

# Electricity Regulation

*Contributing editors*

Daniel Hagan and Kirsti Massie



2017

GETTING THE  
DEAL THROUGH 

GETTING THE  
DEAL THROUGH 

# Electricity Regulation 2017

*Contributing editors*  
**Daniel Hagan and Kirsti Massie**  
**White & Case LLP**

Publisher  
Gideon Robertson  
gideon.roberton@lbresearch.com

Subscriptions  
Sophie Pallier  
subscriptions@gettingthedealthrough.com

Senior business development managers  
Alan Lee  
alan.lee@gettingthedealthrough.com

Adam Sargent  
adam.sargent@gettingthedealthrough.com

Dan White  
dan.white@gettingthedealthrough.com



Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 3708 4199  
Fax: +44 20 7229 6910

© Law Business Research Ltd 2016  
No photocopying without a CLA licence.  
First published 2013  
Fifteenth edition  
ISSN 1479-3210

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between September and October 2016. Be advised that this is a developing area.

Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112



## CONTENTS

<b>Global overview</b>	<b>5</b>	<b>Indonesia</b>	<b>110</b>
Daniel A Hagan and Kirsti Massie White & Case LLP		Arfidea Dwi Saraswati, Gabriella M C Ticoalu and Tara Priscilla Ogilvie Arfidea Kadri Sahetapy-Engel Tisnadisastra (AKSET)	
<b>Australia</b>	<b>6</b>	<b>Japan</b>	<b>117</b>
Andrew Monotti, Simon Cooke and William Osborn King & Wood Mallesons		Nagahide Sato and Sadayuki Matsudaira Nishimura & Asahi	
<b>Austria</b>	<b>14</b>	<b>Korea</b>	<b>124</b>
Bernd Rajal and Azra Dizdarevic Schönherr Rechtsanwälte GmbH		Joonki Yi and Chin Pyo Park Bae, Kim & Lee LLC	
<b>Bulgaria</b>	<b>22</b>	<b>Mexico</b>	<b>129</b>
Siyana Veleva and Gergana Shinikova Kinkin & Partners		Rogelio López-Velarde and Amanda Valdez Dentons López Velarde, SC	
<b>Canada</b>	<b>29</b>	<b>Nigeria</b>	<b>137</b>
Richard J King Osler, Hoskin & Harcourt LLP		Babatunde Irukera and Ikem Isiekwena SimmonsCooper Partners	
<b>Chile</b>	<b>35</b>	<b>Panama</b>	<b>147</b>
José Manuel Larraín, David Acuña and Ignacio Pera Larraín Rencoret Urzúa Abogados		Erika Villarreal Z, José A Brenes and Ixalondra Chee Chong Anzola Robles & Asociados	
<b>Costa Rica</b>	<b>45</b>	<b>Philippines</b>	<b>154</b>
Ruben Zamora-Castro Aguilar Castillo Love		Patricia AO Bunye Cruz Marcelo & Tenefrancia	
<b>Croatia</b>	<b>49</b>	<b>Poland</b>	<b>164</b>
Ivana Manovelo and Miran Macesic Maccesic & Partners LLC		Tomasz Chmal White & Case M Studniarek i Wspólnicy – Kancelaria Prawna sp.k.	
<b>Czech Republic</b>	<b>55</b>	<b>Portugal</b>	<b>170</b>
Vít Stehlík and David Wilhelm White & Case (Europe) LLP		António Vicente Marques AVM Advogados	
<b>Equatorial Guinea</b>	<b>62</b>	<b>Russia</b>	<b>175</b>
Maite C Colón and Juanita Avomo Mikó Nkene Centurion LLP		Adam Smith and Marina Rodina White & Case LLC	
<b>Finland</b>	<b>66</b>	<b>South Africa</b>	<b>181</b>
Katri Joenpolvi, Ville Hailikari and Mikko Pirttilä Krogerus		Joz Coetzer, Matthew Richards and Brenda Migwalla White & Case LLP	
<b>Germany</b>	<b>73</b>	<b>Switzerland</b>	<b>187</b>
Sabine Schulte-Beckhausen, Guido Hermeier and Kristin Spiekermann White & Case LLP		Marc Bernheim, Gaudenz Geiger and Damian Hess Staiger, Schwald & Partner Ltd	
<b>Ghana</b>	<b>80</b>	<b>Turkey</b>	<b>194</b>
Kimathi Kuenyehia, Sarpong Odame and Reginald Nii Odoi Kimathi & Partners, Corporate Attorneys		Değer Boden Akalın, Şeyma Olğun and Ayşegül Önel Boden Law	
<b>Greece</b>	<b>91</b>	<b>United Kingdom</b>	<b>204</b>
Dimitris Assimakis Norton Rose Fulbright		Kirsti Massie White & Case LLP	
<b>India</b>	<b>100</b>	<b>United States</b>	<b>212</b>
Neeraj Menon, Riyaz Bhagat and Pranjal Bhattacharya Trilegal		Daniel A Hagan, Jane E Rueger and John N Forbush White & Case LLP	

