

Indonesia solar power projects: a (long awaited) new regime



Speed read

The Government of Indonesia has just announced it will tender out at least 5,000MW of solar projects by the end of 2018 based on a newly enacted regime for the development of PV solar projects. The regime detailed in the recently issued regulation (Reg 19/2016) introduces an entirely new procedure for the tendering and award of solar projects which includes:

- a capacity quota system;
- feed-in tariffs which differ from region to region;
- the allocation of power capacity based on an online “first come, first served” basis;
- restrictions on the capacity (and therefore the size of projects) that can be awarded to developers; and
- a model power purchase agreement to be issued by PLN.

While Reg 19/2016 has been in force for around a month (since 12 July), the market is waiting for both the government to issue the first capacity quota and call for registration and PLN to issue the model PPA that will be used for these projects.

Reg 19/2016 clearly marks a positive evolution for the Indonesian renewables energy sector as it sets out what appears to be a clear process for the tendering of solar power projects across the archipelago. However, whether the new regime provides a suitable platform for the development of a stream of utility scale solar power projects in Indonesia (thereby meeting the ambitious targets which have been set by the government) will be determined by the following factors:

- the actual implementation of the tender process by MEMR and PLN, especially how the way the “first come, first served” principle will be applied in practice;
- the setting of appropriate quota levels region per region; and
- the bankability of the terms of the standard PPA.

The Ministry of Energy and Mineral Resources (**MEMR**) has recently issued MEMR Regulation No. 19 of 2016 on the Purchase of Electricity from Photovoltaic Power System by PT Perusahaan Listrik Negara (Persero) (**PLN**) (**Reg 19/2016**).

While the issuance of Reg 19/2016 fits with the strong commitment of the Government of Indonesia to support the 35,000MW programme which was launched in 2015 and the ambitious target to increase the share of renewables in the power generation mix to 23% in 2025¹, it is also and mainly meant to fill the regulatory vacuum which arose following the Supreme Court Decision No. 5 P/HUM/2014 which ordered the revocation of MEMR Regulation No. 17 of 2013 on the Purchase of Electricity from Photovoltaic Power System by PT Perusahaan Listrik Negara (Persero) (**Reg 17/2013**).

As a matter of background, the Supreme Court ordered MEMR to revoke Reg 17/2013 on the basis of its failure to comply with a number of prevailing regulations including Law No. 30/2007 on Energy, Law No. 30/2009 on Electricity and Law No. 5/1984 on Industry in that it allowed PLN to purchase power from photovoltaic (**PV**) power projects using modules/panels which did not include any local (Indonesian) content. The Court decided that this was in contradiction with the prevailing regulations which impose obligations to prioritise and maximise the use of local goods and services in the development of power projects.

Reg 19/2016 introduces an entirely new procedure for the tendering and award of PV power projects which includes a capacity quota system and feed-in tariffs (**FITs**) which differ from region to region of the archipelago, the allocation of power capacity on a first come first served basis and a model power purchase agreement (**PPA**) to be issued by PLN.

Article 5(2) of Reg 19/2016 provides that MEMR aims to offer a minimum capacity of 5,000MW to interested parties spread out over different stages with FITs that may vary between such stages (the **PV Development Programme**). From discussions with officials from the Directorate General of Renewable Energy and Conservation of Energy at MEMR (Direktorat Jenderal Energi Baru Terbarukan dan Konservasi Energi or **EBTKE**) (the **Officials**), the timeline for the launch of the respective stages (including the first stage) has not yet been decided and will be announced at a later point in time but MEMR's current aim is for that minimum capacity to be tendered out by the end of 2018.

We set out below the key features of the new regime enacted by Reg 19/2016 including the procedure for the purchase of PV power by PLN (see Section 1), the capacity quota system and related restrictions that apply to potential developers (see Section 2) and the FIT and how it will be applied to particular projects (see Section 3).

1. Procedure for the purchase of PV power by PLN

Reg 19/2016 no longer adopts the auction based competitive tender process which prevailed under Reg 17/2013. Instead, Reg 19/2016 provides for a **three-step process** consisting of (i) a pre-selection phase where an interested party can become an “**Eligible PV Candidate**”, (ii) a PV quota allocation phase where an Eligible PV candidate can be allocated a certain PV capacity and become a “**PV Developer**” and (iii) a completion phase which runs from the signing of a PPA with PLN to the COD of the relevant project. **Please refer to the timeline appended in Schedule 1 for an overview of the tender process.**

1.1 Pre-selection phase

The pre-selection phase includes (a) the call for registration by EBTKE for a given stage of the PV Development Programme, (b) the registration process and (c) the verification of documents submitted by interested parties to determine whether they may proceed to the PV quota allocation phase.

