

NEW LOCAL CONTENT RULES FOR ELECTRICITY INFRASTRUCTURE PROJECTS – WILL IT BE ENOUGH?¹²³⁴⁵

INTRODUCTION

The Government has moved with uncharacteristic speed to make various changes to the local content requirements for electricity infrastructure projects including, most importantly, solar energy power plants.

The recent changes follow widely reported comments, made by a senior executive of the State electricity company in late May, to the effect that Indonesia's local content requirements were making it impossible to obtain international funding for a significant number of high value electric infrastructure projects utilizing renewable energy resources.

It remains to be seen, however, whether or not the conditions attached to the partial relaxation of local content requirements, in certain situations, are commercially realistic. If the conditions are not commercially realistic, then the hoped for positive impact on encouraging the much-needed development of electricity infrastructure projects utilizing Indonesia's potentially huge renewable energy resources will, inevitably, be minimal. In addition, it is unclear whether or not the partial relaxation of local content requirements is, by itself, enough to ensure a significant increase in electricity infrastructure project development.

In this article, the writer will review the recent changes to the local content requirements and their possible significance.

BACKGROUND

Local content (**TKDN**) requirements, which mandate the use of locally produced goods as well as the use of locally provided services (**TKDN Requirements**) in connection with the development of electricity infrastructure projects (as well as projects in other industry sectors), have long been highlighted, by potential investors in these projects, as being problematic.

The TKDN Requirements applicable to solar power plants (**PLTS**) have been the subject of particularly harsh criticism because solar is the renewable energy resource which has the greatest potential to contribute to Indonesia's green energy transition, representing as it does nearly 50% of the additional electricity generating capacity that **could be** achieved utilizing Indonesia's renewable

¹ Bill Sullivan, Senior Foreign Counsel with Christian Teo & Partners and Senior Adviser to Stephenson Harwood.

² Bill Sullivan is the author of "*Mining Law & Regulatory Practice in Indonesia – A Primary Reference Source*" (Wiley, New York & Singapore 2013), the first internationally published, comprehensive book on Indonesia's 2009 Mining Law and its implementing regulations.

³ Copyright in this article belongs to Bill Sullivan and Petromindo.

⁴ This article may not be reproduced for commercial purposes without the prior written consent of both Bill Sullivan and Petromindo.

⁵ An earlier version of this article appeared in the September - October 2024 issue of Coal Metal Asia Magazine.
24WAS017 04

energy resources. The magnitude of the potential revenue to be obtained from large scale and widespread PLTS development may well explain why PLTS have, until the recent changes, been the subject of exceptionally onerous TKDN Requirements.

The TDKN Requirements for electricity infrastructure projects, including PLTS and other types of renewable energy power plants, were previously set out in (i) Minister of Industry (**MoI**) Regulation No. 54 of 2012 re Guidelines for Utilization of Domestic Products for Development of Electricity Infrastructure as lastly amended by MoI Regulation No. 23 of 20 (**MoI Regulation 54/2012**), (ii) MoI Regulation No. 4 of 2017 re Provisions and Procedures for Assessment of TKDN in PLTS (**MoI Regulation 4/2017**), (iii) MoI Regulation No. 54 of 2017 re Amendment of MoI Regulation 54/2012 (**MoI Regulation 54/2017**) and (iv) Government Regulation No. 29 of 2018 re Industrial Empowerment (**GR 29/2018**).

Readers interested in knowing more about the previous TKDN Requirements regulatory regime for PLTS and the bigger policy issues related to TKDN Requirements generally, as well as the various other impediments to the large scale development of Indonesia's renewable energy resources, are referred to the writer's earlier article "*Renewable Energy Projects – Possible Rethink of Local Content Requirements*" which appeared in the July – August 2024 issue of Coal Metal Asia Magazine.