# Indonesia

Arfidea Dwi Saraswati, Gabriella M C Ticoalu and Tara Priscilla Ogilvie

Arfidea Kadri Sahetapy-Engel Tisnadisastra (AKSET)

## 1 Policy and law

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

Law No. 30 (2007) on Energy and Law No. 30 (2009) on Electricity (Electricity Law) are the main laws that govern the electricity sector in Indonesia. Their 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 procedures to obtain licences for electricity business, sale of power, and national and transnational interconnection. Provincial governments may also issue electricity regulations in line with the Electricity Law by virtue of the laws and regulations on regional autonomy. After the enactment of Law No. 23 (2014) on Regional Government (Law 23/2014), local government authorities (those of regent and mayor) have been reassigned to the provincial governments (governors).

As electricity is deemed vital and strategic, the business of electricity is controlled by the state and held by state-owned and region-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.

Further, the national electricity supply plan is implemented through a decree issued by the Ministry of Energy and Mineral Resources (MEMR) No. 5899 dated 10 June 2016 on the National Electricity Supply Plan for the period 2016 through 2025 (known as the 2016 RUPTL). An RUPTL provides, among others, the general policy on development of electricity and electricity infrastructure, an update on annual electricity grid status, development of new and renewable

energy, supply of primary energy, investment needs, analysis on long-term risks and possible mitigating actions. The 2016 RUPTL changes the electricity supply plan by expanding the power capacity in Java and Bali Islands, reducing coal use by targeting more new and renewable power plant construction and operation, and adding 45,000 kilometres to the transmission grids of across Indonesia, which mainly will be in Java and Bali Islands.

## 2 Organisation of the market

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

Power generation, transmission, distribution and sales may be operated in an integrated manner by one business entity within a business area determined by the government. Electricity generation, transmission, distribution, and sale for public use may be organised by business entities owned by the state and local government, as well as by the private sector under an Electricity Supply Business Licence (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.

Other than the above, electricity generation is also allowed for self-use, which requires an operational licence. Usually companies in Indonesian industrial zones generate electricity for self-use 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 MEMR, while for licences under the jurisdiction of the provincial or local government, an IUPTL is issued by the provincial one-stop integrated service (PTSP) on behalf of the governor. A power purchase agreement between the IUPTL applicant and its buyer (commonly, PLN) is a prerequisite to obtaining an IUPTL.

In terms of constructing generation facilities, an IUPTL holder may subcontract the construction to a qualified construction service provider through an engineering, procurement and construction (EPC) contract. The construction service provider is bound to the provisions of Law No. 18 (1999) on Construction Services and its implementing regulations.

Prior to the commencement of construction, an IUPTL holder must secure several licences from the regional and/or provincial government, among others, a building permit (IMB), location permit and environmental licence. Compensation to any party whose assets (land, buildings or plants) are directly or indirectly affected must be settled prior to commencing construction.

Further, in accordance with MEMR Regulation No. 5 of 2014 as amended by MEMR Regulation No. 10 of 2016 on Electricity Procedures and Certification (MEMR 5/2014), prior to the operation of generation facilities, the IUPTL holder must obtain an operational

feasibility certificate (SLO) issued by an institution accredited by the MEMR and registered with the Directorate General of Electricity (DGE) subject to a physical assessment by the technical team from the institution.

