

Draft Government Regulation on Renewable Energy: Energy Supplier Obligations, Incentives, and Allocation of Budgetary Funding

Overview

Government Regulation on the Development of New Energy Sources and Renewable Energy ("Draft") is currently being drafted and is expected to be issued in the relatively near future.

The Draft addresses, at times in very general terms, the utilization and development of 'new energy' and 'renewable energy' sources, with a view to establishing a legislative framework to systematically encourage and regulate the development of the energy sector in relation to such energy sources.

Broadly, the Draft creates both obligations, under Article 3, to provide a certain amount of renewable energy, and incentives, under Article 8, to do so and to develop the renewable energy sector in general.

This edition of the Indonesian Law Digest will highlight the key features of the Draft and provide analysis of the Draft's provisions.

Purpose

The stated purpose of the Draft is to implement Articles 22 and 30 of Law No. 30 of 2007 on Energy. More specifically, the purpose of the Draft is to set out a general framework to address renewable energy sources, while at the same time creating several concrete provisions (such as the Article 3 obligations and Article 12 funding allocation) that can serve to guide the drafting of later regulations on the subject.

Broadly, the Draft aims to mandate and encourage the use of renewable energy sources, with a more long-term goal, stated in Article 11 (3), of encouraging the development of an independent national energy industry.

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Definitions

'New energy' is defined by Articles 1 (3) and (4) as originating from 'new technologies' and including renewable energy as well as non-renewable energy sources such as: nuclear, hydrogen, coal bed methane, liquefied coal, and gasified coal.

'Renewable energy' is defined by Articles 1 (5) and (6) as originating from sustainable energy sources, such as geothermal, wind, biological, solar, and hydrodynamic.

National Plan

The supply of new and renewable energy will have to be done in accordance with a National Energy Plan, in accordance with Article 2 (1), with the local authorities setting out targets for provision of new and renewable energy in line with the plan, in accordance with Article 2 (2). Such a plan will be prepared at a later date, in accordance with the applicable guidelines, which are to be issued by means of further Presidential Regulation.

Supplier Obligations

Utilization

Once the Government Regulation based on the Draft is issued, certain energy suppliers will be required to utilize a certain amount of energy originating from new and renewable energy sources. However, pursuant to Article 15 (1), such requirements will only apply to suppliers whose licenses are issued after the issuance of the Government Regulation based on the Draft.

Electricity suppliers have to provide electricity derived from new or renewable energy sources pursuant to Article 3 (1). With a specified minimum of 15% of total electricity generated being derived from renewable energy sources pursuant to Article 3 (4). However, Article 4 (1) permits electricity suppliers to either produce their own new and renewable energy, or to buy it from third parties, with the conditions and procedures of such purchases to be regulated by Article 5 and further ministerial regulation according to Article 4 (3).

Oil suppliers who hold a wholesale license have to provide oil derived from new or renewable energy sources pursuant to Article 3 (2). With a specified minimum content of 20% of biofuel in the oil being distributed pursuant to Article 3 (3). With the stages of implementation of this requirement being left to be elaborated on in further ministerial regulation.

Reporting

Both the electricity and the wholesale oil suppliers, discussed above, are obliged to report the amount of energy produced each year, in accordance with Article 3 (5), with the exact procedures and format of the report being left to further ministerial regulation under Article 3 (6). Furthermore, electricity suppliers are obliged to report the amount of new and renewable energy produced as well as purchased, in accordance with Article 4 (2).

Assistance

The Draft contains a number of provisions on the assistance that will be offered to energy suppliers, with Articles 6 (2) and (3) stating that central and local government will encourage businesses to utilize new and renewable energy, preferably from locally derived sources. And that business entities should give priority to utilizing energy derived from such sources, over non-renewable energy, pursuant to article 6 (1).

Incentives

Incentives, and facilities, to provide and use new and renewable energy, as required and encouraged under Articles 3 and 6, respectively, are provided for under Article 7.