- (a) **Call for registration:** The call for registration by EBTKE has to be made through EBTKE's website and/or a national newspaper **at the latest one month prior to the opening of the registration process**².
- (b) **Registration process:** Once the registration process is opened by EBTKE, interested parties (applicants) have **seven days to submit their registration** which has to include the following supporting documents in relation to the applicant:
- deed of incorporation;
 - tax number (Nomor Pokok Wajib Pajak or NPWP);
 - company registration certificate;
 - in-principle investment licence; and
 - certified letter on the applicant's financial capability issued by a financial ranking or a financial auditing institution.

¹ As reflected in the 2016 – 2025 Electricity Supply Business Plan (Rencana Umum Penyediaan Tenaga Listrik – **RUPTL**).

² Article 9 (1) of Reg 19/2016.

In addition to the above documents, applicants may also submit credentials and proof of experience in the development of PV power projects³. However, based on discussions with the Officials, it appears that EBTKE's assessment will solely (within that phase of the process) be based on the review of the mandatory supporting documents which have to be submitted and not on credentials and proof of experience.

- (c) **Verification of documents:** EBTKE will then verify the documents submitted by each applicant **within six working days from the application** date and communicate online to the applicant its decision of approval or rejection of the relevant application⁴. Applicants whose application is approved by EBTKE become Eligible PV Candidates who may then proceed to the PV allocation phase (see Section 1.2 below).

The pre-selection phase will be conducted by EBTKE at every stage of the PV Development Programme. However, once an applicant has been approved to become an Eligible PV Candidate at any given stage, it will not need to resubmit pre-selection applications for the further stages of the programme and can proceed directly to the PV allocation phase with regards to such further stages.

1.2 PV quota allocation phase

This phase covers (a) the publication of the capacity quota plan, (b) the communication of capacity quota offer to all Eligible PV Candidates, (c) the application for capacity allocation by Eligible PV Candidates, (d) the verification of such applications by EBTKE, and (e) the appointment and announcement of PV Developers.

- (a) **Publication of the capacity quota plan:** EBTKE will publish the capacity quota plan and the FIT offered at any given stage of the PV Development Programme on its website and/or in a national newspaper at the latest **four months prior to communicating the capacity quota offer online directly to the Eligible PV candidates**⁵. This four month time window seems to suggest that such publication will probably take place prior to the pre-selection phase and the call for registration referred to in Section 1.1 above in order to inform potential interested parties about the relevant capacity quota and the FITs which will be offered by MEMR and allow such interested parties

to submit an application if they have not yet become an Eligible PV Candidate at a prior stage of the PV Development Programme.

After confirming the appointment of an applicant as an Eligible PV Candidate (see Section 1.1(c) above), EBTKE will provide such candidate with an online account for the purpose of correspondence and document submission⁶.

- (b) **Communication of capacity quota offer:** EBTKE will then communicate directly to all Eligible PV Candidates through such online account the capacity quota and FIT which are offered for the relevant stage of the PV Development Programme.
- (c) **Application for capacity allocation:** This communication opens a **two month period** during which Eligible PV Candidates can submit online to EBTKE applications for allocation of PV capacity. Applications need to include the following documents⁷:
- self-assessment of the local content^{8*} of the proposed PV power system;
 - certificate of the PV modules and inverter;
 - feasibility study; and
 - interconnection study.

The required contents of the feasibility study and interconnection study are set out in detail in appendices 2 and 3 to Reg 19/2016⁹.

- (d) **Verification of applications by EBTKE:** EBTKE will then **verify and assess applications from Eligible PV Candidates on a first come first served basis**. From our discussions with the Officials, the first come first served principle will be based on the timing of the online submission by the relevant candidates as recorded by the online system which will be put in place by EBTKE. EBTKE's decision on capacity applications needs to be issued within two months from submission.

⁶ According to the Officials, EBTKE will soon conduct a trial period of the online system.

⁷ Article 14 (2) of Reg 19/2016.

