

MEMR Guidelines on Setting Electricity Tariffs for Consumers outside PLN's Business Area: More Certainty for Business Area Holders

Client Alert

February 2019

For more information:

Nadia Soraya

Partner
+62 21 2960 8541
nadia.soraya@
bakermckenzie.com

Luke Devine

Foreign Legal Consultant
+62 21 2960 8600
luke.devine@
bakermckenzie.com

Ibnu Hasan

Associate
+62 21 2960 8614
ibnu.hasan@
bakermckenzie.com

In November last year, the Minister of Energy and Mineral Resources issued a regulation that provides guidelines for the determination of electricity tariffs to be charged by Electricity Supply Business License (IUPTL) holders for the consumers in their respective "business areas" (*wilayah usaha*)¹.

Electricity tariffs in a business area must be approved by the House of Representatives (*Dewan Perwakilan Rakyat* or **DPR**) or the relevant local legislative councils (*Dewan Perwakilan Rakyat Daerah* or **DPRD**). However, the Ministry of Energy and Mineral Resources (**MEMR**) found that of 50 business areas that had been awarded to business entities, only a few have had their electricity tariffs approved by DPR or DPRD. Business Area Holders whose tariffs have not been approved are not able to sell electricity to consumers in their business areas. The delays in the approval process are because the discussions within DPR and DPRD are rather lengthy. For this reason, the MEMR issued Regulation No. 47 of 2018 on the Procedures for the Determination of Electricity Tariffs (**Reg 47**).

Reg 47 is expected to enable IUPTL holders that have their own business area (**Business Area Holders**) to sell the electricity to their customers although the process of approval on the tariffs from DPR or DPRD is still pending.

What's new?

Reg 47 allows Business Area Holders to set temporary electricity tariffs for their consumers if the DPR or DPRD has yet to approve the electricity tariffs. Reg 47 also provides guidelines on how to obtain the determination of the tariffs from the Minister or the Governor prior to the application for approval of the tariff is made to the DPR or DPRD.

Mechanism of determination of electricity tariffs

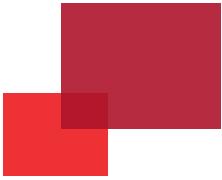
The basis for the MEMR or the relevant Governor to set the electricity tariffs will be the composition of the tariff structures (high, medium, or low voltage) and categories (such as social services, households, businesses).



¹ "Business area" is a non-PLN area designated by the MEMR for a business entity engaging in electricity distribution and/or sales of electricity to directly supply or sell the electricity to end customers.

Business Area is determined by the MEMR. A Business Area is stipulated if either:

- the area has not been covered by any existing Business Area holder (including PLN)
- any existing Business Area holder cannot provide electricity or distribution network with a good level of quality and reliability
- any existing Business Area holder releases a part or the whole of its Business Area to the MEMR



The electricity tariffs may be prepaid or postpaid and may be in either Rupiah or foreign currencies. However, tariffs in a foreign currency will still need to be paid in Rupiah using Jakarta Interbank Spot Dollar Rate (JISDOR) exchange rate at an agreed time.

Initial electricity tariffs

Before selling electricity to consumers for the first time, Business Area Holders need to apply for initial electricity tariffs to the MEMR or the Governor (depending on who issued the license of the Business Area Holder) together with the following documents within three months after the Business Area Holders have got their own consumers:

1. the electricity supply business plan
2. the principal cost of electricity supply borne by the Business Area Holder (*biaya pokok penyediaan tenaga listrik* or **Electricity BPP**), such as fuel costs, maintenance fees, administration fees
3. the composition of the relevant structures or categories of the electricity tariff

Reg 47 does not provide any explanation for what would be the condition for a Business Area Holder to be deemed to have a consumer. However, based on discussion with the MEMR, a Business Area Holder will be deemed to have a consumer when it, at least, has a memorandum of understanding with a prospective consumer.

The MEMR or the relevant Governor will evaluate the application by no later than 14 days after the submission. A public hearing with the relevant stakeholders, such as the other Business Area Holders in the same province and PLN will then be held within 14 days after the evaluation.

No later than 21 days after the public hearing the MEMR or the relevant Governor must propose to the DPR or DPRD respectively for the electricity tariffs to be approved. 14 days after the DPR or DPRD approves the proposed tariff, the MEMR or the relevant Governor will issue the determination of the electricity tariff.

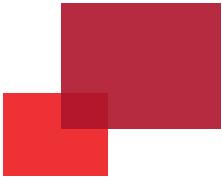
Determination of electricity tariff adjustment

Business Area Holders may apply for tariff adjustment if there is a significant change to the Electricity BPP to be determined by the MEMR or the Governor and approved by the DPR or DPRD. The adjustment can be applied for through the same procedures and mechanism as the determination of initial electricity tariffs.

Temporary electricity tariffs

To provide certainty to Business Area Holders, if the DPR or DPRD has not approved the tariffs within three months after the submission of a proposal from the MEMR or the relevant Governor, the Business Area Holder must set a temporary tariff by referring to the tariffs set by PLN or other Business Area Holders (which have been approved by the DPR or DPRD) in the same Province and with the same structure and category.

The temporary tariffs will be valid for six months.



If the DPRD still has not issued its approval within six months, the relevant Governor must determine permanent electricity tariffs based on the electricity tariffs of PLN or other Business Area Holders. However, we understand from the MEMR that the Business Area Holders will still need to submit a request for determination of the permanent electricity tariffs to the Governor.

Reg 47, however, does not set a deadline for the approval of electricity tariffs by the DPR. Therefore, the timeframe for the DPR's approval of electricity tariffs remains unclear in this respect. We understand from our discussion with the MEMR that the MEMR believes that the DPR should be able to issue its approval within six months.

Reporting requirements

MEMR Reg 47 requires Business Area Holders to report their electricity tariff realization, sales of electricity and electricity BPP quarterly to the MEMR or the relevant Governor. The reports will be reviewed by the MEMR or the relevant Governor, by considering, among other things, inflation and foreign exchange rates. Following the review, the MEMR or the relevant Governor may determine new electricity tariffs that are subject to approval from the DPR or DPRD.

Conclusion

Reg 47 gives detailed procedures for the determination of the electricity tariff for consumers outside PLN's Business Areas that are more favorable for Business Area Holders, as they are now allowed to determine temporary tariffs while waiting for the approval from the DPR or DPRD. Therefore, Business Area Holders are now guaranteed to be able to sell electricity to consumers sooner using these temporary tariffs. However, there is still uncertainty with respect to the timeframe for the approval from DPR, as Reg 47 does not set a clear timeframe.



www.hhp.co.id

HHP Law Firm
Pacific Century Place, Level 35
Sudirman Central Business District
Lot. 10
Jl. Jenderal Sudirman Kav. 52-53
Jakarta 12190
Indonesia

Tel: +62 21 2960 8888
Fax: +62 21 2960 8999

©2019 Hadiputran, Hadinoto & Partners is a member firm of Baker & McKenzie International, a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.