#### 4 Grid connection policies

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

Generation facilities are connected to the transmission grid subject to a power purchase agreement or a grid 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 by securing an SLO from an institution accredited by the DGE.

Under the 2016 RUPTL, the government has opened up the chance for interconnection between a hybrid solar PV and wind power plants with PLN's network in villages for the purpose of expanding the power grid in underserved areas and increasing the use of new and renewable energy.

#### 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.

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. 40 of 2014, there are 58 power plant projects and 40 transmission projects listed as fast-track Private Public Partnerships involving coal, geothermal, water and gas-fired power plants.

Further, the newly enacted Presidential Regulation No. 4 of 2016 on Development of Electrical Infrastructure (PR 4/2016) provides that for development of generation facilities using new and renewable energy, the central and/or regional government may give government support in the form of fiscal incentives, feed-in tariffs and outright subsidies. Thus far, the MEMR has issued several regulations stipulating procedures and feed-in tariffs for the purchase of electricity from renewable sources (eg, MEMR Regulation No. 19 of 2016 on Electricity Purchase by PLN from Solar Photovoltaic Power Generators (MEMR 19/2016)).

MEMR 19/2016 provides incentives for independent power producers (IPPs) by adjusting the feed-in tariff (formerly regulated in 2013) based on the location for solar PV IPPs in various regions in Indonesia, (US\$0.14-US\$0.25/kWh), steps for registering as an IPP developer and the quota capacity per region in Indonesia, guidance on the feasibility form and interconnection study, and a flowchart on the IPP licensing process from registration through commercial operation.

The purchase of power by PLN from geothermal, city waste-based and hydro power generators had been regulated earlier, respectively in 2009, 2011 and 2014 (geothermal) and 2015 (for city-waste and hydro generators).

#### 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 CO<sub>2</sub> emissions from deforestation and forest degradation, since 2010 the government has suspended 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 Storage

##### Does the regulatory framework support electricity storage including research and development of storage solutions?

There are currently no regulations on electricity storage. In general, the Energy and Mineral Resources Research and Development Body (LITBANG) under the MEMR is responsible for research and development in the fields of oil and gas, electricity, minerals and coal, new and renewable energy, energy conservation and sea geology. The authority of LITBANG's includes organising technical policies and implementing research and development.

#### 8 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 on 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

#### 9 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 to engage 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 as amended by MEMR Regulation No. 12 of 2016 on Electricity Business Licensing Procedures.

##### Issuing authority

In accordance with Law 23/2014 and MEMR Regulation No. 35 of 2014 on Delegation to BKPM of Authority in the field of Electricity for Implementation of the One Stop Service, the issuing authority of an IUPTL is now the BKPM or the provincial PTSP, based on their respective authority.

The 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. Further, the provincial PTSP is now authorised to issue an IUPTL to entities whose business areas are within a 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 IMB, location permit, and an environmental licence from the local government and must compensate any party whose assets (land, buildings, or plants) are directly or indirectly affected by the transmission network. Before commencing operation, a transmission installation must secure an SLO issued by an accredited technical inspection institution.

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.

#### 10 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. Specifically for an IPP, access to the grid is subject to the PPA with PLN governing the terms of the IPP's electricity transfer to PLN's transmission grid.

Other than the above, access to the grid may also be obtained through a lease agreement 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 or governor, 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.

#### 11 Government transmission policy

##### Are there any government measures to encourage or otherwise require the expansion of the transmission grid?

Since 2010, the government has assigned PLN to develop electricity infrastructures to meet the target of 35,000MW power generation and 46,000km transmission grid across Indonesia, particularly with the issuance of MEMR Regulation No. 15 of 2010 on List of Fast Track Projects in Renewable Energy, Coal and Gas Power Generation and the Relevant Transmissions, as amended four times, lastly by MEMR Regulation No. 40 of 2014. Consistent with this objective, PR 4/2016 specifically provides government financial support for the development of electrical infrastructures, including transmission grids, by PLN through an independent-management scheme.

Despite the regulations allowing private sector involvement in electricity transmission, the historical monopoly on transmission by PLN is expected to continue for some time. The expansion of transmission networks by the private sector may likely take longer to realise considering that the government incentives to encourage the development of transmission networks for private entities were only just introduced in early 2016. They are, among others, in the form of delegation of land acquisition to government institutions on behalf of private entities, and an increase in foreign ownership permitted in mid-high-voltage electricity.