⁸ Tingkat Komponen Dalam Negeri or TKDN

⁹ Based on the description of the contents of the feasibility study set out in Schedule 2 to Reg 19/2016, such study will need to contain among others information in relation to the proposed technology, the location of the project, social and environmental impact analysis, schedule, construction arrangements, projection of capital expenditure and operational costs, risk assessment, operation and maintenance. Schedule 3 provides details on the required contents of the interconnection study which shall contain among others technical information in relation to the plant, interconnection facilities and the suitability and impact of the project on the interconnection and distribution system.

³ Article 10 of Reg 19/2016.

⁴ Article 11 of Reg 19/2016.

⁵ Article 13(1) of Reg 19/2016.

(e) Appointment and announcement of PV

Developers: In case EBTKE approves an application for allocation of PV capacity, this will constitute the **appointment of the relevant Eligible PV Candidate to become a PV Developer** in relation to such approved capacity¹⁰.

1.3 Completion phase

Reg 19/2016 sets out the following further steps that need to be undertaken after the appointment as PV Developer:

(a) PPA signing, (b) financial close, (c) obtention of IUPTL and (d) COD of the relevant project.

(a) **PPA signing:** Reg 19/2016 provides that a **PPA must be signed with PLN within one month from the appointment as a PV Developer**¹¹. Thereafter, the PV Developer must submit a copy of the signed PPA to EBTKE¹². The PPA shall have a term of 20 years which may be extendable¹³. From our discussions with the Officials, we understand that there is no set procedure or considerations for the extension of the PPA and that the term and maximum number of extensions as well as the applicable procedure will have to be agreed with PLN and set out in the relevant PPA.

In relation hereto, it is worth noting that Reg 19/2016 provides that a model PPA will be provided by PLN to EBTKE within 30 working days from its issuance (i.e. by 24 August 2016)¹⁴.

(b) **Financial Close:** A PV Developer must **achieve financial close for a given project within six months from the execution of the relevant PPA** and submit online to EBTKE the proof of financial close having occurred. If financial close is not achieved within the required period of time, the status as PV Developer will be revoked¹⁵.

(c) **Obtention of IUPTL:** After the above steps are completed, the PV Developer shall apply to obtain an Electricity Supply Business License (Izin Usaha Penyediaan Tenaga Listrik or **IUPTL**). Based on Presidential Regulation No. 4/2016 on Acceleration of Power Infrastructure Development, an IUPTL should be issued within three working days as of the complete submission of the required documents¹⁶. From our

discussions with the Officials, it appears that Reg 19/2016 introduces a new concept of “appointment letter” which is to be issued by EBTKE to PV Developers and is meant to replace the temporary IUPTL (IUPTL Sementara or IUPTLS) which is typically issued by MEMR prior to financial close and which is valid until COD when it is replaced by the (definitive) IUPTL.

Within three working days from obtaining the IUPTL, the PV Developer must submit a copy thereof online to EBTKE and PLN¹⁷.

(d) **COD:** The required commercial operation date (**COD**) under Reg 19/2016 must take place **within 12 months from the issuance of the IUPTL for PV power projects with a capacity below 10MW and 24 months for PV power projects with a capacity above 10MW**. If the COD is not achieved within this timeframe, PLN will reduce the FIT progressively and up to 8% depending on the duration of the delay¹⁸, and if such delay is in excess of one year, the status of PV Developer will be revoked¹⁹. Further, should such revocation occur, the relevant PV Developer will be prohibited from applying for a new PV power capacity allocation for a period of two consecutive years from the revocation date²⁰.

1.4 Additional obligations of PV Developers

Reg 19/2016 also requires the following actions to be undertaken by PV Developers during the term of the PPA:

- PV Developers are required to submit online to MEMR a quarterly report of the PV development from the date of execution of the PPA until COD²¹.
- PV Developers are also required to submit a self-assessment report of their compliance with the applicable local content requirements no later than 30 days before the expected COD. This assessment will be verified by an official appraiser appointed by the Ministry of Industry. If the PV Developer fails to meet the local content requirements and is unable to remedy such failure within 60 days, the FIT will be reduced by the difference between the verified level of local content and the required level of local content (as stipulated under

¹⁰ Article 16 of Reg 19/2016.

¹¹ Article 17 (1) of Reg 19/2016.

¹² Article 17 (2) of Reg 19/2016.

¹³ Article 7 of Reg 19/2016.

¹⁴ Article 18 (1) of Reg 19/2016.

¹⁵ Article 20 of Reg 19/2016.

¹⁶ Article 19 (3) of Reg 19/2016.

¹⁷ Article 21 of Reg 19/2016.

