

RENEWABLE ENERGY PRICING & TRANSITION – SOME CERTAINTY AT LAST¹²³⁴⁵

INTRODUCTION

After seemingly endless and mostly unexplained delays, stretching over several years, the Government has finally issued the long-awaited Presidential Regulation on the pricing of electricity generated from renewable energy resources and related matters.

The Government has opted for two, rather than three, electricity pricing alternatives, dropping altogether the so-called “feed-in tariff” alternative that was an integral part of the last widely circulated 2021 draft of the Presidential Regulation. The Government has also considerably expanded the scope of the Presidential Regulation, compared to the numerous earlier drafts, so as to deal specifically with the phasing out of electricity plants utilizing coal.

The new Presidential Regulation improves the “economics” of developing Indonesia’s renewable energy resources by providing for an electricity pricing structure that expressly recognizes the need to take into account the geographical location of renewable energy resources/renewable energy power plants in pricing electricity generated from renewable energy resources.

It remains to be seen, however, whether or not the new Presidential Regulation is sufficient, by itself, to spur meaningful development of Indonesia’s renewable energy resources given the absence of a feed-in tariff as long sought by investors. It is also questionable whether or not the new Presidential Regulation will do much to “fast track” the phasing out of coal fired power plants.

In this article, the writer will review the main provisions of the new Presidential Regulation as well as evaluate the potential significance of the new Presidential Regulation.

BACKGROUND

Much has been said and written about Indonesia’s potentially vast renewable energy resources including geothermal (“**PLTP**”), hydro (“**PLTA**”), solar (“**Photovoltaic PLTS**”), wind (“**PLTB**”), biomass (“**PLTBm**”), biogas (“**PLTBg**”), tidal (“**Ocean PLT**”) and liquid biofuel (“**PLT BBN**”) energy (together, “**Renewable Energy Resources**”).

The Ministry of Energy & Mineral Resources (“**ESDM**”) has estimated that Indonesia has Renewable Energy Resources equivalent to (i) 28.5 GW from PLTP, (ii) 75 GW from PLTA, (iii) 207 GW from Photovoltaic PLTS (iv) 60 GW from PLTB and (v) 32 GW from PLT BBN. Yet, to date, Indonesia has only managed to utilize a tiny fraction of its Renewable Energy Resources.

Numerous reasons can be advanced for why Indonesia has, so far, made very modest progress at best in developing and utilizing its Renewable Energy Resources. Unquestionably, however, the non-

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commercial, pricing structure or tariff for electricity generated from Renewable Energy Resources (“**RE Electricity**”) has been the most significant problem (“**NC Tariff Problem**”).

In early 2021, the Government seemed to get very close to finalizing a new Presidential Regulation that sought to address the NC Tariff Problem by introducing three different pricing structures to be used in determining the purchase price payable by PLN for RE Electricity (“**RE Electricity Price**”), being (i) Feed-in Tariff Price, (ii) Highest Benchmark Price and (iii) Strike Price (“**2021 Draft Presidential Regulation**”). The renewable energy industry waited in vain for the 2021 Draft Presidential Regulation to be finalized and issued. Instead, the 2021 Draft Presidential Regulation simply “disappeared into the ether” and it seemed that nothing further was going to be heard about it ever again.

On 13 September 2022, however, the President signed Presidential Regulation No. 112 of 2022 re Acceleration of the Development of Renewable Energy for the Supply of Electrical Power (“**PR 112/2022**”). PR112/2022 is clearly intended to be the expanded and “improved” final version of the never issued 2021 Draft Presidential Regulation.

ANALYSIS AND DISCUSSION

1. Overview of PR 112/2022

PR 112/2022 deals with a number of different but inter-related matters including:

- (a) prioritization of development and use of Renewable Energy Resources as part of the rolling 10 year national electrical power supply business plan (“**RUPTL**”);
- (b) promotion of energy transition through the phase-out of coal-fired power plants (“**PLTUs**”);
- (c) introduction of a new pricing regime for PLN’s purchase of RE Electricity;
- (d) introduction of a new PLN purchasing regime for RE Electricity;
- (e) incentives and support for the development of power plants utilizing Renewable Energy Resources (“**RE Power Plants**”); and
- (f) compensation for PLN in certain circumstances.

