

Job Creation Act

Legal Insight

Indonesian Legal Requirements relating to Captive Power Supply Business

A. Legal Requirements Relating to Captive Power Supply Business

In the Republic of Indonesia, the captive power supply is known as 'electricity supply business for personal interest'. Law Number 30 of 2019 concerning Electricity (as amended by Law Number 11 of 2020 concerning Job Creation ("**Job Creation Act**") and its implementing regulations ("**Electricity Related Laws and Regulations**") provides the following legal requirements for a party carrying out captive power supply ("**Captive Power Supply Business Requirements**"):

Types of Business	Electricity supply business for personal interest shall be performed only for personal use and not for trade, and covers: <ol style="list-style-type: none"> a. electricity generation; b. electricity generation and electricity distribution; or c. electricity generation, electricity transmission, and electricity distribution, (" Captive Power Supply Business ").		
The Parties	The Captive Power Supply Business can be carried out by the central government agency, regional government agency, state-owned enterprise, region-owned enterprise, private business entity, cooperative, individual, and other institution/business entity (i.e. foreign entity or foreign business entity).		
Permits	<ol style="list-style-type: none"> 1. Business Licensing. Any party carrying out the Captive Power Supply Business must first obtain Business Licensing for Captive Power Supply Business, namely Captive Power Supply Business Permit (<i>Izin Usaha Penyediaan Tenaga Listrik untuk Kepentingan Sendiri</i> or "IUPTLS"), where: <table border="1" data-bbox="454 1591 1343 1960"> <tr> <td data-bbox="454 1591 672 1960"> Power Plant Capacity Requirements </td> <td data-bbox="672 1591 1343 1960"> <ol style="list-style-type: none"> a. It is mandatory to obtain IUPTLS if the performance of the Captive Supply Power Business uses a power plant(-s) with a total capacity of more than 500 kW connected in one electricity installation system (">500kW Power Plant"). b. It is not mandatory to obtain IUPTLS if the performance of the Captive Supply Power Business uses a power plant(-s) with a total capacity of up to 500 kW connected in one electricity installation system ("≤500kW Power Plant"). </td> </tr> </table> 	Power Plant Capacity Requirements	<ol style="list-style-type: none"> a. It is mandatory to obtain IUPTLS if the performance of the Captive Supply Power Business uses a power plant(-s) with a total capacity of more than 500 kW connected in one electricity installation system (">500kW Power Plant"). b. It is not mandatory to obtain IUPTLS if the performance of the Captive Supply Power Business uses a power plant(-s) with a total capacity of up to 500 kW connected in one electricity installation system ("≤500kW Power Plant").
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**Permits
(continued)**

Nature of Use	The IUPTLS will be granted according to the nature of their use, as follows: a. main use; b. reserve use; c. emergency use; and d. temporary use.
Validity Period	Maximum of 10 years and extendable.
Issuer	a. Minister of Energy and Mineral Resources (“MEMR”), if: i. installation facilities cover across provinces; ii. it is located in the area above 12 nautical miles; iii. the power plant has a total capacity of more than 10 MW; and/or iv. electricity installation on oil and gas business. b. The governor, if: i. installation facilities are within the province area; ii. it is located in the area up to 12 nautical miles; and/or iii. the power plant has a total capacity of up to 10 MW.
Issuance	a. If the MEMR is the authority that can determine the issuance of IUPTLS, the IUPTLS will be issued through an Online Single Submission (“OSS”) licensing system (“OSS System”) by the OSS Management and Organizing Agency (“OSS Agency”) on behalf of the MEMR. b. If the governor is the authority that can determine the issuance of IUPTLS, the IUPTLS will be issued through the OSS System by the head of a provincial One-Stop Integrated Services and Investment Office (<i>Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu</i> or DPMPTSP) on behalf of the governor.
Nature of IUPTLS	As the Business Licensing to Support Business Activities, if the operational and/or commercial stages of a business activity(-ies) of a company requiring the performance of Captive Power Supply Business.
Requirements	The obtainment of the effective IUPTLS shall be subject to the fulfillment of requirements and commitments (e.g. technical study) as determined by the Indonesian laws and regulations.