¹⁸ Article 23 (2) of Reg 19/2016 provides that for a delay of up to 3 months, the FIT will be reduced by 3%, while for a delay of more than 3 months up to 6 months, the FIT will be reduced by 5%, and for a delay of more than 6 months up to 12 months, the FIT will be reduced by 8%.

¹⁹ Article 23 of Reg 19/2016.

²⁰ Article 24 of Reg 19/2016.

²¹ Article 19 of Reg 19/2016.

MOI Reg 54/2012²²) in accordance with the formula as set forth under Reg 19/2016²³.

1.5 Only Indonesian entities may take part in the PV power allocation process

Reg 19/2016 provides that, to become Eligible PV Candidates, applicants need to be Indonesian incorporated entities that engage in the supply of electricity as (one of) their business activity(/ies). This is further confirmed by the list of supporting documents which need to be submitted with each application.

Such legal entities may be in the form of a foreign investment company (PT PMA), provided that the following foreign ownership restrictions applicable under Government Regulation No. 44/2016 on the List of Business Fields Which Are Closed and Conditionally Open to Investment (**Negative List**) are complied with:

- For projects with a capacity of more than 10MW: the maximum foreign ownership is 95%;
- For projects with a capacity of 10MW or less: the maximum foreign ownership is 49%.

2. Capacity quota – different levels of limitations

Besides the new tender process set out in Section 1 above, Reg 19/2016 sets out a capacity allocation system which is based on the concept of “capacity quota” which is defined as “the maximum total capacity of PV power that is proposed to Eligible PV Candidates” within a given region and at a given point in time (i.e. one the “stages” of the PV Development Programme) using the applicable FIT for that region. From our discussions with the Officials, the capacity quota for each region will be determined by MEMR by taking into account PLN’s grid capacity in such region. The capacity quota for the first stage of the PV Development Programme is set out in schedule 1 to Reg 19/2016 and consists of a total capacity of 200MW spread across all regions (see Schedule 2 for the full list of capacity quota per region).

Further to the capacity quota per region, Reg 19/2016 also introduces the **following additional limitations** that apply

to the allocation of capacity to Eligible PV Candidates within a given region²⁴:

- if the capacity quota for the region is above 100MW, an Eligible PV Candidate may request a **maximum capacity of 20MW per application**;
- if the capacity quota for the region is between 10MW and 100MW, an Eligible PV Candidate may request a **maximum capacity of 20% of the capacity quota per application** (e.g. based on the current capacity quota of 5MW in Aceh, an Eligible PV Candidate can request a capacity of up to 1MW per application in that region); and
- if the capacity quota for the region is below 10MW, there is **no restriction** on the capacity an Eligible PV Candidate may apply for.

An Eligible PV Candidate may submit at each stage **up to three applications of capacity allocation within the same region** (e.g. if a region has a capacity quota above 100MW, an Eligible PV Candidate may apply for 3 X 20MW of capacity in that region). If after one month from the communication by EBTKE of the capacity quota offer to PV Eligible Candidates there remains available capacity quota for any given region, Eligible PV Candidates that have already been awarded three capacity allocations within the same region and for the same stage are then **allowed to submit additional capacity applications for a capacity of up to the remainder of the relevant quota** (e.g. if a region has a capacity quota of 110MW and that 50MW have not been allocated after one month from the communication by EBTKE of the capacity quota offer, an Eligible PV Candidate which has already been awarded 3 X 20MW of capacity in that region may then apply for the remaining 50MW of capacity)²⁵.

All of the above limitations **only apply within a given region** and, as such, an Eligible PV Candidate is therefore allowed to apply simultaneously for capacity quotas in different regions.

The **capacity quota offer** by EBTKE for a given stage will be **valid for two months** from its communication to the Eligible PV Candidates. If a capacity quota has not been fully awarded within this two month period, the remaining capacity quota will be accumulated and carried forward to the following stage of the PV Development Programme and the FIT for such remaining quota will then be the FIT applicable to the following stage.

From our discussions with the Officials, a PV Developer may be allowed to merge different capacity allocations into a single project with a single PPA. However, the details and

22 For centralized and communal PV power systems, the level of local content requirement is as follows: (a) for goods, including the solar module, battery control unit, inverter, lighting system, electricity distribution system, and accessories and supporting equipment, a minimum of 25.63%; and (b) for services, including shipping and installation: 100%; and a combined minimum level for goods and services of 43.85%.

23 Article 22 of Reg 19/2016.

24 Article 15 of Reg 19/2016.

25 Article 15 (4) and (5) of Reg 19/2016.

requirements for such consolidation are not set out in the regulation and will therefore depend on EBTKE's and PLN's assessment and willingness to entertain such requests.