In late July 2024, the Minister of Energy & Mineral Resources (**MoEMR**) issued (i) Regulation No. 11 of 2024 re Utilization of Domestic Products for Development of Electricity Infrastructure (**MoEMR Regulation 11/2024**) and (ii) Decree No. 191 of 2024 re Minimum TKDN Values for Combined Goods & Services within the Scope of Electricity Infrastructure Projects (**MoEMR Decree 191/2024**). At substantially the same time, MoI issued (i) Regulation No. 33 of 2024 re Revocation of MoI Regulation 54/2012 (**MoI Regulation 33/2024**) and (ii) Regulation No. 34 of 2024 re Procedures for Calculating TKDN Value of Solar Module Products (**MoI Regulation 34/2024**).

How the TKDN Requirements, applicable to Electricity Infrastructure Projects in general and to PLTS in particular, have been impacted by MoEMR Regulation 11/2024, MoEMR Decree 191/2024, MoI Regulation 33/2024 and MoI Regulation 34/2024 are the subject of the balance of this article.

ANALYSIS AND DISCUSSION

1. Overview of New Regulations

MoI Regulation 54/2012 has been revoked by MoI Regulation 33/2024 with the result that the ongoing general guidelines for the application of TKDN Requirements, in connection with the development of so-called "*Electricity Infrastructure Projects*" (including power plants utilizing renewable energy resources), are now to be found in MoEMR Regulation 11/2024.

MoEMR Regulation 11/2024 continues to use the same basic approach to the application of TKDN Requirements, in connection with the development of Electricity Infrastructure Projects, that was previously provided for in MoI Regulation 54/2012 and GR 29/2018 but (i) introduces a couple of potentially important new exceptions to the TKDN Requirements in the case of those Electricity Infrastructure Projects that can satisfy significant pre-conditions and (ii) makes significant changes to the determination of minimum TKDN

Values. MoI Regulation 11/2024 also introduces a price preference requirement for certain “favored” producers/suppliers of certain domestic goods/services used in implementing Electricity Infrastructure Projects.

MoEMR Decree 191/2024 makes significant changes to the minimum TKDN percentage or “value” (**TKDN Value**) for each type of Electricity Infrastructure Project covered by MoEMR Regulation 11/2024.

MoI Regulation 4/2017 has been revoked by MoI Regulation 34/2024 which makes significant changes to how the actual TKDN Value of particular solar module products is to be calculated.

2. **MoEMR Regulation 11/2024**

2.1 **Relevant Electricity Infrastructure Projects:** Electricity Infrastructure Projects, for the purpose of MoEMR Regulation 11/2024, continue to comprise:⁶

No.	Electric Infrastructure Project Types	Details
1.	Power plants utilizing renewable energy resources	a. Hydroelectric Power Plants (PLTA); b. Geothermal Power Plants (PLTP); c. PLTS ; d. Wind Power Plants (PLTB); e. Biomass Power Plants (PLTBm); f. Biogas Power Plants (PLTBg); and g. Waste Power Plants (PLTSa).
2.	Power plants utilizing non-renewable energy resources	a. Steam Power Plants (PLTU); b. Gas Power Plants (PLTG); c. Steam Gas Power Plants (PLTGU); and d. Gas Engine Power Plants (PLTMG).
3.	Transmission networks, distribution networks and substations	-

It also continues to be the case that the TKDN Requirements, set out in MoEMR Regulation 11/2024, only apply to Electricity Infrastructure Projects being undertaken by:⁷

- (a) state agencies, ministries, non-ministerial government agencies, other government agencies and local work units in the procurement of goods and services if the source of financing comes from the state revenue and expenditure budget, regional government revenue and expenditure budgets and/or loans or grants from domestic or foreign sources; and
- (b) state-owned enterprises, other state-owned legal entities, regional government-owned enterprises and **private enterprises** where:
 - (i) the financing comes from the state revenue and expenditure budget or a regional government revenue and expenditure budget;

⁶ Article 2 of MoEMR Regulation 11/2024.

⁷ Article 3(2) of MoEMR Regulation 11/2024.

- (ii) the work is carried out through a form of cooperation between the central government and/or local governments and business entities; and/or
- (iii) utilizing “**resources controlled by the state**” (**i.e.**, including renewable energy resources) (together, **Designated Parties**).

The above provisions, re Designated Parties, were previously included in GR 29/2018.