The wording of PR 112/2022 leaves a lot to be desired in terms of clarity and intended meaning. Different interpretations are possible and it has not proved possible for the writer’s staff to satisfactorily resolve all the areas of uncertainty. Accordingly, some of the points made in Part 2 below are necessarily speculative and may change in due course.

2. Some Aspects of PR 112/2022 in Detail

2.1 Use of RUPTL to Prioritize Renewable Energy Resource Development

PLN is responsible for both the preparation and the implementation of RUPTL.

In preparing RUPTL, PLN is required to take into consideration:

- (a) development of Renewable Energy Resources in accordance with the renewable energy target mix as set out in the general national electricity plan;
- (b) the need to achieve a balance between the available supply of and demand for Renewable Energy Resources; and
- (c) the economics of RE Power Plants (Article 2(1) of PR 112/2022).

When it comes to RUPTL implementation, PLN is mandated to:

- (a) prioritize the purchase of RE Electricity;
- (b) ensure the operation of RE Power Plants on a “must run” basis and having regard to the characteristics of the relevant Renewable Energy Resource and the capacity of the electricity grid under “low-load” conditions;
- (c) utilize local goods (but **not**, so it would seem, local services) in accordance with applicable laws and regulations; and
- (d) encourage the development of RE Power Plants (Article 2(3) of PR 112/2022).

2.2 Phasing Out of Coal Fired Power Plants

The Minister of Energy & Mineral Resources (“**MoEMR**”) is to prepare, in conjunction with the Minister of Finance (“**MoF**”) and the Minister of State Owned Enterprises (“**MoSOE**”), a “road map” for “accelerating” the phasing out of PLTUs (Article 3(1) of PR 112/2022).

The construction of new PLTUs is expressly prohibited **except** in the case of new PLTUs which:

- (a) are already included in the current 2021 - 2030 RUPTL; or
- (b) are **not** included in the current 2021 - 2030 RUPTL **but** fulfil the following requirements:
 - (i) are integrated with industries focused on increasing the local added value of natural resources or are part of designated national strategic projects making a major contribution to job creation and/or national economic growth;
 - (ii) [have project sponsors] committed to decreasing greenhouse gas [from the relevant PLTU] by at least 35% within 10 years of the relevant PLTU commencing operations, when compared to average Indonesian PLTU emissions in 2021, through technology advancements, carbon offsets, and/or renewable energy mix; and
 - (iii) will only operate until not later than 2050 (Article 3(4) of PR 112/2022).

PLN is also obliged to “accelerate” the (i) phasing out of PLN-owned/operated PLTUs, (ii) termination of PLN’s electricity sale and purchase agreements (“**PJBLs**”) with privately

owned PLTUs and/or (iii) replacement of PLTUs with RE Power Plants, taking into account the following considerations re the relevant PLTU:

- (a) capacity of PLTU;
- (b) age of PLTU;
- (c) PLTU utilization;
- (d) level of PLTU greenhouse gas emissions;
- (e) PLTU economic added value;
- (f) availability of domestic and foreign financial support [for replacement of PLTU with RE Power Plant]; and
- (g) availability of domestic and foreign technological support [for replacement of PLTU with RE Power Plant] (Article 3(5) to (7) of PR 112/2022).

The Government may provide fiscal support, through a funding and financing framework that includes so-called “blended finance”, from the state revenue budget and other legitimate sources in connection with phasing out PLTUs and otherwise accelerating the transition to reliance on RE Power Plants. The details of the available fiscal support and how it is to be administered will be set out in a MoF regulation (Article 3(9) to (11) of PR 112/2022).

2.3 **New Pricing Regime**

2.3.1 **Outline:** PR 112/2022 provides for two different schemes in determining the RE Electricity Price. The two RE Electricity Pricing schemes are:

- (a) Maximum Benchmark Price; and
- (b) Agreed Price (Article 5(1) of PR 112/2022).

The two RE Electricity Pricing schemes are mutually exclusive.

The applicable RE Electricity Pricing scheme, in any situation, depends on (i) the Renewable Energy Resource used by the relevant RE Power Plant and (ii) the intended use to be made of the relevant RE Power Plant.