#### 12 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), 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 a network lease agreement, through a Transmission Business Entity, may propose the price of power transmission by submitting a written application to the MEMR or governor for approval pursuant to MEMR Regulation No. 1 of 2015 on Cooperation for Electricity Supply and Joint Utilisation of Electrical Grid. The approved price or fee from the relevant authority may be in the form of a benchmark price.

#### 13 Entities responsible for grid reliability

##### Which entities are responsible for the 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 technical inspection institution will issue an SLO in connection with the installation and operation of the transmission grid.

In the event of non-compliance, 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

#### 14 Authorisation to construct and operate distribution networks

##### What authorisations are required to construct and operate distribution networks?

An IUPTL is the main licence needed 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. The BKPM (on behalf of the MEMR), or the provincial 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.

The stipulation of an electricity business area (WIUPTL) as a pre-requisite to apply for an IUPTL for distribution is subject to the procedures outlined in MEMR Regulation No. 28 of 2012 as lastly amended by MEMR Regulation No. 7 of 2016 on Procedures for Application for WIUPTL for Public Interest. Note that there may only be one business entity in a given WIUPTL. A WIUPTL may only be granted if such territory is not yet reached by a business entity covering a WIUPTL or if the business entity covering a WIUPTL in such territory is not capable of meeting electricity demands. Similar to transmission, despite the regulations allowing private sector involvement in the distribution business, the historical monopoly on distribution by PLN as the holder of most WIUPTLs in Indonesia is expected to continue for some time.

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

#### 15 Access to the distribution grid

##### Who is eligible to obtain access to the distribution network 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 access 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 or governor.

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

#### 16 Government distribution network policy

##### Are there any governmental measures to encourage or otherwise require the expansion of the distribution network?

Similar to the transmission business, distribution is technically open to the private sector. However, in practice, even private IPPs are still relying on PLN's distribution grid to supply their power to end users.

In terms of regulator involvement, MEMR Regulation No. 4 of 2009 on Provisions on Electricity Distribution stipulates a code of conduct for the distribution business, including standard policies for distribution, connection, operation, planning and settlement. Government incentives for private sector distribution business are not currently available.

### 17 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 (MEMR or governor) 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 or relevant governor. The approved fee may be in the form of a benchmark price.

### Regulation of electricity utilities – sales of power

#### 18 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, for sales 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.

#### 19 Power sales tariffs

##### Is there any tariff or other regulation regarding power sales?

Yes. As mentioned in question 18, there are two types of power sales 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 (MEMR or the Governor). The government has provided several feed in tariffs for purchase of electricity from IPPs for certain power generators (eg, MEMR Regulation No. 3 of 2015 on Procedures for Electricity Purchase and Benchmark Price for Electricity Purchase from Mine Mouth PLTU, Coal PLTU, PLTG/PLTMG, and PLTA by PLN through direct selection and direct appointment, MEMR Regulation No. 19 of 2015 on Purchase by PLN of Electricity from PLTA with capacity up to 10MW, and MEMR 19/2016).

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 or governor, subject to approval by the provincial 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 and a prepaid tariff.

Electricity is considered a good with a strategic purpose and is therefore exempted from VAT except for in housing with capacity of more than 6,600W.

#### 20 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 19, wholesale power tariffs are determined by the MEMR or governor, subject to approval from the provincial 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.

#### 21 Public service obligations

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

The underlying constitutional principle of the Electricity Law is article 33 of the 1945 Constitution of the Republic of Indonesia, which stipulates that sectors of production that are vital to the state and affect the greater livelihood of the people shall be under the power of the state. Further, the article provides that the land, waters and natural resources shall be under the powers of the state and used to the greatest benefit of the people. The core of the Electricity Law and electricity supply, therefore, is to achieve social welfare.

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.

Further, Law No. 30 of 2007 on Energy provides that the purpose of energy development is to increase energy access for unfortunate and isolated citizens and to reduce regional disparity with respect to.

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

### Regulatory authorities

#### 22 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 provincial (and 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.