- 2.2 **Continuation of Existing General Exception for Certain Electricity Infrastructure Projects:** MoEMR Regulation 11/2024 continues the previously existing general exception, to the obligation to comply with the TKDN Requirements in the case of Electricity Infrastructure Projects carried out by Designated Parties, where the relevant good/product, required for a particular Electricity Infrastructure Project, is (i) **not** manufactured domestically **or** (ii) is manufactured domestically but does **not** meet the required specifications for the relevant Electricity Infrastructure Project **or** (iii) is manufactured domestically but is **not** available domestically in the quantity needed for the relevant Electricity Infrastructure Project (**General Exception**).⁸

In order to be able to take advantage of the General Exception, the existence of the relevant criteria (**i.e.**, (i), (ii) or (iii) above) must be verified by an “*independent verification agency*” and, in the case of criteria (iii) above only, must be confirmed by the relevant domestic manufacturer or industry association.⁹

- 2.3 **New Special Exception for Foreign Funded Electricity Infrastructure Projects:** A new special exception, to the obligation to comply with the TKDN Requirements, has been introduced by MoEMR Regulation 11/2024 in the case of Electricity Infrastructure Projects carried out by Designated Parties where (a) (i) not less than 50% of the required funding for the relevant Electricity Infrastructure Project comes from international development banks or financial institutions in the form of grants or loans (**i.e.**, foreign funding) and (ii) with or without government guarantees and (b) the relevant foreign grant or loan agreement provides that the TKDN Requirements are not to apply in the case of the relevant Electricity Infrastructure Project.¹⁰
- 2.4 **New Special Exception for PLTS Only:** A new special exception, to the obligation to comply with the TKDN Requirements, has been introduced in the case of PLTS only (**PLTS Special Exemption**). The PLTS Special Exemption **may** be granted by MoEMR (a) in respect of the period up to 30 June 2025 and (b) where (i) a power purchase agreement with the State electricity company is signed not later than 31 December 2024, (ii) the relevant PLTS will start operating commercially not later than 30 June 2026 in accordance with the approved business plan for supplying electricity, (iii) the relevant PLTS is included in the Government’s List of PLTS Electricity Infrastructure, (iv) the relevant PLTS uses foreign solar module products either exclusively or in combination with domestic solar module products, (v) the relevant foreign solar module product manufacturer commits to investing in domestic manufacturing of solar module products (**Investment Commitment**) and (vi) the relevant foreign solar module product manufacturer has the ability to comply with the

⁸ Article 4(2) of MoEMR Regulation 11/2024.

⁹ Article 4(3) and (4) of MoEMR Regulation 11/2024.

¹⁰ Article 17 of MoEMR Regulation 11/2024.

applicable TKDN Value for solar module products by 31 December 2025 (**Compliance Commitment**).¹¹

The Investment Commitment and the Compliance Commitment must be supported by a letter of commitment from the relevant foreign solar module product manufacturer.¹²

Failure to fulfil either the Investment Commitment or the Compliance Commitment may result in the relevant foreign solar module product manufacturer being included in a “blacklist” of solar module product manufacturers.¹³

The fact that the PLTS Special Exemption is discretionary is a concern as this means that there is **no** absolute right to this exemption. Further, there is (i) no explanation of how MoEMR will decide whether or not to grant the PLTS Special Exemption in the case of any particular PLTS and (ii) no timetable for MoEMR to make a decision on whether or not to grant the PLTS Special Exemption in any particular case.

The Investment Commitment also does not seem to be very realistic. It is hard to believe that many (or, indeed, any!!) foreign solar module product manufacturers will be willing to commit to investing in domestic manufacturing of solar module products (given the associated large scale capital expenditure necessarily involved) just to assist a particular Designated Party, wanting to build a particular PLTS, obtain the benefit of the PLTS Special Exemption.

Finally, the actual consequences, for a foreign solar module product manufacturer which is included in a “blacklist”, are not made clear although, very likely, they include the withdrawal of future Government cooperation in connection with their continued operation in Indonesia. The use of “blacklists” seems somewhat draconian and unnecessary.