Non-compliance with the IUPTL requirement shall be subject to sanction as regulated by the Electricity Related Laws and Regulations.

**Permits
(continued)**

2. **SLO.** Any party carrying out Captive Power Supply Business must obtain a certificate of operational worthiness (*sertifikat laik operasi* or “**SLO**”) before operating the electricity installation used for the performance of the Captive Power Supply Business, where:

Power Plant Capacity Requirements	<p>a. It is mandatory to obtain SLO for:</p> <ul style="list-style-type: none"> i. the >500kW Power Plant; and ii. the ≤500kW Power Plant of which control panel is in 1 separate part. <p>b. For the ≤500kW Power Plant of which control panel is in 1 integral part, it will be declared to have fulfilled the mandatory SLO requirement, provided that it must equipped with documents in the form of:</p> <ul style="list-style-type: none"> i. product certificate; or ii. a statement of responsibility for the electricity safety aspects from the owner of the electricity installations which is equipped with (a) valid manufacturer's warranty, (b) result of commissioning test from the distributor's technician, or (c) power plant installation maintenance documents, <p>that have been evaluated by the MEMR or the governor and obtained a registration number from the MEMR.</p>
Validity Period	<ul style="list-style-type: none"> a. 5 years for electricity generation installation; b. 10 years for electricity transmission installation; and c. 10 years for electricity distribution installation.

Non-compliance with the SLO requirement shall be subject to sanction as regulated by the Electricity Related Laws and Regulations.

Other Legal Requirements

1. **Mandatory reporting obligations.** The Electricity Related Laws and Regulations provides that:

- a. any party using ≤500kW Power Plant for the performance of the Captive Power Supply Business is not obligated to obtain IUPTLS but it must submit a one-time report to the MEMR (through the Directorate General of Electricity) or the governor, according to their respective authority, before carrying out the Captive Power Supply Business. Non-compliance with this reporting requirement shall subject to sanction as regulated by the Electricity Related Laws and Regulations; and
- b. the holder of IUPTLS must fulfill the reporting obligation by submitting an annual report of the business activities to the Directorate General of Electricity, as required by the Electricity Related Laws and Regulations.

Other Legal Requirements (continued)

- 2. Electricity safety requirements.** The performance of the Captive Power Supply Business must fulfill the electricity safety requirements (e.g. fulfillment of standardization of electricity equipment in compliance with the Indonesian national standards applicable in electricity sector, safeguarding of electrical installation, etc.) as determined by the Electricity Related Laws and Regulations. Electricity safety requirements are currently provided in MEMR Regulation Number 10 of 2021 concerning Electricity Safety.
- 3. Other obligations.** Any party performing the Captive Power Supply Business shall:
 - a. fulfill the obligation to prioritize domestic products and potentials in carrying out the Captive Power Supply Business (e.g. fulfillment of domestic component level);
 - b. for the IUPTLS holder, the fulfillment of the obligations applicable for the IUPTLS holder as may be determined in the IUPTLS and by the Electricity Related Laws and Regulations (including fulfillment of requirements applicable for the operation of the electricity installation (e.g. the requirement for an electricity installation to be operated by a party holding the electrical engineering personnel certificate of competency required by the Electricity Related Laws and Regulations));
 - c. comply with environmental protection requirements as determined by the environmental related laws and regulations;
 - d. other obligations that must be fulfilled or licenses/approval that must be obtained from the relevant governmental authority or institution that may be applicable according to the relevant Indonesian laws and regulations (e.g. conformity to spatial utilization activities and Building Approval); and
 - e. observe the sanctions (both administrative sanctions and criminal sanctions) that can be imposed for non-compliances with requirements of the electricity installation and/or for operation of the electricity installation and/or the Captive Power Supply Business, and/or adverse effect/implications therefrom.
- 4. Sale of Excess Power.** The holder of IUPTLS may sell excess power of the captive power supply to be utilized for public interest, provided that:
 - a. it has obtained prior approval from the Central Government or Regional Government;
 - b. can sell the excess power to the holder of Business Licensing for electricity supply for public interest; and
 - c. only for the area that has not been covered by the holder of Business Licensing for electricity supply for public interest.

