



Renewable Energy Draft Bill Review:

Energy Democracy: The Dilemma of Just Pricing and Incentive for Renewable Energy Producers

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Executive Summary

This policy brief focuses on price governance and renewable energy incentives. It answers three fundamental issues: First, an indicator of the value of economic justice in renewable energy tariffs; second, the government's responsibility and consumer rights to renewable energy; and third, optimizing incentives and facilities to encourage the renewable energy transition in the business world. The main findings of this brief are: 1) Large-scale business actors are still the main consideration in determining renewable energy prices; 2) the renewable energy Bill has not concretely guaranteed people's rights to cheap, affordable and sustainable renewable energy; and 3) incentive policies are still not optimal due to the types of incentives that are general in nature and are not based on business characteristics.

Article Inventory List that Needs to Be Fixed

Article	Material
Article 53	(1) Energy prices shall be determined on: a. the agreement of the parties by considering the economic value and reasonable rate of return for the business entity; and
Article 54	(1) Renewable energy prices shall be determined on: a. the agreement of the parties by considering the economic value and reasonable rate of return for the business entity; and (3) Determining electricity selling prices sourced from Renewable Energy as referred to in section (1) shall be in form of: a. The agreement prices of the parties based on the types, characteristics, technologies, locations, and/or installed power plant capacity sourced from renewable energy; b. market index prices of biofuel; and/or c. reverse auction mechanism.
Article 55	(2) Incentives as referred to in section (1) shall be in form of fiscal incentives and/or non-fiscal incentives for a certain period. (4) Fiscal incentives as cited in section (2) shall be in form of tax facilities or imports issued by the Government based on the legislation of taxation and customs law, or other facilities issued by state in form of financing and guarantees through state-owned enterprises that assigned by Central Government. (5) The Central Government and/or Local Government in accordance with the authority shall be giving support to electricity state-owned enterprises in developing New and Renewable Energy. (6) Supporting of Central Government and/or Local Government to electricity state-owned enterprises as cited in section (5) shall be through: a. provision of land and infrastructure in order to accelerate the transition using fossil fuel power plants into New and Renewable Energy power plants; b. licensing facilities in order to land acquisition and infrastructure; and/or c. low-cost funding guarantees issued by Central Government in order to develop New and Renewable Energy.

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Why is it Necessary to Formulate the Right Renewable Energy Prices and Incentives?

In Law Number 30 of 2009 concerning Electricity in Article 2 (2), it is explained that "The development of electricity aims to guarantee the availability of electricity in sufficient quantities, good quality, and reasonable prices in the context of increasing the welfare and prosperity of the people in a fair and equitable manner and in realizing sustainable development". The point that has been highlighted with regards to the renewable energy Bill is the phrase "...reasonable prices in the context of increasing the welfare and prosperity of the people in a fair and equitable manner...".

The way electricity prices are stipulated deserves attention considering that the renewable energy Bill puts forward an Energy Transition towards Renewable Energy, causing the use of energy sources not only leads to the changes in the governance of electricity supply, but also in the support for the required technology.

One of the problems that arise in electricity generation using renewable energy is the competitive economic value of the generator itself. Referring to Presidential Decree 112/2022 concerning the Acceleration of Renewable Energy Development, it can be seen that the scheme launched by the government is directed towards efforts to encourage power plants sourced from renewable energy to have equal competitiveness or at least close to conventional power plants.



Setting fixed prices in a regulation, especially in law, is hoped to result in fairer business competition and to ensure that the public gets affordable electricity prices. At the same time, it is also important to consider whether the incentives for both business actors and the community in the renewable energy Bill can guarantee resilience while supporting the democratization of the energy sector in Indonesia.

Looking for Equitable Renewable Energy Tariffs

The renewable energy Bill is based on the principles of benefit, efficiency, fair and independent economy, accessibility, participation, and integration. Meanwhile, in terms of the purpose of implementing New Energy and Renewable Energy, it refers to guaranteeing national energy security, independence and sovereignty.