- 2.5 **No Minimum TKDN Value for Electricity Infrastructure Projects:** MoEMR Regulation 11/2024 **no** longer specifies the minimum required TKDN Value for different types of Electricity Infrastructure Projects. More particularly and unlike MoI Regulation 54/2012, MoEMR Regulation 11/2024 does **not** specify the minimum TKDN Value for solar modules/panels as being 60% commencing 1 January 2025.

The minimum TKDN Values, applicable to different types of Electricity Infrastructure Projects is to be determined based on a comparison between (i) the “**domestic**” prices of relevant goods and services and (ii) the “**overall**” prices for relevant goods and services.¹⁴ Just what this proposed comparison, between “domestic” prices and “overall” prices, means is nowhere made clear. However, **if** it implies that minimum TKDN Values may be reduced, in the case of those Electricity Infrastructure Projects where the domestic price of relevant goods and services is higher than the international price of these goods and services, that would (of course) be a very positive development.

¹¹ Article 19(1) and (2) of MoEMR Regulation 11/2024.

¹² Article 19(3) of MoEMR Regulation 11/2024.

¹³ Article 19(5) of MoEMR Regulation 11/2024.

¹⁴ Article 8(4) of MoEMR Regulation 11/2024.

MoEMR is responsible for subsequently determining the minimum TKDN Values applicable to different types of Electricity Infrastructure Projects. Thereafter, the determined minimum TKDN Values will be reviewed at least once every three years.¹⁵

- 2.6 **Appreciation Book:** MoEMR Regulation 11/2024 introduces the new and somewhat curious concept of an “Appreciation Book” which (i) is to be prepared by two Directors General, (ii) will include details of certain providers of goods and services required for Electricity Infrastructure Projects and (iii) Designated Parties “implementing” (i.e., carrying out) Electricity Infrastructure Projects must use in connection with procuring the required goods and services for their Electricity Infrastructure Projects.¹⁶

The prices of goods and services, offered by providers listed in the Appreciation Book, are (i) set by MoEMR, (ii) intended to create a “*price preference*” and (iii) “*adjust or normalize*” the price of goods and services used by Designated Parties in connection with implementing Electricity Infrastructure Projects.¹⁷

Although the wording used in MoEMR Regulation 11/2024, re the Appreciation Book, is vague and not easy to understand, enquiries indicate that the purpose of the Appreciation Book is to (i) allow higher prices to be charged for domestic goods and services (i.e., a “*price preference*”), used in connection with Electricity Infrastructure Projects, compared to the prices for equivalent imported goods and services with similar specifications and (ii) ensure that Designated Parties, implementing Electricity Infrastructure Projects, cannot refuse to use/reject the relevant domestic goods and services merely because of the existence of the price preference.

Depending upon just how significant or otherwise is the price preference enjoyed by providers of goods and services listed in the Appreciation Book, the existence of the price preference clearly has the potential to compromise the economics of implementing Electricity Infrastructure Projects carried out by Designated Parties. Given that the materially higher cost/price of domestic goods and services, used in connection with Electricity Infrastructure Projects, compared to the cost/price of equivalent imported goods and services with similar specifications, has been widely cited as a key reason for the relative lack of progress in developing Electricity Infrastructure Projects utilizing renewable energy resources, the inclusion of the Appreciation Book concept and its associated legitimizing of price preferences for domestic good and services providers is a seriously retrograde step.

It is also quite unclear what qualifies certain domestic providers of goods and services to be included in the Appreciation Book. As such, the opportunities for favouring politically well-connected domestic providers of goods and services and/or domestic providers of goods and services willing and able to offer “incentives” for their inclusion in the Appreciation Book appear to be considerable. It seems that, as a practical matter, it is very hard for Indonesia to overcome many of the “bad habits” that have long plagued the local construction and energy industries.

- 2.7 **Rewards:** MoEMR Regulation 11/2024 includes a wonderfully “quaint” provision for non-monetary “rewards”, in the form of certificates of appreciation, announcements in the mass media etc, for Designated Parties which implement Electricity Infrastructure Projects utilizing

¹⁵ Article 9(1) and (2) of MoEMR Regulation 11/2024.

¹⁶ Article 6 of MoEMR Regulation 11/2024.