Please note the followings:

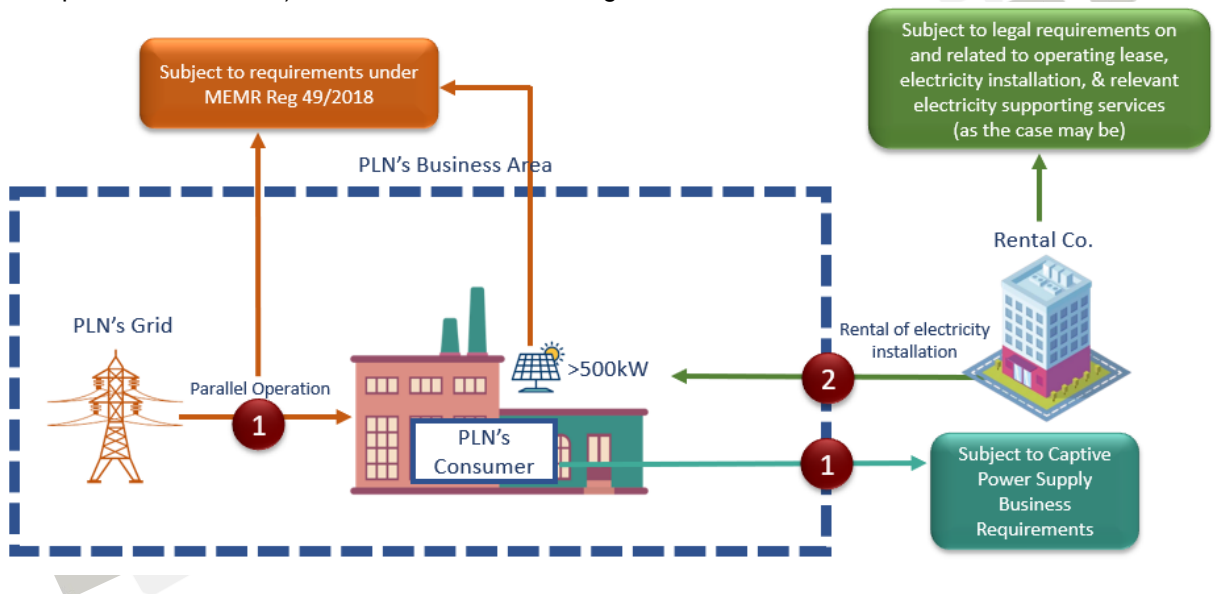
- (i) *the explanation on the Captive Power Supply Business Requirements provided in the table above, in particular on the licenses required for the performance of the Captive Power Supply Business, refers to regulations enacted after the enactment of Job Creation Act. The implementation of requirements for applying and obtaining those licenses thereunder are still subject to the effectiveness of the OSS System implementing those requirements;*

- (ii) MEMR has also enacted MEMR Regulation Number 5 of 2021 on Standards of Business Activities and Products on the Implementation of Risk-based Business Licensing in Energy and Mineral Resources Sectors; and
- (iii) the explanation on the Captive Power Supply Business Requirements provided in the table above only refers to regulations enacted by the central government of the Republic of Indonesia and therefore, it is advisable for any party carrying out the Captive Power Supply Business (including for the construction and installation activities of the electrical installations) to also observe any legal requirements applicable in the area of their location and the site where the electrical installations will be located (including, in case where the electrical installations are located within an industrial estate area, the Industrial Estate's Code of Conduct).

In addition, if the IUPLTS holder needs PLN's transmission line or distribution line to distribute the power from the electricity generation to their site, they shall comply with the requirements for joint utilization of electricity network (power wheeling) under MEMR Regulation No. 1 of 2015 concerning the Cooperation of Electricity Supply and Joint Utilization of Electricity Network.