In the case of each of the Maximum Benchmark Price and the Agreed Price, the RE Electricity Price, otherwise payable by PLN for electricity from a particular RE Power Plant, may be subject to adjustment depending upon just where that RE Power Plant is located and utilizing a so-called location factor or “**F**”. “**F**” (i) is only relevant during the first ten years of a PJBL and (ii) varies between 1.00 and 1.50 (Article 5(2) and Appendix II of PR 112/2022).

The Maximum Benchmark Price (but **not** the Agreed Price) and the resulting RE Electricity Price calculations are to be reviewed annually by MoEMR in conjunction with MoF and MoSOE (Article 5(4) to (6) of PR 112/2022).

2.3.2 **Maximum Benchmark Price:** There are two alternative versions of the Maximum Benchmark Price in certain situations as follows:

- (a) The Maximum Benchmark Price **First Alternative** is the price payable by PLN, per kWh, for RE Electricity, which price:
 - (i) is subject to negotiation and agreement, with a “ceiling” being the Maximum Benchmark Price specified in Annexure I of PR 112/2022 and then multiplied by the applicable location factor, F (if any), during the first ten years only of the relevant PJBL;
 - (ii) is **not** subject to escalation during the PJBL term; and
 - (iii) serves as an approval from MoEMR (**i.e., no** separate MoEMR approval needs to be obtained) (Article 6(1) of PR 112/2022).

- (b) The Maximum Benchmark Price **Second Alternative** is the price payable by PLN, per kWh, for RE Electricity, which price:
 - (i) is subject to negotiation and agreement, with a “ceiling” being the Maximum Benchmark Price (as specified in Annexure I of PR 112/2022) and then multiplied by the applicable location factor, F (if any), during the first ten years only of the relevant PJBL term or during the first ten years only of the term of the relevant geothermal steam sale and purchase agreement as the case may be (“**PJBU**”);
 - (ii) operates as a base price;
 - (iii) is subject to escalation during the relevant PJBL term or PJBU term as the case may be; and
 - (iv) serves as an approval from MoEMR (**i.e., no** separate approval is required from MoEMR) (Article 6(2) of PR 112/2022).

- (c) The Maximum Benchmark Price varies depending upon:
 - (i) whether the relevant RE Power Plant has been/will be (i) wholly built by private sector business entities (**i.e., PPL**) or (ii) wholly or partially built by the Central Government or a Regional Government including with or without the benefit of grants;
 - (ii) the capacity of the relevant RE Power Plant;
 - (iii) whether the relevant PJBL is currently in years 1 to 10 or years 11 to 30 of its term;
 - (iv) whether or not the RE Electricity to be purchased is (i) the result of an expansion of the relevant RE Power Plant’s generating capacity in the case of RE Electricity generated by RE Power Plants using PLTA, Photovoltaic PLTS, PLTB, PLTBm or PLTBg or (ii) excess electricity in the case of RE Electricity generated by RE Power Plants using PLTP, PLTA, PLTBm or

PLTBg; and

- (v) in the case only of RE Electricity generated by RE Power Plants using Photovoltaic PLTS, whether or not land for the relevant RE Power Plant has been provided by the Central Government or a Regional Government (Article 9 and Appendix I of PR 112/2022).

2.3.3 **Agreed Price:** The Agreed Price is the price payable by PLN, per kWh, for RE Electricity, which price:

- (a) is subject to negotiation and agreement and then multiplied by the applicable location factor, F (if any), during the first ten years only of the relevant PJBL; and
- (b) must be subsequently approved by MoEMR (i.e., separate MoEMR approval is required) (Article 6(3) of PR 112/2022).

2.3.4 **Point of Payment/Purchase:** It is important to understand that, regardless of the applicable pricing scheme, the RE Electricity Price is the price payable, by PLN, at the meeting point between a particular RE Power Plant and the electricity power network facility or “electricity grid” and does **not** include the charge levied by PLN for use of PLN’s electricity grid (“**Electricity Grid Use Charge**”).

The Electricity Grid Use Charge is to be determined by negotiation and agreement.

If the agreed Electricity Grid Use Charge is not more 30% of the RE Electricity Price, there is **no** need for MoEMR approval but any agreed Electricity Grid Use Charge that is more than 30% of the RE Electricity Price needs MoEMR approval (Article 7 of PR 112/2022).