The definition given by the renewable energy Bill itself with regards to Equitable Economy is the implementation of New Energy and Renewable Energy which reflects energy production costs, including environmental costs and conservation costs, as well as benefits that are assessed based on people's purchasing power. From this definition, there are five important elements that can be sorted out: 1) energy production costs, 2) environmental costs, 3) conservation costs, 4) profits, and 5) people's purchasing power.

Referring to the phrase in Article 54 paragraph (1) of the renewable energy Bill concerning Renewable Energy Tariffs, in determining prices the government sets the highest benchmark price while to achieve the expected price a negotiation mechanism will be used between the government, represented by PLN, and various entities focusing on providing electricity. It is important to note that the highest price benchmark will still pay attention to reasonable returns for business entities. However, in Article 54 paragraph (4), if the negotiation exceeds the highest price benchmark, the government will guarantee assistance through budget readiness, which means that the government will provide subsidies.

Of all aspects mentioned in this bill, there is not a single consideration that determines the calculation of environmental and conservation costs. The profit-return factor remains the main consideration in determining the price of electricity. If the government indeed aims to achieve an Equitable Economy as stated in the Bill, then the purchase price for Renewable Energy as stated in Article 54 paragraph (3) does not only include: 1) the agreed price of the parties based on the type, characteristics, technology, location, and/or installed capacity of the power plant from Renewable Energy Sources, 2) market index price for biofuels, and/or 3) reverse auction mechanism. Rather, it should also clearly pay attention to the environmental and conservation impacts. This would demonstrate that Indonesia is serious about creating a just energy transition.



The most important aspect of stipulating the price is how the mechanism can guarantee the development and continuity of Renewable Energy. This is not only limited to renewables but it must also be sustainable (just), which means that it is not limited to possessing renewable elements in energy sources, but also considers how they impact the environment and society during the transition process.

a. The Configuration of Legal Relations in renewable energy Pricing

Article 53 and Article 54 of the renewable energy Bill regulate the pricing of new energy and the pricing of renewable energy. If these articles are examined further, there are at least three ways in determining the price of new energy and renewable energy, namely; 1) The agreement of the parties, 2) the determination of the central government, and 3) the assignment of the central government.

Of the three pricing models as formulated in Articles 53 and 54 of the renewable energy Bill, each has a different legal relationship. First, the agreement of the parties as stipulated in Article 53 paragraph (1) letter a and Article 54 paragraph (1) letter a implies that price fixing is carried out based on contractual legal relations. In carrying out this norm, the principle of *pacta sunt servanda* or kept your promise applies. This principle is bound by the provisions stipulated in Article 1338 paragraph (1) of the Civil Code which states that every agreement made legally applies as a law for those who make it. Based on these provisions, the parties to the agreement must comply with the agreement made (Situmorang, 2021, p. 447).

Thus, according to the formulation of Article 53 paragraph (1) letter a and Article 54 paragraph (1) letter a, the parties involved in setting the price of new renewable energy hold the same legal standing. Hence, it can be seen that the role of the state in this matter has become more passive. The state in more extreme conditions may even be weaker than the private sector when setting prices for new renewable energy – depending on the negotiating ability of the representatives of the parties involved in stipulating these prices.

Second, in addition to being carried out based on a contractual legal relationship, Article 53 paragraph (1) letter b and Article 54 paragraph (1) letter b stipulate that the price of new renewable energy is determined based on the determination of the central government. This means that the legal relationship contained in Article 54 paragraph (1) letter b and



Article 54 paragraph (1) letter b is a one-sided public legal relationship in the form of *beschikking* (state administrative decisions). *Beschikking* or state administrative decisions are doctrinally defined as one-sided public legal actions carried out unilaterally by the government which is not an agreement between two parties in the framework of carrying out government tasks in the narrow sense (*bestuur*). In the narrow sense here implies that the decision is real or concrete (casuistic, special events, formation of legal rules in concreto), individual (applies to a particular person or legal entity), and final (possesses legal consequences, with the intention of determining rights and obligations). This decision regulates an existing legal relationship or creates a new legal relationship (Herman & Noor, 2017, pp. 90-91).