Finally, the capacity quota for a new stage can only be issued if at least up to 80% of the currently-offered capacity quota has been awarded and/or if the current two month capacity application period has lapsed²⁶.

3. Feed-in tariff

To the contrary of the approach under Reg 17/2013 which set a flat FIT for all regions of Indonesia, Reg 19/2016 now sets different FITs depending on the region in which projects will be developed. For the first stage of the PV Development Programme, the FIT ranges from USD 0.145/kWh to USD 0.25/kWh depending on the region. Please see Schedule 2 for the full list of FITs applicable to stage one as appended to Reg 19/2016. The FITs:

- are inclusive of the construction costs of the transmission line from the PV system to PLN's grid²⁷;
- are non-negotiable and must be set forth in the PPA²⁸;
- are not subject to escalation²⁹;
- will be paid in Rupiah (pursuant to Bank Indonesia Regulation No. 17/3/PBI/2015 on the Obligation to Use Rupiah) and be based on the Jakarta Interbank Spot Dollar Rate (JISDOR) on a specified date as agreed in the PPA³⁰;
- may vary between the various stages of the PV Development Programme³¹.

4. Implementation, transitional provisions and potential alternatives to the Reg 19/2016 regime

4.1 Implementation

Reg 19/2016 has entered into force as from its issuance on 12 July 2016.

However, we understand from discussions with the Officials that the regulation is still to be socialised and that the timing of the first announcement of capacity

²⁶ Article 13 (4) of Reg 19/2016.

²⁷ Article 6 (1) a of Reg 19/2016.

²⁸ Article 6 (1) b of Reg 19/2016.

²⁹ Article 6 (1) b of Reg 19/2016.

³⁰ Article 6 (1) c of Reg 19/2016.

³¹ Schedule 1 of Reg 19/2016.

quota and call for registration (as per the process set out in the regulation) have yet to be set. PLN is also to issue a model PPA which will be used for the projects tendered out on the basis of Reg 19/2016.

4.2 Transitional provisions

Reg 19/2016 further provides that:

- winning bidders of tenders that were conducted based on Reg 17/2013, are required to execute a PPA with PLN within three months from the enactment of Reg 19/2016³² and failure to do so will result in the revocation of such winning bidder status;
- investors which have been conducting sales and purchases of PV power with PLN through a business-to-business scheme, may opt not to execute the FIT-based PPA and continue with the supply of electricity under the existing PPA they have in place with PLN³³.

4.3 Potential alternatives to the Reg 19/2016 tender regime

Based on our discussions with the Officials, it appears that the new process enacted by Reg 19/2016 is not exclusive nor the sole avenue available for the development of PV power projects in Indonesia. Interested parties may still approach PLN with proposed PV power projects based on the direct appointment process which remains available for renewable energy projects, although Officials mentioned that in such case, the proposed tariff should arguably be lower than the relevant FIT.