Assistance is provided in the form of the provision of information on potential new energy resources, technology, and human capital, as well as a simplified licensing procedure, under Article 8 (1).

Incentives are enumerated in Article 8 (2), and are available to limited liability companies (*Perseroan Terbatas* / PT) operating in the area of new and renewable energy pursuant to Article 9 (1), taking the form of:

- capital injection in the form of soft loans
- establishment of the sale price of electricity derived from new and/or renewable sources
- compensation for energy price differences between new and renewable energy and oil
- value added tax exemption or deferral for importation and purchase of equipment
- import duty reduction for equipment
- value added tax reduction for the sale of electricity derived from new or renewable energy sources
- income tax reduction

The funding for the provision of soft loans will be managed by a new entity that will be established by the Minister of

Energy and Mineral Resources, pursuant to Article 10 (1). With the possible funding sources being enumerated in Article 10 (2) as: the state and local budgets, various energy sector entities, revenue derived from the exploitation of fossil fuels, unconditional grants, and other sources.

It is of note however that the above incentives part of the Draft has yet to be synchronized with Law 25 of 2007 on Investment. And the exact incentives remain to be determined by the Minister of Energy and Mineral Resources, while the conditions and procedures for their availability are to be set out in further Minister of Finance regulation pursuant to Articles 9 (2) and (3), respectively.

Research and Development

Central and local government is also to facilitate, and fund along with the private sector, research and development in the areas of new and renewable energy, for the purpose of supporting the development of and independent national energy industry, pursuant to Article 11.

The specific funding allocation being 3% of state revenues derived from non-renewable energy, under Article 12 (2).

Guidance and Supervision

The provision of new and renewable energy will be guided and supervised by the Minister of Energy and Mineral Resources, local governors, regents, and mayors, pursuant to Article 14 (1). The extent of such guidance and supervision is unclear from the current Draft, with further details having been left to further ministerial regulation that will address the guidelines to be followed by the above entities in providing the guidance and carrying out their supervision duties.

Sanctions

The Sanctions regime is contained in Article 13 (1) and sets out administrative sanctions for:

- energy suppliers failing to utilize the minimum required percentage of new and/or renewable energy (Article 3)
- energy suppliers failing to fulfil their reporting obligations (Article 4)
- electricity suppliers violating the procedure for the purchase of new and renewable energy from third parties (Article 5)

In the form of:

- written warnings
- temporary or permanent suspension of business operations

- revocation of business licenses

The regulation of the procedures for the application of the above-listed administrative sanctions is however left to the Minister of Energy and Mineral Resources, the governors, regents, and mayors, pursuant to Article 13 (3).

Conclusion

The Draft provides a view into the scope and several substantive requirements of the forthcoming Government Regulation that will aim to address the utilization of new and renewable energy sources. As such, it is welcome in that it provides an overview of what shape the legislative scheme concerning renewable energy will ultimately take. And in that it sets out several concrete obligations, in Article 3, and provides a list of incentives that will be available, in Article 8, along with a definitive funding commitment under Article 12.

However, the current Draft, which is the version made available in August 2010, is far from a comprehensive legislative scheme, with a lot of details being left to further regulation.

Importantly, under the current version of the Draft, the requirements listed in Article 3 are only applicable to license holders whose licenses are issued after the passage of the Government Regulation. Which means that the legislative scheme requirements, although appearing ambitious at first, will in fact be introduced in a very gradual manner, and will most likely have little effect on the already established energy suppliers operating in Indonesia. They may however, depending on the exact extent of the incentives under Article 8 relative to the Article 3 requirements, either deter or encourage the entrance of new players into the Indonesian energy supply market.

The date of the ultimate issuance of the Government Regulation is unclear, although the Draft is reported to have been forwarded to the Ministry of Energy and Mineral Resources as of August 2010. 🇮🇩