In contrast to the provisions in Article 53 paragraph (1) letter a and Article 54 paragraph (1) letter a which bases the process of determining the price of new renewable energy on a contractual legal relationship, in the formulation of Article 53 paragraph (1) letter b and Article 54 paragraph (1) letter b the role of the state is stronger given that the legal price fixing authority is determined by the state itself.

The price fixing process carried out by the state – the central government – is based on the principle of state sovereignty and the juridical consequences of the concept of the right to control the state which is the constitutional mandate of Article 33 paragraphs (2), (3) and (4) of the Indonesian Constitution. Thus, one-sided public law relations in the form of determination (*beschikking*) of the central government can be seen as the government's endeavor to carry out its obligations to create sustainable prosperity and welfare for Indonesian citizens – in Dutch terms it is called *bestuurszorg* (Herman, 2019, p. 9).

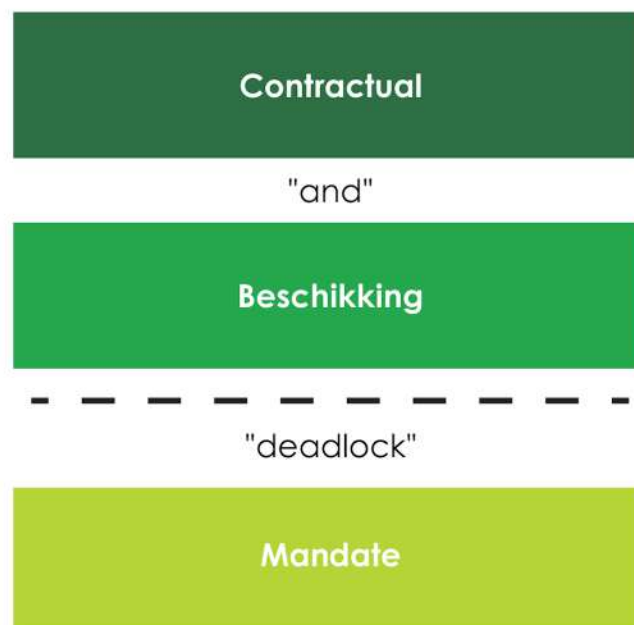
Third, the pricing of new renewable energy is based on assignments from the central government. Provisions regarding the pricing mechanism based on assignments from the central government are formulated in Article 53 paragraph (2) and Article 54 paragraph (2) of the renewable energy Bill. Government assignments in the field of state administrative law are known as part of the co-administration task (*medebewind*). Co-administration implies a limited delegation of authority from one institution to a lower institution in order to carry out the tasks or household affairs of the institution that gives the authority. Thus, the authority obtained by the lower institutions is in the form of a mandate. This means that in carrying out *medebewind*, the affairs carried out by the recipient of the mandate are still the affairs of the central government as an institution that is in charge (Pitono, 2012, p. 20).



b. Guarantees for people's rights are still minimal

Article 53 paragraph (1) letter a and Article 54 paragraph (1) letter a use the word "and" to connect it with letter b. On the other hand, Article 53 paragraph (2) and Article 54 paragraph (2) use the word "In the case of ... the mechanism referred to in paragraph (1) fails" to link paragraph (1) and paragraph (2). This means that the two paragraphs in Article 53 and Article 54 of the renewable energy Bill must be implemented systematically. Their implementation must be sequential from paragraph (1) letter a first, then letter b and paragraph (2).