5. Closing remarks

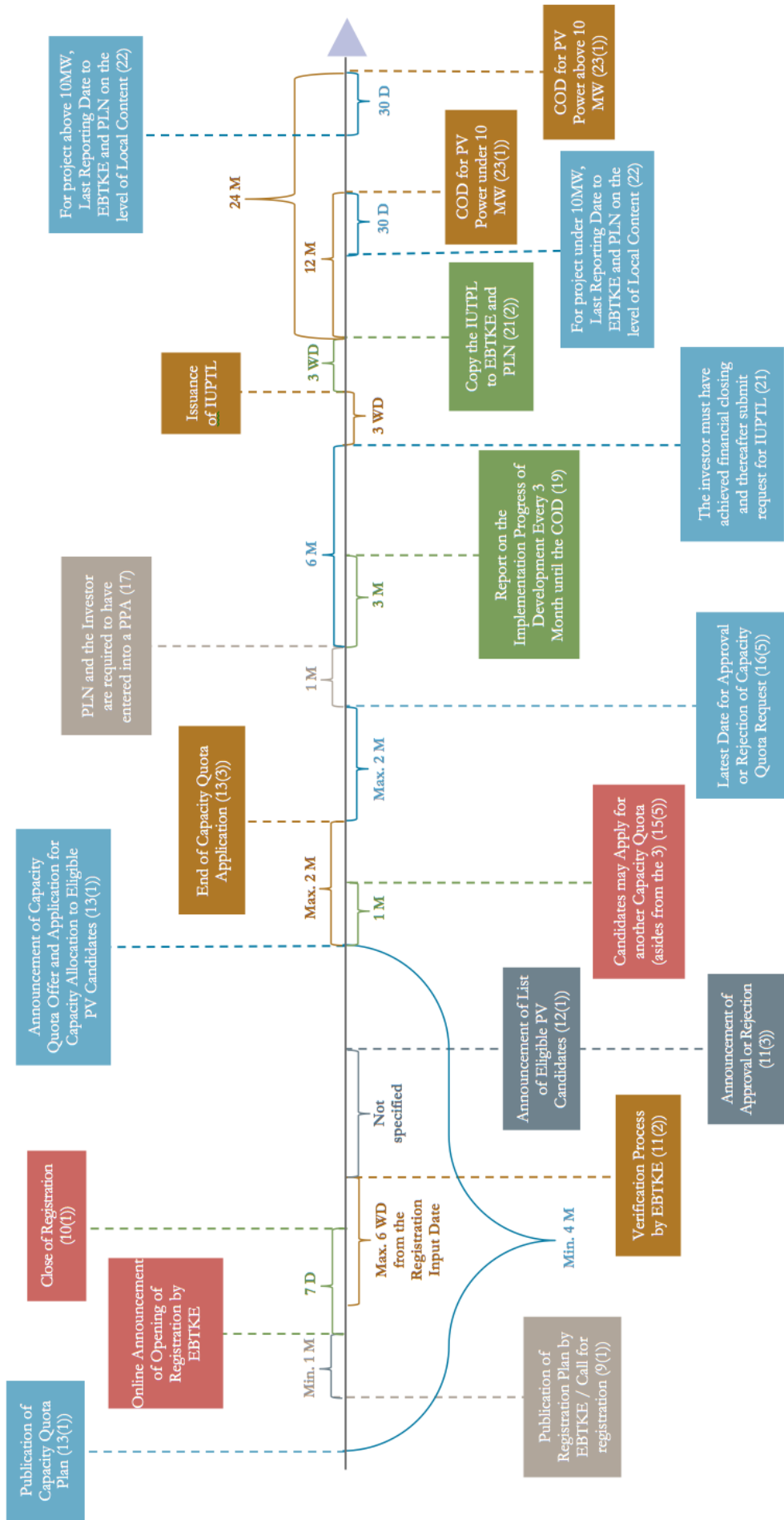
Reg 19/2016 clearly marks a positive evolution for the Indonesian renewables energy sector as it fills the vacuum that had been created by the Supreme Court decision issued in 2014. However, only the actual implementation of the tender process by MEMR (through EBTKE) and PLN and, in particular, the setting of appropriate quota levels and the way the first come first served principle will be applied in practice will tell whether the new regulatory regime enacted by Reg 19/2016 provides a suitable platform for the development of utility scale PV power projects in Indonesia.

Further, it will have to be seen whether PLN will still be willing to entertain direct appointment solicitations which are not based on the process and FIT provided under Reg 19/2016 but on a B2B approach and, if that were to be the case, what will then be the terms and conditions applicable to such projects including the tariff.

³² Article 25 (1) of Reg 19/2016.

³³ Article 26 of Reg 19/2016.

SCHEDULE 1
Procedure for the Purchase of PV Power by PLN



SCHEDULE 2
First stage capacity quota and feed-in tariff for each region
(as set forth in Reg 19/2016)

No.	Region	Capacity Quota (MW)	Purchasing price (cent USD/kWh)
1	DKI Jakarta	150	14,5
2	West Java		
3	Banten		
4	Central Java and Special Region of Yogyakarta		
5	East Java		
6	Bali	5	16
7	Lampung	5	15
8	South Sumatra, Jambi and Bengkulu	10	15
9	Aceh	5	17
10	North Sumatra	25	16
11	West Sumatra	5	15,5
12	Riau and Riau Islands	4	17
13	Bangka-Belitung	5	17
14	West Kalimantan	5	17
15	South Kalimantan and Central Kalimantan	4	16
16	East Kalimantan and North Kalimantan	3	16,5
17	North Sulawesi, Central Sulawesi and Gorontalo	5	17
18	South Sulawesi, Southeast Sulawesi and West Sulawesi	5	16
19	West Nusa Tenggara	5	18
20	East Nusa Tenggara	3,5	23
21	Maluku and North Maluku	3	23
22	Papua and West Papua	2,5	25



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