### 23 Scope of authority

#### What is the scope of each regulator's authority?

The provincial and national houses of representatives reserve the right as consultation regulatory bodies for the central and provincial 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 provincial level, the provincial PTSPs hold similar licensing authorities with the BKPM, but as apply within the limits of their respective jurisdictions.

### 24 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 provincial governments. There is no independent regulatory authority.

### 25 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 (provincial and national houses of representatives, the MEMR or governor, and the 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 (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

### 26 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 the BKPM, in the event that the company is a foreign investment company or a local investor registered with the BKPM (Domestic Investment and Foreign Investment in Indonesia).

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 (KPPU), which has the authority to unwind mergers and acquisitions that lead to monopoly, anticompetitive 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 the KPPU, under Indonesian investment regulations acquisition transactions shall always refer to the negative investment list based on Presidential Regulation No. 44 of 2016, which regulates foreign share ownership of specific sectors in Indonesia, including electricity.

### 27 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, the 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 the KPPU no later than 30 days after the transaction takes effect. The KPPU will review the transaction within 90 days of receiving notification. Delay in notifying the KPPU can result in fines of 1 billion rupiah per day, up to 25 billion rupiah.

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

### 28 Prevention and prosecution of anticompetitive practices

#### Which authorities have the power to prevent or prosecute anticompetitive or manipulative practices in the electricity sector?

The KPPU has the authority to investigate, review and sanction anticompetitive 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, anticompetition concerns have not arisen in Indonesia.

### 29 Determination of anticompetitive conduct

#### What substantive standards are applied to determine whether conduct is anticompetitive 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.



### Update and trends

The government of Indonesia updated and issued several new regulations on electricity during 2015 and 2016. Under the presidency of Joko Widodo, the government has expressed a commitment to develop 35,000MW power generation facilities and 46,000km transmission grid across Indonesia 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, the MEMR has regulated procedures and standard prices for power purchase from mine-mouth, coal, gas, hydro power plants and others.

In order to implement the above objectives, the government enacted PR 4/2016, which elaborates measures and incentives to accelerate the development of electricity infrastructures. One of the highlights of PR 4/2016 is the government guarantee for PLN's financial obligations under PPAs in which PLN contracts with IPPs for electricity infrastructure that requires high funding, high risk, high fuel supply, and uses new and renewable energy to operate the power generator.

The current policies of the government show their eagerness to

promote the development of new and renewable energy by giving special incentives in the form of fiscal incentives, feed-in tariffs and subsidies as provided in PR 4/2016. Several regulations on feed-in tariffs for new and renewable energy such as MEMR 19/2015 for hydropower, MEMR 19/2016 for solar photovoltaic and MEMR 21/2016 for biogas and biomass have also been enacted in accordance with the mandate.

Finally, the scheme of power wheeling is relatively new in Indonesia and recently developed by the government as a response to PLN's inability to cope with the high demand for electricity. MEMR Regulation 1/2015 concerning Electricity Supply Cooperation and Joint Utilisation of the Electricity Network 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.

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.

### 30 Preclusion and remedy of anticompetitive practices

#### What authority does the regulator (or regulators) have to preclude or remedy anticompetitive or manipulative practices?

The KPPU has the authority to preclude or remedy anticompetitive or manipulative practices by:

- appraising contracts and activities that may cause anticompetitive practices;
- giving suggestions and recommendations related to anticompetitive practices;
- investigating cases that may cause anticompetitive practices; and
- imposing administrative sanctions on business entities that violate the Anti-Monopoly Law including:
  - cancelling an agreement that causes anticompetitive practices;
  - ordering the entrepreneur to stop anticompetitive activities;
  - cancelling a merger, acquisition, or dissolution;
  - determining compensation; and
  - issuing fines up to 25 billion rupiah.

### International

#### 31 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 (67 per cent for geothermal), 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 negative investment list now also allows up to 49 per cent foreign investment for construction and installation of mid and high-voltage electricity facilities, which formerly was restricted to domestic investment. For producers of biomass pellet, foreign investors may own 100 per cent shares with no further requirement for entering into a joint venture or partnership with a local company.

The above foreign ownership limitations only apply for related companies operating in special economic zones.