Picture. Sequence of renewable energy Pricing Mechanism



The picture above shows how the renewable energy pricing mechanism is carried out based on the formulation of Article 53 and Article 54 of the renewable energy Bill. Pricing through a contractual mechanism is the first method regulated in the renewable energy Bill. This means that this contractual mechanism cannot be bypassed; it is legally obligatory to be carried out first in the renewable energy price fixing process. Thus, the formulation of Articles 53 and 54 regarding the pricing of renewable energy shows that the position of the state remains weak, or negligent, to determine the highest reference price for renewable energy. In addition, the formulation of this article also shows the dominance of the interests of the businesses in the bill.



It is not only the interests of the businesses that are prioritized in the formulation of Articles 53 and 54, but the guarantee of people's rights to cheap, affordable and sustainable energy is also not visible in the formulation of the article. Even though Article 53 paragraph (1) and Article 54 paragraph (1) stipulate that the pricing of renewable energy still considers "economic value", this formula is still not enough to showcase that the government is serious about fulfilling people's rights to energy in determining renewable energy prices.

According to the preamble, new and renewable energy considering the letter a of the renewable energy Bill is one of the strategic natural resources that affects the lives of many people. Therefore, in accordance with the Ruling of the Constitutional Court Number 85/PUU-XI/2013 concerning restrictions on the concept of the right to control the state in relation to the management of resources or energy that affects the lives of many people, the government is obliged to formulate clear guarantees for the fulfillment of people's rights to cheap, affordable, and sustainable energy in accordance to Article 53 and Article 54, not just disguising the norms with the phrase "economic value".

Energy, including renewable energy, is a primary matter that concerns the lives of many people. Therefore, the order of the price fixing mechanism should first be carried out by the state itself – the Central Government or State/Regional Owned Enterprises as organizational subjects in the concept of the state's right to control. This process of price fixing by the state can be carried out either through direct *beschikking* or by handing over a mandate to a particular institution. Therefore, the formulation of paragraph (2) related to the mandate in Articles 53 and 54 should be made into one unit in one paragraph with the formulation of paragraph (1) letter b regarding *beschikking*. The phrase used to connect the *beschikking* norm with the mandate norm should use the word "or", so that only one of the mechanisms is used by the government in setting renewable energy prices.

If the guarantee of people's rights to cheap, affordable and sustainable energy sources is fulfilled, then the renewable energy price fixing through a contractual mechanism will be implemented. Thus, the formulation of articles related to this contractuality should be placed as the last option in the process of setting renewable energy prices for the benefit of the businesses. In this case, the rights of the people are prioritized first followed by the interests of the businesses. In addition, the phrase "failure (deadlock)" in the formulation of Article 53 and Article 54 does not need to be included as a link between one norm and another. This phrase seems to signal that the deadlock in the renewable energy pricing process has been engineered to occur by law.



Renewable Energy Incentives are not Optimal

Indeed, Article 55 of the renewable energy Bill has regulated the provision of incentives by the central and regional governments to business entities that operate renewable energy, provide electricity with a standard renewable energy portfolio, have electricity business areas that prioritize the purchase of electricity from renewable energy, that carry out conversions or innovations in non-renewable energy electricity, and seeking to create an renewable energy market through the conversion of fossil fuel-based equipment to electricity-based electricity in the transportation, industrial and household sectors in reducing emissions. However, the incentives have two fundamental obstacles, namely in terms of the substance of Article 55 of the renewable energy Bill, and in terms of corporate governance.

a. Substance Issue in Article 55 of the renewable energy Bill

Norma yang terdapat dalam Pasal 55 RUU renewable energy ternyata memiliki masalah yang menggambarkan kebijakan insentif masih setengah hati yaitu: The norms contained in Article 55 of the renewable energy Bill have several issues which show that incentive policies are still half-hearted, namely:

1. Types of incentives are still general in nature and not based on business characteristics

The renewable energy Bill as a regulatory policy that is *lex specialis* can essentially formulate norms with a special character (focusing renewable energy). However, the construction of norms in Article 55 paragraph (2), paragraph (4) and paragraph (6) does not describe this element. This is because the types of incentives are still general in nature in the form of: a) fiscal incentives and/or non-fiscal incentives for a certain period of time; b) tax/import facilities, and financing; c) provision of land and infrastructure; d) ease of licensing; and e) provision of guarantees to obtain funding.