2.3.5 **Storage Usage Allowance:** Although far from clear, the intention seems to be that, in the case of RE Power Plants (i) utilizing Photovoltaic PLTS or PLTB and (ii) equipped with battery facilities or other electrical energy storage facilities only, there is a separate allowance or “price”, in addition to the RE Electricity Price, payable by PLN for the notional use of those battery facilities or other electrical energy storage facilities (“**Storage Use Allowance**”).

While not specifically stated, the Storage Use Allowance is **probably** to be determined by negotiation and agreement.

If the agreed Storage Use Allowance is not more than 60% of the RE Electricity Price, there is **no** need for MoEMR approval but any agreed Storage Use Allowance that is more than 60% of the RE Electricity Price needs MoEMR approval (Article 10 of PR 112/2022).

2.3.6 **Payment and Collection Process:** PR 112/2022 does not make clear when and how PLN will (i) pay the RE Electricity Price and the Storage Use Allowance (if any) or (ii) collect the Electricity Grid Use Charge. More particularly, will PLN set-off the Electricity Grid Use Charge against the RE Electricity Purchase Price/Storage Use Allowance (if any) so that PLN only pays a net amount? Alternatively, will PLN pay 100% of the RE Electricity Price/Storage Use Allowance (if any) and then separately invoice for the Electricity Grid Use Charge? PLN’s practice to date, however, suggests that the second approach is more likely.

Although the Maximum Benchmark Prices in Appendix 1 are quoted in US Cents per kWh, payments are to be made in Rp using the Jakarta Interbank Spot Dollar Rate on the day specified in the relevant PJBL [or PJBU?] (Article 10 of PR 112/2022).

2.4 New Purchasing Regime

2.4.1 **Outline:** PR 112/2022 provides for two different PLN purchasing schemes in respect of RE Electricity. The two purchasing schemes are:

- (a) Direct Appointment; and
- (b) Direct Selection (Article 14(1) of PR 112/2022).

The two purchasing schemes are mutually exclusive.

The applicable purchasing scheme depends on (i) the Renewable Energy Resource used by the relevant RE Power Plant and (ii) the intended use to be made of the relevant RE Power Plant (Article 14(2) to (4) of PR 112/2022).

In the case of (i) certain Renewable Energy Resources and (ii) the intended use of certain types of RE Power Plants, PLN will set and offer capacity quotas for the sale/purchase of RE Electricity by way of either Direct Appointment or Direct Selection (Article 19(1)(a) of PR 112/2022).

2.4.2 **Direct Appointment:** The Direct Appointment process, which is to be completed within a maximum period of 90 days, involves:

- (a) submission of documents by interested business entities included on a list that is updated and re-issued by PLN every 3 months;
- (b) evaluation of submitted documents, from administrative, technical and financial perspectives, by PLN;
- (c) negotiation, between PLN and business entities passing the evaluation stage, of the RE Electricity Price and based on a “ceiling price” set by PLN with reference to the applicable Maximum Benchmark Price; and
- (d) signing of the PJBL by PLN and the appointed business entity (Articles 15 and 17 of PR 112/2022).

2.4.3 **Direct Selection:** The Direct Selection process, which is to be completed within a maximum period of 180 days, involves:

- (a) submission of documents by interested business entities included on a list that is updated and re-issued by PLN every 3 months;
- (b) evaluation of submitted documents, from administrative, technical and financial perspectives, by PLN;
- (c) a “reverse” auction, with the submission (by business entities passing the evaluation stage) of lowest price bids set having regard to the applicable Maximum Benchmark

Price; and

- (d) signing of the PJBL by PLN and the auction winner (Articles 16 and 17 of PR 112/2022).

