

## Client Alert

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## Expanded Coverage and New Feed-in Tariff for Indonesia's Waste to Energy Projects

President Joko Widodo recently signed the long awaited presidential regulation on the acceleration of development of waste to energy projects. Presidential Regulation No. 35 of 2018 ("**Regulation 35**") replaces Presidential Regulation No. 18 of 2016 ("**Regulation 18**"). Early last year, the Supreme Court decided that Regulation 18 contradicted the Environmental Law by allowing developers to start the construction of waste to energy facilities before the environmental license and building construction permit (IMB) had been obtained.

Regulation 35 rectifies this contradiction, and provides a more comprehensive legal framework for the development of waste to energy projects in some major cities in Indonesia. It also provides a wider city coverage than Regulation 18, covering twelve major cities in Java, Bali, Sumatra and Sulawesi, including DKI Jakarta.

Other key features of Regulation 35 are the introduction of a new single feed-in tariff and a specific subsidy from the state budget (APBN) for the payment of the waste management fee (commonly referred to as the "tipping fee").

### Project locations expanded

Regulation 18 provided for waste to energy projects to be implemented in DKI Jakarta and six other cities, i.e., Tangerang, Bandung, Semarang, Surakarta, Surabaya and Makassar. Regulation 35 expands this list to include South Tangerang, Bekasi, Denpasar, Palembang and Manado.

### Procurement Process

The key difference between waste to energy projects under Regulation 35 and other renewable energy projects relates to the manner in which PLN is permitted to procure power generated from the projects. For other renewable projects (except for geothermal), MEMR Regulation No. 50 of 2017 on Utilization of Renewable Energy ("**Regulation 50**") provides that PLN is the one carrying out the procurement process by way of a limited tender (and for geothermal, the tender for the award of the geothermal resource area is carried out by the MEMR). For waste to energy projects, Regulation 35 provides that the governor/mayor can assign a regional-owned enterprise (BUMD) to carry out the project, or to carry out a public tender to choose the developers. The tender is carried out based on the government procurement rules or public private partnership (PPP) rules. Under the government procurement and/or PPP rules, there are certain circumstances in which a project can be awarded to a developer on a direct-appointment basis (i.e., no competitive tender is carried out).



Direct appointment under PPP rules is allowed in any of the following situations:

- The project is an expansion of an existing infrastructure project by the same developer.
- The project utilizes a new technology and only one developer can provide that technology.
- The developer has acquired all or a majority part of the land required for the project.

Direct appointment under government procurement rules can only be done under very specific circumstances, including if:

- the goods/construction work/services can only be done by one capable provider; or
- the goods/construction work/services are specific and can only be done by a patent holder, or a licensee from a patent holder, or a party that wins a tender to obtain a license from the government.

Regardless of this, the wording in Regulation 38 suggests that a public tender is mandatory. So it would appear that the local government will still have to carry out a public tender even if there is a condition that will allow for a direct appointment under the PPP or government procurement rules (e.g., if a developer has acquired all or a majority part of the land required for the waste to energy projects).

Once a developer is selected by the local government, the MEMR will then assign PLN to purchase power from the developer. Regulation 35 requires the Power Purchase Agreement ("**PPA**") to be signed within 35 days after PLN receives the assignment letter from the MEMR. However, there is no specific timeline for the submission of nomination by the local government and the issuance of the assignment by the MEMR.

### **Dual Roles: Waste Management and Power Generation**

The selected developer will have dual roles as a waste manager (entering into a waste management agreement with the local government) and a power generator (entering into a PPA with PLN).

For the waste management function, the developer will be entitled to receive a fee from the local government, calculated based on the weight of the waste (in tonne) managed by the developer. Regulation 35 also provides that the state budget (APBN) can be allocated to provide additional funding for the payment of this waste management fee, capped at a maximum amount of IDR 500,000 (around US\$38.5) per tonne of waste.

For its power generation activities, the developer will be entitled to receive payment for electricity purchased by PLN that is generated using the waste as the feedstock (as discussed further below).



### **Foreign Ownership Restriction**

Power generation projects in Indonesia generally fall under the line of business of KBLI No. 35101 (power generation). This line of business is open for foreign investment with certain restrictions. Projects having a capacity of 1 - 10 MW are open for a maximum 49% foreign ownership, while projects with a capacity higher than 10 MW are open for a maximum 95% foreign ownership (or 100% if it is a PPP project). Interestingly, this KBLI No. 35101 specifically excludes power generation activities by way of waste incinerator, which falls under a different KBLI number below.

