

## Energy

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**T**he Energy Bill passed the House of Representatives (Dewan Perwakilan Rakyat / DPR) on 17 July 2007. The Bill if not signed by the President within 30 days of it being passed will self-execute on day 30 meaning the Bill will come into full force and effect no later than 16 August 2007. The basic premise of the Bill is to facilitate the implementation of Article 33 of the 1945 Constitution of the Republic of Indonesia. The Article mandates that energy is a resource that is to be controlled by the State with a view to ensuring the prosperity of the community; in essence energy is to be managed in such a way as the security and the benefits derived from Indonesia's energy resources are done so for the greatest benefit of the community as a whole.

To this end the Bill covers some basic elements; energy regulation, energy reserves, Central and Regional Government authorities, national energy policy, the establishment of a National Energy Council, the rights and obligations of the community, guidance and supervision of energy management, and research and development.

However, despite the local elements there is also a realization that global development and demand has increased exponentially over recent years and is likely to continue to do so for the foreseeable future and this will lead to increasingly sophisticated and technologically advanced mechanisms being developed to supply energy as a means to drive continuing industrialization. Nevertheless, these advancements have not come without associated costs such as a rapid increase in the destruction of the earth itself with global warming being the most obvious of these.

For Indonesia there are specific problems such as the continual increase in population. An ever-increasing population will over time place additional burdens on the State to provide sufficient energy to serve this population. The assumption is that at a modest increase of just 1.4 % per annum Indonesia's population in 2050 will be in excess of 400 million.

The impacts of this sort of growth are going to be across multiple fronts. The most relevant of these in terms of energy are that Indonesia's fossil fuel reserves will deplete increasingly quickly and if alternative energy reserves or forms are not found or developed there will be a point where critical mass is achieved and Indonesia will enter into a period of energy crisis where it is unable to supply the necessary amounts of energy to support its population or being able to secure provision from other sources.

The other front that is relevant for energy where the reliance has been on the burning of fossil fuels is the increasing pollution. It does not require a science degree to see the pollution that already inhabits the air around Jakarta, it is as simple as stepping outside of one's office and looking up at the sky where there is an enveloping haze.

The Energy Bill has been drafted and passed with a number of considerations being paramount in both the drafters' and the legislators' minds, namely: Indonesia has not ever had a comprehensive and integrated national energy policy that demanded maximization of energy management. These concerns have generally been grouped into 6 broad categories: the lack of vision and sustainable clear targets in the national energy policy, weak management and supervision of the energy sector, slowness in the program to diversify Indonesia's energy usage, lack of knowledge regarding energy conservation, the over-dependence on fossil fuels which account for about 54% of Indonesia's total energy usage, and finally fuel subsidies which have now reached some IDR 100 trillion annually.

This has meant that over time the State has become less able to guarantee its ability to ensure energy supply or procurement. This lack of energy security has serious implications other than those of simple energy supply. The

inability to supply energy at cost-sustainable prices to the community will give rise to situations that may endanger internal security and perhaps even national security and defense. Nevertheless, the major of these threats will be domestic dissatisfaction with the Government's inability to guarantee supply and maintain prices. The most obvious example of this is the widespread protests that greeted the Government's decision to reduce the subsidies on fuels such as kerosene. In economic terms the Government needs to manage the reduction of subsidies process as the threat comes not only from increasing fuel prices but the trickle down effect that this will have on prices across the board and the subsequent inflationary pressures that will arise.

When all these things are considered it becomes increasingly obvious that energy is a strategic resource for Indonesia and it makes sense to have a specific piece of legislation to ensure that management of the resources and sector is optimized and maximized to ensure long-term sustainability is achieved. Even though from a constitutional perspective the State is obligated to manage energy resources and reserves, this would appear to be relevant to resources or reserves that are exploited from the natural environment.

However, this interpretation in and of itself is too narrow. The constitutional provisions also appear to imply that the State has a responsibility to research and develop new and alternative energy sources. Some of these may be natural in nature such as harnessing the power of ocean waves or the wind, but it might also be the generation of nuclear power technologies that will require the import of the necessary raw materials from other States to supply nuclear power generators developed and built in Indonesia. This ILD does not intend to focus on the arguments for an against certain energy technologies nor enter into debate about the environmental pros and cons of the development of technologies such as nuclear power.