B. The Current Prevalent Structure for Performance of Captive Power Supply Business

The explanation below is given only by referring to the regulations (issued by the central government of the Republic of Indonesia) and based on the following scheme:



1. **Collaboration of Captive Power Supply Business and Parallel Operation.** The utilization of electricity generated from photovoltaic power station by consumers of PT PLN (Persero) ("PLN") under the MEMR Regulation Number 49 of 2018 concerning the Use of Rooftop Solar Power Plant by PLN's Consumers (as lastly amended by MEMR Regulation Number 16 of 2019) ("**MEMR 49/2018**"), where:
 - a. **Allowing PLN's Consumers to Use Rooftop Solar Power System.** MEMR 49/2018 provides:
 - i. the definition of "**Rooftop Solar Power System**" as an electricity generating process by using photovoltaic modules that are installed and placed on the roof, walls, or other parts of the building owned by consumers of PLN as well as distributing electrical energy through the connected electrical system of the consumers of PLN;
 - ii. that the Rooftop Solar Power System shall include solar modules, inverters, electrical connections, safety systems, and export-import kWh meters;

- iii. the capacity of Rooftop Solar Power System shall be limited to a maximum of 100% of the connected power of the PLN's consumer, as will be determined by the inverter's total capacity;
- iv. requirements that must be fulfilled by the PLN's consumer for (a) obtaining PLN's approval for the construction and installation of the Rooftop Solar Power System, (b) the performance of construction and installation of the Rooftop Solar Power System (including the requirement of a party that can only carry out such construction and installation services), and (c) the installation of the Rooftop Solar Power System that must be in accordance with the Indonesian National Standards, international standards, and/or PLN's standards;
- v. that, for PLN's consumers from the industrial tariff group, they may carry out the construction and installation of the Rooftop Solar Power System in accordance with the MEMR 49/2018, both on grid and off grid from PLN's network system, provided that, in case of on grid, they shall be subject to monthly capacity charge as calculated based on the following formula:

$$\text{capacity charge} = \frac{\text{total capacity of inverter (kW)} \times 5 \text{ hours} \times \text{electricity tariff}}{}$$

- vi. that, **for the utilization and operation of the Rooftop Solar Power System, the PLN's consumer shall comply with the Captive Power Supply Business Requirements** (including the requirement to obtain the business license for carrying out the Captive Power Supply Business, SLO requirements, and requirements on the utilization of domestic goods/services).

b. Allowing PLN's Consumers to Export Excess Generation through Net Metering Scheme. As the aim of utilization of the Rooftop Solar Power System thereunder is to save electricity bills of PLN's consumers using the Rooftop Solar Power System, the MEMR 49/2018 provides:

- i. a scheme exporting excess kWh of electricity from the PLN consumer's Rooftop Solar Power System to the PLN's grid to become a backup for saving electricity bill that can only be accumulated for a maximum of 3 months;
- ii. that the exported electricity will be offset with imported electricity from PLN; and
- iii. the exported electrical energy of the PLN consumer's Rooftop Solar Power System shall be calculated based on the export kWh value recorded on the kWh meter exports and imports (as installed by PLN) multiplied by 65%.

c. Providing incentives. The Rooftop Solar Power System shall not be subject to capacity charge and emergency energy charge which is an integral part of the parallel operating costs. Furthermore, for PLN's consumers from the industrial tariff group that carry out construction and installation of the Rooftop Solar Power System in accordance with the MEMR 49/2018 as referred to in paragraph B.1.a.v above:

- i. in case of on grid, they shall not be subject to emergency energy charge which is an integral part of the parallel operating costs; and
- ii. in case of off grid, they shall not be subject to capacity charge and emergency energy charge which is an integral part of the parallel operating costs.

In addition, for avoiding any inconsistency between the imposition of capacity charge under the MEMR 49/2017 and the imposition of capacity charge under the MEMR Regulation Number 1 of 2017 concerning Parallel Operation of Power Plants with PLN's Power Grids ("**MEMR 1/2017**"), MEMR 49/2018 provides that the provisions on parallel operation under the MEMR 1/2017 shall not be applicable insofar as it relates to the utilization of the Rooftop Solar Power System by PLN's consumers.