Arfidea Dwi Saraswati  
Gabriella M C Ticoalu  
Tara Priscilla Ogilvie

asaraswati@aksetlaw.com  
gticoalu@aksetlaw.com  
togilvie@aksetlaw.com

The Plaza Office Tower, 29th Floor  
Jl MH Thamrin Kav 28-30  
Jakarta 10350  
Indonesia

Tel: +62 21 2992 1515  
Fax: +62 21 2992 1516  
www.aksetlaw.com

### 32 Authorisation to construct and operate interconnectors

#### What authorisations are required to construct and operate interconnectors?

The Electricity Law recognises transmission and distribution grids as the only form of interconnectors. The transmission and distribution business is subject to IUPTL as the main operating licence. A WIUPTL must be secured prior to the IUPTL application. As previously explained, there may only be one business entity in a WIUPTL.

The applicant must also secure an IMB, location permit, and an environmental licence from the local government and must compensate any party whose assets (land, buildings or plants) are directly or indirectly affected by the transmission or distribution network. Furthermore, in accordance with MEMR Reg 5/2014, a transmission or distribution installation must secure an SLO before being allowed to operate.

### 33 Interconnector access and cross-border electricity supply

#### What rules apply to access to interconnectors and 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.

Further study of extra high voltage cross-border interconnection between Indonesian and Malaysia through Sumatera and Borneo grids is still progressing. Indonesia is in the process of amending its regulation regarding the cross-border interconnection. Among others, to update the Presidential Regulation No. 77 of 2008 on Ratification of Memorandum of Understanding on the ASEAN Power Grid, and Government Regulation No. 42 of 2012 on Cross-Border Power Purchase.

### Transactions between affiliates

#### 34 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.

#### 35 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.

## Getting the Deal Through

Acquisition Finance  
Advertising & Marketing  
Air Transport  
Anti-Corruption Regulation  
Anti-Money Laundering  
Arbitration  
Asset Recovery  
Aviation Finance & Leasing  
Banking Regulation  
Cartel Regulation  
Class Actions  
Commercial Contracts  
Construction  
Copyright  
Corporate Governance  
Corporate Immigration  
Cybersecurity  
Data Protection & Privacy  
Debt Capital Markets  
Dispute Resolution  
Distribution & Agency  
Domains & Domain Names  
Dominance  
e-Commerce  
Electricity Regulation  
Energy Disputes  
Enforcement of Foreign Judgments  
Environment & Climate Regulation  
Equity Derivatives  
Executive Compensation & Employee Benefits  
Financial Services Litigation  
Fintech  
Foreign Investment Review  
Franchise  
Fund Management  
Gas Regulation  
Government Investigations  
Healthcare Enforcement & Litigation  
High-Yield Debt  
Initial Public Offerings  
Insurance & Reinsurance  
Insurance Litigation  
Intellectual Property & Antitrust  
Investment Treaty Arbitration  
Islamic Finance & Markets  
Labour & Employment  
Legal Privilege & Professional Secrecy  
Licensing  
Life Sciences  
Loans & Secured Financing  
Mediation  
Merger Control  
Mergers & Acquisitions  
Mining  
Oil Regulation  
Outsourcing  
Patents  
Pensions & Retirement Plans  
Pharmaceutical Antitrust  
Ports & Terminals  
Private Antitrust Litigation  
Private Banking & Wealth Management  
Private Client  
Private Equity  
Product Liability  
Product Recall  
Project Finance  
Public-Private Partnerships  
Public Procurement  
Real Estate  
Restructuring & Insolvency  
Right of Publicity  
Securities Finance  
Securities Litigation  
Shareholder Activism & Engagement  
Ship Finance  
Shipbuilding  
Shipping  
State Aid  
Structured Finance & Securitisation  
Tax Controversy  
Tax on Inbound Investment  
Telecoms & Media  
Trade & Customs  
Trademarks  
Transfer Pricing  
Vertical Agreements

Also available digitally



# Online

[www.gettingthedealthrough.com](http://www.gettingthedealthrough.com)



Electricity Regulation  
ISSN 1479-3210



THE QUEEN'S AWARDS  
FOR ENTERPRISE:  
2012



Official Partner of the Latin American  
Corporate Counsel Association



Strategic Research Sponsor of the  
ABA Section of International Law