2.5 Relevant Pricing Schemes and Purchasing Schemes for RE Electricity Differentiated according to Renewable Energy Resource and Intended RE Power Plant Usage

The following table sets out how the different pricing schemes and purchasing schemes, as discussed in 2.3 and to 2.4 above, apply to RE Electricity generated by wholly PPL developed and owned RE Power Plants only and having regard to the relevant Renewable Energy Resource and intended RE Power Plant usage:

Renewable Energy Resource Used by RE Power Plant	RE Electricity Pricing Scheme	PLN Storage Use Allowance	PPL Electricity Facility Grid Charge	PLN Electricity Purchasing Scheme
PLTP (Geothermal)				
For all generating capacities (including capacity expansion and excess electricity)	Maximum Benchmark Price Second Alternative	Not Applicable	Applicable	Direct Appointment
PLTA (Hydro)				
(a) For all generating capacities (including capacity expansion and excess electricity)	Maximum Benchmark Price First Alternative	Not Applicable	Applicable	Direct Appointment for PLTA from reservoirs/dams/irrigation canals Direct Selection for PLTA from streams/waterfalls
(b) Functioning as a Peaker	Agreed Price	Not Applicable	Applicable	Direct Selection
Photovoltaics PLTS (Solar)				
For all generating capacities (including capacity expansion)	Maximum Benchmark Price First Alternative	Applicable	Applicable	Direct Selection except for capacity expansion which is Direct Appointment
PLTB (Wind)				
For all generating capacities (including capacity expansion)	Maximum Benchmark Price First Alternative	Applicable	Applicable	Direct Selection except for capacity expansion which is Direct

Renewable Energy Resource Used by RE Power Plant	RE Electricity Pricing Scheme	PLN Storage Use Allowance	PPL Electricity Facility Grid Charge	PLN Electricity Purchasing Scheme
				Appointment
PLTBm (Biomass)				
For all generating capacities (including capacity expansion and excess electricity)	Maximum Benchmark Price First Alternative	Not Applicable	Applicable	Direct Selection except for capacity expansion and excess power which are Direct Appointment
PLTBg (Biogas)				
For all generating capacities (including capacity expansion and excess electricity)	Maximum Benchmark Price First Alternative	Not Applicable	Applicable	Direct Selection except for capacity expansion and excess power which are Direct Appointment
Ocean PLT (Tidal)				
For all generating capacities (including capacity expansion)	Agreed Price	Not Applicable	Applicable	Direct Selection
PLT BBN (Liquid Biofuel)				
For all generating capacities	Agreed Price	Not Applicable	Applicable	Direct Selection

2.6 **Government Support:** In order to encourage the development of RE Power Plants, relevant business entities are eligible for various incentives as follows:

- (a) fiscal incentives related to income tax, import duties, land-and-building tax and support for geothermal development as well as financing facilities and/or guarantees; and
- (b) non-fiscal incentives that may be provided by both the Central Government and Regional Governments in accordance with applicable laws and regulations (Articles 22 and 23 of PR 112/2022).

2.7 **PLN Compensation:** In the event that PLN’s purchase of RE Electricity results in an increase in the operating costs of PLN, PLN is to be compensated for these cost increases “***in accordance with the State's financial capacity***” (Article 24 of PR 112/2022).

2.8 **Effective Date:** PR 112/2022 came into effect on 13 September 2022.

3. Assessment and Evaluation of PR 112/2022

- 3.1 **Energy Transition:** There must be a concern that the exceptions to the prohibition on the construction of new PLTUs are too broad. More particularly, allowing the construction of new PLTUs that are not already part of the 2021 - 2030 RUPTL if they are “*integrated with industries focused on increasing the local added value of natural resources or are part of designated national strategic projects making a major contribution to job creation and/or national economic growth*” seems to allow the construction of a virtually unlimited number of new PLTUs to provide the required electricity for downstream processing and refining of metal minerals. As (i) continued insistence upon full downstream processing and refining of all metal minerals is one of the “signature” policies of the current Government and (ii) processing and refining of metal minerals requires very large amounts of electricity, the number of new PLTUs that may be required to provide this electricity is considerable.

Likewise, allowing the construction of new PLTUs, that are part of “*designated national strategic projects making a major contribution to job creation and/or national economic growth*” is very open-ended as just what constitutes “a major contribution to job creation and/or national economic growth” may legitimately be the subject of various different interpretations.

While new PLTUs, that are not already part of the 2021 - 2030 RUPTL, need to have PPLs “*committed to decreasing greenhouse gas [from the relevant PLTU] by at least 35% within 10 years*”, there is a major difference between being “committed” to decreasing greenhouse gas emissions by at least 35% within 10 years and actually “achieving” that level of greenhouse gas emissions within the specified timeframe. It is concerning that PR 112/2022 does not make any provision for what happens if a newly constructed PLTU does not, in fact, achieve a 35% decrease in greenhouse gas emissions within 10 years and after having been approved for construction on the basis of the commitment to achieve such a 35% decrease.