The line of business of waste management (whether producing electricity or not) falls under KBLI No. 38211 (management and disposal of non-hazardous waste). This line of business is currently open for 100% foreign ownership, thus removing the need for foreign investors to mandatorily find an Indonesian local partner.

However, it remains to be seen whether the Indonesian Investment Coordinating Board will be willing to approve a foreign investment (PMA) company having a PPA with PLN to have 100% foreign ownership under this KBLI number.

### **New Single Feed-in Tariff**

Regulation 50 sets tariff ceilings for renewable projects (including waste to energy) based on the published PLN cost of generation provision (commonly referred to by its Indonesian acronym, BPP) applicable at the time of the PPA signing. The tariff ceiling set using this BPP excludes the transmission cost (i.e., the cost involved in connecting the power plant to the existing PLN grid network), which will be determined based on business-to-business negotiation between PLN and the relevant developer.

Under Regulation 50, if the BPP for a certain local grid is higher than the national BPP, the tariff for a waste to energy project will be capped at 100% of the local local BPP. For projects in Sumatra, Java, Bali and other locations where the local BPP is equivalent to or lower than the national BPP, the tariff will be determined based on negotiation between the developer and PLN. Regardless of this, in practice PLN still seeks to cap the tariff in locations where the local BPP is already lower than or equivalent with the national BPP. The logic behind this is to prevent BPP for the next year going up.

The national BPP is currently set at USD 7.66 cents/kWh (see our [previous Client Alert](#)), with the local grid BPP of the relevant project locations as set out under Regulation 35 as follows:

- (a) USD 6.81 cent/kWh for Denpasar, and cities in Java covered under this Regulation 35 except for Surabaya and Thousand Islands in DKI Jakarta
- (b) USD 6.83 cent/kWh for Surabaya
- (c) USD 7.18 cent/kWh for Palembang
- (d) USD 7.28 cent/kWh for Makassar



- (e) USD 13.00 cent/kWh for Manado
- (f) USD 20.00 cent/kWh for Thousand Islands

Unlike Regulation 50, Regulation 35 sets out a definitive single feed-in tariff for all waste to energy projects, regardless of where the project is located and when the project achieves commercial operation:

- (a) for projects of up to 20 MW, the tariff is USD 13.35 cent/kWh
- (b) for projects of more than 20 MW, the tariff is determined based on the following formula:

$$\text{Tariff (USD cent/kWh)} = 14.54 - (0.076 \times \text{capacity})$$

The tariff already includes the transmission cost to PLN's transmission lines, without negotiation, without escalation, and is effective once the plant achieves commercial operation in accordance with the agreed schedule in the PPA. Given that: (i) the projects covered under this Regulation 35 are located in Sumatra, Java, Bali and Sulawesi where most of the local BPP is already lower than the national BPP; and (ii) the locations covered under this Regulation 35 are major cities with relatively good and expansive PLN networks, the tariff set out in Regulation 35 may be higher than those that IPP developers will get under Regulation 50. The exception is Manado and Thousand Islands, where currently the local BPP is higher than the national BPP, and therefore, under Regulation 50, the tariff for waste to power projects should be capped at the local BPP (excluding transmission cost).

Given that Regulation 35 is of a higher rank than Regulation 50, the tariff in Regulation 35 will be the one applicable for waste to power projects in cities covered in Regulation 35.

### Conclusion

The Supreme Court decision issued last year effectively halted the development of waste to energy projects in Indonesia, especially in large cities which were expected to bear the largest burden of helping to solve the municipal waste issue. Regulation 35 is a much-needed shot in the arm for the development of waste to energy projects, which to-date have been lagging well behind other types of renewable projects such as hydro, wind and solar.

Regulation 35 provides a more attractive tariff for waste to energy projects as well as stronger financial incentives and support from the central government. The main challenge, though, will be at the local government level. Regulation 35 requires local governments to take the lead in implementing waste to energy projects. However, the local governments may have less experience in dealing with PPP/infrastructure procurement process. For this regulation to be implemented effectively, we will expect the central government, together with PLN, to take the lead in providing standard guidelines for the procurement process.

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