The trend in Indonesian legislation is to take the necessary time to draft appropriate and effective legislation. Although this is subject to debate considering the amount of legislation that has found its way to the Constitutional Court for judicial review. However, this particular issue is outside the scope of this particular ILD. The discussion and debate process extended for almost 2 years and would be best characterized as a multi-stakeholder negotiation including stakeholders from professional organizations, the private sector, NGOs, foundations, institutes of higher education.

The other important feature of the negotiation process was public consultation pursuant to Article 53 of the Legislation Drafting Law (Law No. 10 of 2004).

The Energy Bill is not a stand alone Bill and must be read in conjunction with other associated legislation within the sector, specifically the laws on Geothermal Power (Law No. 27 of 2003), Nuclear Power (Law No. 10 of 1997), Oil & Gas (Law No. 22 of 2001), Mining (Law No. 11 of 1967), and Electricity (Law No. 15 of 1985). The Bill attempts to draw all of these energy sources together in terms of trying to reflect the established integrated policy approach to energy exploitation, conservation, and the pursuit of alternative energy sources.

Considering the intent of the Bill it is surprising short consisting of just 10 Chapters and 34 Articles. Nevertheless, as with most Indonesian legislation the law is general and relies heavily on the confirmation of subsidiary implementing regulations to give full force and effect to the provisions of the law. In this regard the Energy Bill is no different.

The main features of the Bill that must be noted are that:

- 1 the Government is obligated to develop a national energy strategy that ensures diversification and conservation of energy sources and this is to be achieved generally through better energy management;
- 2 the Government needs to strengthen the legal basis of the national energy policy by garnering the agreement of the DPR;
- 3 the Government is to establish a National Energy Council (*Dewan Energi Nasional/ DEN*);
- 4 that the Government is to develop and use advanced technologies to ensure environmental protection and work safety in the provision of energy;
- 5 that the Central and Regional Governments' are to promote and provide incentives for the development of new and alternative energy sources;
- 6 the Government is to provide incentives for the conservation of energy;
- 7 the price of energy is to be determined after considering economic conditions and fairness, particularly for those members of the community that cannot afford energy and where the Central and Regional Governments will have to provide subsidies; and
- 8 the community has a right to obtain energy but also

maintains a right to participate in the compilation of energy plans and the development of energy.

These features give rise to a number of actions that the Government must immediately set in motion. The Bill requires a number of Government Regulations to be issued. These Regulations were not prepared simultaneously and consequently must be completed quickly to ensure that the Bill is an effective law. The Bill also requires the establishment of the National Energy Council (DEN) which must be in operation no later than 6 months after the Bill is enacted into Law. The establishment of the DEN is critical as it is this Council which is to create the National Energy Plan and also is to be instrumental in the handling of energy crises and other energy emergencies.

From a business perspective the Bill also has some significant implications for how businesses will manage their energy usage but even more so for businesses that are involved in the development of new and alternative energy sources and technology. The major implication here is to be the development of an incentive and disincentive scheme. For businesses that use energy these incentives are likely to reward them for conservation and reduced consumption and conversely punish them for excessive usage and an inability to reduce or conserve energy. However, for businesses that develop new or alternative energy sources then there will be incentives that support these initiatives. The increasing use of alternative or new energy sources is not likely to be punished with disincentives as these disincentives are specifically geared to reducing Indonesia's reliance on fossil fuels.

The Energy Bill is a critical part of the Government's plan to ensure that Indonesia maintains current competitiveness and becomes increasingly more competitive in global markets while guaranteeing energy self-sufficiency and security into the future. It is a bold piece of legislation in its intent however it relies heavily on subsidiary legislation to give it the necessary effect and then delegates much of this responsibility to the DEN. The Government must ensure that the membership of the DEN have the requisite skills and knowledge to give body to the vision of the Bill. 🇮🇩