Finally, the outside operation date of 2050 for newly constructed PLTUs is very far in the future. It would not be surprising to the writer if some PPLs were more than willing to accept now an outside operation date of 2050 in order to be able to proceed with the construction of new PLTUs while, at the same time, being very confident of their practical ability to secure succession extensions of the 2050 outside operation date once their PLTUs are already operational.

It may well be, however, that the most effective limitation on the construction of new PLTUs is not PR 112/2022 at all but, rather, the increasing difficulties that (i) PPLs face in obtaining third party financing for new PLTUs and (ii) owners/operators of metal processing and refining facilities face in finding buyers for their products if the same have been produced using electricity generated by PLTUs. These difficulties are only likely to increase over time.

- 3.2 **New Pricing Regime:** The Government has significantly simplified the pricing regime for RE Electricity by (i) reducing the number of available pricing schemes from three proposed schemes (with three alternatives in the case of one scheme) under the 2021 Draft Presidential Regulation to become two pricing schemes (with two alternatives in the case of one scheme) under PR 112/2022 and (ii) not making the applicable pricing scheme dependent upon the capacity of the relevant RE Power Plant as was the case with the proposed pricing schemes in the 2021 Draft Presidential Regulation. This has to be a positive development that will be welcomed by PPLs as the proposed pricing regime under the 2021 Draft Presidential Regulation was extremely complicated.

The writer is, however, surprised to see the Feed-in Tariff Price scheme dropped altogether from PR 112/2022 as a Feed-in Tariff Price was previously much sought after by investors and was, in many respects, viewed as being the “highlight” of the 2021 Draft Presidential Regulation.

Both the Maximum Benchmark Price scheme and the Agreed Price scheme also involve considerable uncertainty as to what the final RE Electricity Price will be given each of these pricing schemes contemplates a process of negotiation between PLN and the relevant PPL. In the case of the Maximum Benchmark Price scheme, the relevant Maximum Benchmark Price, as specified in Appendix I to PR 112/2022, is merely the “ceiling” price beyond which PLN and the relevant PPL cannot go in their price negotiations. Meanwhile, in the case of the Agreed Price scheme, there are no constraints on the price negotiations between PLN and the relevant PPL but the price they finally agree upon is still subject to MoEMR approval, which MoEMR approval is wholly discretionary. This is to be compared with the Feed-in Tariff Price scheme envisaged by the 2021 Draft Presidential Regulation and where the RE Electricity Price was (i) specified in an annexure, (ii) **not** subject to negotiation between PLN and the relevant PPL and (ii) **not** dependent upon subsequent MoEMR approval. It was because of these characteristics, which would have taken much of the residual uncertainty out of RE Electricity Pricing, that the Feed-in Tariff Price scheme was considered so desirable.

3.3 **PLN Compensation:** Making compensation for PLN, in respect of increased operating costs as a result of energy transition, expressly dependent upon and subject to “*the State’s financial capacity*” to provide such compensation may not do much to encourage PLN’s active support for the greater use of RE Electricity. By implication, if the Government cannot afford to cover PLN’s increased operating costs, **no** compensation for PLN will be forthcoming.

CONCLUDING REMARKS

PR 112/2022 represents the long awaited and much needed Government proposed solution to the NC Tariff Problem.

Whether or not, however, the RE Electricity Pricing regime, as provided for in PR 112/2022, is sufficient to “break the logjam” of Renewable Energy Resource development remains to be seen. The absence of a Feed-in Tariff Price scheme in PR 112/2022 and the residual uncertainty as to what the RE Electricity Price will finally be under both the Maximum Benchmark Price scheme and the Agreed Price scheme may continue to be impediments to material additional investment materializing for the development of Indonesia’s Renewable Energy Resources. RE Electricity Price “certainty” was previously thought to be the non-negotiable, minimum requirement to spur significant domestic and international investor interest in developing Indonesia’s Renewable Energy Resources on a large scale.

The development of Indonesia’s Renewable Energy Resources may also be impeded by the broadly worded exceptions to the prohibition on construction of new PLTUs provided for in PR 112/2022.

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