This incentive is not based on business characteristics which should be formulated through a business sector approach, functions, needs analysis, and risk/problem analysis in the form of: a) Fiscal incentives for energy efficiency; b) support and facilities for research and development; c) an energy transition financing mechanism; d) insurance schemes for green projects; e) blended finance; f) incentive schemes for business entities that provide renewable energy-based electricity of more than 50% of the demand; and g) an easy ecosystem (such as an renewable energy component).



2. Not Explicitly Dividing Incentives and Facilities Provided

In order to realize the principle of clarity in the formulation of laws, Chapter X of the renewable energy Bill should be able to clearly divide incentive norms and facility norms. In various laws and regulations, incentives and facilitation norms are formulated explicitly and separately, which include:

Nomenclature of Incentive and Facility Arrangements

REGULATIONS	NORMS
UU 23 Tahun 2014	Incentives and Facilities
UU 11 Tahun 2020	Incentives and Facilities
UU 1 Tahun 2022	Incentives and Facilities
PP 24 Tahun 2019	Incentives and Facilities

Explicitly dividing incentives and facilities is in line with various norms of laws and regulations that are currently in effect. It will also provide legal certainty for forms that can be provided in a more detailed and comprehensive manner. Later, the provision of incentives will be directed at supporting fiscal policy to increase investment. Meanwhile, the provision of facilities in the form of providing non-fiscal facilities is to facilitate and to increase investment.

Forms of incentives can be formulated through business sector approaches, functions, needs analysis, and risk/problem analysis. Moreover, the provision of facilities can be in the form of: a) provision of data and information; b) provision of facilities and infrastructure; c) provision of technical assistance; d) simplification and acceleration of licensing; e) access to marketing of products; f) access to skilled manpower; and g) access to supply of raw materials.



b. The Dilemma of the Power Wheeling Incentive Model for the Business World and Society

One of the attractive incentives for the private sector and the public to enter renewable energy generators is a power wheeling policy plan that allows the private sector to use PLN facilities to distribute electricity to households and industrial areas. In this case, the government still needs to include articles related to power wheeling in the renewable energy Bill.

Conceptually, the power wheeling policy is expected to: 1) Reduce costs for electricity buyers as they can purchase electricity from various sources; 2) increase investment in the private energy sector, allowing private companies to profit from the sale of electricity; 3) increase consumers' purchasing power as they can buy electricity from different sources; and 4) enable private companies to increase their operational efficiency by reducing the cost of purchasing electricity.

By using power wheeling, households can sell the energy produced by their power plants to other users in the national electricity network. Thus, households can generate profits from selling the energy produced by their power plants.

Europe has become one of the regions in the world that has developed an effective power wheeling regulation model with the following details:

Power Wheeling Arrangements in Europe

Countries	Setting Models
Germany	Power wheeling in Germany is based on government regulation. This model requires network owners to provide power wheeling services to other network owners at rates set by the government. This model also requires network owners to pay shipping fees to other network owners according to the rates set by the government.



Countries	Setting Models
France	The power wheeling arrangement model in France is based on an agreement between the network owners. This model requires network owners to provide power wheeling services to other network owners at rates set by the government. This model also requires network owners to pay shipping fees to other network owners according to the rates set by the government.
Netherlands	The power wheeling arrangement model in the Netherlands is based on an agreement between the network owners. This model requires network owners to provide power wheeling services to other network owners at rates set by the government.