Additional notes:

- (a) *as the MEMR 49/2018 does not specifically include behind-the-meter ("**BTM**") energy storage system as a component of the Rooftop Solar Power System, the Rooftop Solar Power Systems under the MEMR 49/2018 is not the common BTM system that consists of BTM solar power system and energy storage system. Thus, given the intermittent nature of Rooftop Solar Power System, (i) the application of the Rooftop Solar Power Systems as regulated in the ESDM Ministerial Regulation No. 49/2018 is currently not directed as a backup energy source when the PLN's electricity goes out or PLN suffers a blackout, (ii) without being connected to the PLN's grid, the energy generated from the Rooftop Solar Power Systems is not stable, and (iii) and without such energy storage system, the Rooftop Solar Power Systems cannot supply continuous and uninterrupted electricity to its users and will also hinder the PLN's customers to achieve energy independence from the PLN's grid and increase energy resilience;*
- (b) *except for PLN's consumers from the industrial tariff group that are using off grid Rooftop Solar Power Systems, the utilization of the Rooftop Solar Power Systems under the MEMR 49/2018 is using grid-tied system where they still maintain a connection to the electrical grid;*
- (c) *the MEMR 49/2018 does allow the construction and installation of the Rooftop Solar Power Systems by non-PLN's consumer and for Captive Power Supply Business, provided that, they shall be subject to a requirement for submitting a report on such construction and installation to the Director General of New, Renewable Energy and Energy Conversion and comply with the requirements for the operation of the Rooftop Solar Power Systems according to the prevailing laws and regulations;*
- (d) *the MEMR 49/2018 does not eliminate the obligation of the PLN's consumers using the Rooftop Solar Power Systems to fulfill the minimum charge (rekening minimum) requirements that may potentially reduce their monthly savings; and*
- (e) *the MEMR 49/2018 was enacted before the Job Creation Act that amended Law Number 30 of 2019 concerning Electricity ("**Law 30/2009**") and therefore, the MEMR 49/2018 is still using a reference to 'Operating License' which is the preceding term of the business license for performing captive power supply business.*

Furthermore, by considering that:

- (i) *the enactment of the Job Creation Act that caused changes to numerous laws (including to the Law 30/2009) requires further enactment of its implementing regulations by the relevant ministries and other governmental institutions which includes, for the electricity business sector, the implementing regulations of the Law 30/2009 (as amended by the Job Creation Act) that are expected to be done through enactment of new subordinated regulations and/or amendment to existing subordinated regulations of the Law 30/2009; and*
- (ii) *a plethora of issues relating to the MEMR 49/2018 (such as, the PLN consumer's energy-saving which is 65% limit on the credit value and the balance of accumulation of excess exported energy that will be reset quarterly) that have been raised by the relevant associations as they consider that MEMR 49/2018 gives benefits that may only be perceived by consumers with high daytime use and causes the consumers for receiving the payback of their investments in the Rooftop Solar Power Systems from the energy-saving in a long period and for which they are expecting to be followed up*

by the MEMR with an amendment to the MEMR 49/2018 that can give more additional value, incentives, and maximum benefits from the energy-savings to attract more public's interest to install the Rooftop Solar Power Systems (either with or without BTM energy storage system or battery energy storage system (BESS)),

an amendment to the MEMR 49/2018 in the near future needs to be anticipated by the relevant stakeholders.

2. **Rental of Electricity Generation.** As there is no specific regulation stipulating the ownership of the power generation used in the performance of Captive Power Supply Business, the PLN's consumer will rent electricity supply equipment forming the Rooftop Solar Power System from an Indonesian limited liability company carrying out rental of electricity supply equipment ("**Rental Co.**"). Thus, the common transactions to be entered into by and between PLN's consumer and the Rental Co. will be a lease transaction and, as the case may be, construction and installation services transaction and operation and maintenance services transaction. For that purpose, the Rental Co. shall comply with the legal requirements applicable for the performance of those transactions (including the business licensing requirements) in accordance with the prevailing Indonesian laws and regulations.

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