¹⁷ Article 7 of MoEMR Regulation 11/2024.

domestic goods and services and otherwise comply with the TKDN Requirements¹⁸. Similar non-monetary awards, for compliance with relevant laws, policies and regulations, are to be found in other areas of the Indonesian economy.

The availability of meaningless, non-monetary “rewards” is, self-evidently, not likely to make any difference at all to Designated Parties, focused on minimum return on investment criteria and needing to justify the economics of implementing Electricity Infrastructure Projects in Indonesia. The only relevant consideration is likely to be whether or not the presence of price preferences for domestic goods and services that Designated Parties are compelled to use, if they proceed with these Electricity Infrastructure Projects, will still make possible the realization of a minimally acceptable rate of return on the associated investment.

3. **MoEMR Decree 191/2024**

The new minimum TKDN Values, for each type of Electricity Infrastructure Project (including PLTS) undertaken by Designated Parties and which are subject to the TKDN Requirements set out in MoEMR Regulation 11/2024, are as follows:¹⁹

No.	Type of Electricity Infrastructure Project	Minimum TKDN Value of Combined Goods and Services	Relevant Goods and Services Components
1.	PLTU	27.18% for installed capacity up to 600 MW	Steam turbines, boilers
		18.83% for installed capacity of more than 600 MW	
2.	PLTG	10.39%	Gas turbines
3.	PLTGU	21.93%	Gas turbines and steam turbines
4.	PLTMG	23.96%	Gas engines and fuel supplies
5.	PLTP	24% for installed capacity up to 60 MW	Civil works, well drilling, fluid collection, reinjection systems
		29% for installed capacity of more than 60 MW	
		20% for partial geothermal activities project	
6.	PLTA	45% for installed capacity up to 10 MW	Metalwork, electromechanics

¹⁸ Article 14 of MoEMR Regulation 11/2024.

¹⁹ Appendix to MoEMR Decree 191/2024.

No.	Type of Electricity Infrastructure Project	Minimum TKDN Value of Combined Goods and Services	Relevant Goods and Services Components
		35% for installed capacity of more than 10 MW up to 50 MW	
		23% for installed capacity of more than 50 MW	
7.	PLTS	20%	Solar modules, inverters, mountings, cables and wiring, combiner boxes, etc.
8.	PLTB	15%	Metalwork, electromechanics, etc.
9.	PLTBm	21%	
10.	PLTBg	25.19%	
11.	PLTSa	16.53%	
12.	Transmission Networks	60.71% for 150 kV High Voltage Air Lines	
		65.65% for 275 kV Extra High Voltage Air Lines	
		38.13% for 500 kV Extra High Voltage Air Lines	
		56.40% for 150 kV High Voltage Ground Cable Ducts	
13.	Electrical Substations	39.87% for 150 kV High Voltage Substations	
		24.79% for 275kV Extra High Voltage Substations	
		13.28% for 500kV Extra High Voltage Substations	
		12.95% for 150 kV High Gas Insulated Switchgear (GIS)	
		17.38% for up to 500 kV Extra High GIS	

Direct materials, project management and engineering materials, working tools and facilities, construction and fabrication, general services

4. **MoI Regulation 34/2024**

- 4.1 **Deemed Composition:** For the purpose of calculating the actual TKDN Value of particular solar module products only, each solar module product is deemed to comprise (i) 91% direct materials, (ii) 5% direct labour/manpower and (iii) 4% indirect factory overhead.²⁰
- 4.2 **Calculation of Actual TKDN Value of Materials:** Solar module products are deemed to contain the following direct materials:²¹

No.	Description	Composition (%)
1.	Solar Cells	50.00
2.	Tempered Glass	12.00
3.	Photovoltaic Junction Box	8.00
4.	Back sheet	4.00
5.	Frame	9.00
6.	Film Eva	4.00
7.	Photovoltaic Ribbon	2.00
8.	Solar Silicon	2.00

Solar cells are, in turn, deemed to contain the following direct materials:

No.	Description	Composition (%)
1.	Silica Sand Procurement	2.50
2.	Silicon Metallurgical Grade	7.50
3.	Silicon Solar Grade Manufacture	15.00
4.	Ingot Manufacture	5.00
5.	Brick Manufacture	2.50
6.	Wafer Manufacture	2.50
7.	Blue Cell Manufacture	7.50
8.	Printing Cells	7.50

The actual TKDN Value of materials manufactured/produced (i) in Indonesia is deemed to be 100% and (ii) outside of Indonesia is deemed to be 0%.²²

- 4.3 **Calculation of Actual TKDN Value of Labour/Manpower:** The actual TKDN Value of labour/manpower is calculated based on the percentage ratio of the domestic direct labour/manpower used in the manufacture of particular solar module products to the total direct labour/manpower used in the manufacture of those solar module products.²³
- 4.4 **Calculation of Actual TKDN Value of Factory Overhead:** The actual TKDN Value of factory overhead is calculated based on the percentage ratio of domestic indirect factory overhead to total indirect factory overhead.²⁴

²⁰ Article 2 of MoI Regulation 34/2024.

²¹ Article 3(1) of MoI Regulation 34/2024.

²² Article 3(2) of MoI Regulation 34/2024.

²³ Article 4 of MoI Regulation 34/2024.

²⁴ Article 5(1) of MoI Regulation 34/2024.

Factory overhead indirect costs include (i) “*tool costs*” and (ii) “*other service costs*”.²⁵

MoI Regulation 34/2024 provides a (i) further breakdown of what comprises “*tool costs*” and “*other services costs*” and (ii) a detailed explanation of how the actual TKDN Value of “*tool costs*” and “*other services costs*” is to be calculated.²⁶

SUMMARY & CONCLUSIONS

Reducing the minimum TKDN Values, for various types of Electricity Infrastructure Projects (including PLTS) undertaken by Designated Parties, is a much needed and positive step that will undoubtedly be welcomed by Designated Parties and potential financiers of/investors in these Electricity Infrastructure Projects.

Likewise, the PLTS Special Exemption is a good idea in principle. However, query whether or not the pre-conditions, that must be satisfied in order to qualify for the PLTS Special Exemption, are realistic. The required Investment Commitment seems to be particularly problematic.

Finally, taking into account the difference between the cost/price of domestic goods/services and the cost/price of imported goods/services (**if** this is what the oblique wording used is intended to mean), in determining the minimum TKDN Values, for different types of Electricity Infrastructure Projects, **could be** a very significant improvement on the existing position.

Notwithstanding the above **potentially** positive developments, the Appreciation Book and the associated mandatory price preference for certain “favored” domestic goods and services providers are obviously potential obstacles to the economics of Electricity Infrastructure Projects meeting the minimum return on investment criteria of Designated Parties and their potential financiers/investors.

It remains to be seen whether or not the recent relaxation, in certain situations, of the TKDN Requirements for Electricity Infrastructure Projects is enough, by itself, to materially improve the prospects for Electricity Infrastructure Project development/implementation, especially in the case of Electricity Infrastructure Projects utilizing renewable energy resources. As the writer has explained in an earlier article, unrealistic TKDN Requirements are only one of several existing impediments to the large-scale development of Electricity Infrastructure Projects utilizing renewable energy resources.

This article was written by Bill Sullivan, Senior Foreign Counsel with Christian Teo & Partners and Senior Adviser to Stephenson Harwood. Christian Teo & Partners is a Jakarta based, Indonesian law firm and a leader in Indonesian energy, infrastructure and mining law and regulatory practice. Christian Teo & Partners operates in close association with international law firm Stephenson Harwood which has eight offices across Asia, Europe and the Middle East: Dubai, Hong Kong, London, Paris, Piraeus, Seoul, Shanghai and Singapore.

²⁵ Article 5(2) of MoI Regulation 34/2024.

²⁶ Articles 6 and 7 of MoI Regulation 34/2024.

Get in touch



Bill Sullivan

T: +62 21 5020 2789

E: bsullivan@cteolaw.com



Christian Teo

T: +62 21 5020 2789

E: cteo@cteolaw.com



Claudius Novabianto

T: +62 21 5020 2789

E: cnbianto@cteolaw.com