic electricity demand has been fulfilled;
- the sale price of the electricity is not subsidised; and
- the cross-border electricity sale must not interfere with the quality and reliability of domestic supply.

Cross-border electricity purchases may be conducted if:

- domestic electricity demand has not yet been fulfilled;
- the purchase supports fulfilment of domestic demand;
- the purchase does not harm the interest of the state;
- the purchase improves the quality and reliability of the domestic supply;
- the purchase does not create dependency on foreign sources; and
- the purchase does not neglect the development of domestic electricity supply capacity.

The price of cross-border electricity must be related to the economic value of the electricity and must be approved by the MEMR.

Cross-border electricity sale and purchase activities are also subject to customs regulations. There is no tariff for cross-border electricity interconnection in Indonesia.

Transactions between affiliates

31 Restrictions

What restrictions exist on transactions between electricity utilities and their affiliates?

To date, there are no rules that restrict transactions between an entity carrying out electricity supply business and its affiliates, although in general, affiliated transactions are required to follow the arm's-length principle and arm's-length pricing documentation should be maintained.

State-owned enterprises are allowed to directly appoint their affiliates for goods and services procurement under certain conditions, as long as the arm's-length principle is also met.

32 Enforcement and sanctions

Who enforces the restrictions on utilities dealing with affiliates and what are the sanctions for non-compliance?

Affiliated transactions are subject to scrutiny by the Directorate General of Taxation, which has an aggressive transfer pricing unit. Sanctions for improper transfer pricing involve stiff penalties.



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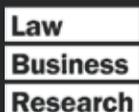
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