Source: greenmatch

Renewable Energy Component Industry Support must be Included in the Renewable Energy Bill

The domestic renewable energy component industry needs support from the government in order to be able to accelerate the development of clean energy. To date, however, there is no clear support, especially in terms of market creation, industrial development, and technology transfer. This is because there is no master plan program regarding the development of the renewable energy ecosystem and supporting components. Based on the Domestic Component Level (TKDN). In various projects, renewable energy components are still imported. For example, in geothermal which has been developing for more than 40 years, the TKDN component remains very small.

Support for renewable energy components from the government can be formulated in regulatory policies in the renewable energy Bill, which explicitly formulates the design and build of the renewable energy business climate. Support for market creation and component development will also reduce the price of renewable energy for consumers.



Unclear Norms Regulating Financing for Switching to Renewable Energy

Financing to switch to renewable energy is also a challenge in itself as it requires a large amount of funds. The Ministry of Finance noted that the budget requirement to reduce carbon emissions in 2030 reaches IDR 3,461 trillion. The presence of fiscal instruments and the active role of the financial services industry are urgently needed to accelerate the implementation of the renewable energy transition. It is hoped that the burden on the business world to invest in the green economy, especially renewable energy, can be reduced and accelerated.

Several green economy incentive schemes have been announced by the government, including tax holidays, tax allowances, exemption from import duties, reductions in VAT, PPh DTP, reductions in PBB, imposition of carbon taxes, energy transition financing mechanisms. In the non-bank financial industry sector, a green insurance scheme has also been designed to accommodate insurance for green projects. However, this variety of incentive schemes is problematic because the arrangements have not been integrated into the renewable energy Bill, given that it is still a separate and sectoral policy.

Meanwhile, several funding schemes have emerged, such as the funding scheme announced at the G20 Summit, namely, the JETP (Just Energy Transition Partnerships) and ETM (Energy Transition Mechanism) schemes with a total commitment of US\$20 billion each (equivalent to Rp.314 trillion) and US\$250-300 million (equivalent to Rp.3.87 trillion).

Financing schemes in the realm of investment in renewable energy also need to be accommodated in the renewable energy Bill by promoting the principles of just transition energy. For example, there should be transparency regarding the use of funds in detail, sources of funding that are not borne by the State Budget, a larger portion for the construction of renewable energy generators and transmission, and the role of affected communities in policy making



Conclusion

The formulation of Articles 53 and 54 of the renewable energy Bill, especially paragraphs (1) and (2), makes contractual legal relations the main mechanism for setting renewable energy prices, thereby placing business actors, especially large-scale ones, as the main actors in determining renewable energy prices. In the meantime, renewable energy is the primary energy that has considerable implications on the lives of many people.

Meanwhile, the incentive policy has three fundamental obstacles. First, in terms of the substance, Article 55 the renewable energy Bill is still not optimal because: a) the types of incentives are still general in nature and are not based on business characteristics; and b) it does not explicitly share the incentives and facilities that will be provided. Second, the dilemma of the power wheeling incentive model for the business world which should still be accommodated in the renewable energy Bill. Third, the issue of financing and support for the renewable energy component industry needs to be clarified in the regulation of the renewable energy Bill.

Recommendations

- The government must be consistent in determining Equitable Economic Indicators in terms of Renewable Energy Pricing.
- The government must be able to guarantee externality cost indicators according to the Equitable Economy intent, such as environmental costs and conservation costs.
- The government needs to be the main actor in determining the price of Renewable Energy One of them is by changing the Formulation of Article 53 paragraph (1) letter a and paragraph (2) and Article 54 paragraph (1) letter a and paragraph (2) into one paragraph and placed in paragraph (1) or the initial letter with the connecting phrase " or".
- The formulation of Renewable Energy pricing through a contractual relationship should be used as the final method or mechanism.
- The people's right to cheap, affordable and sustainable energy should be formulated in the stem of the article as a mandatory consideration for the government in setting the price of Renewable Energy.
- Norms governing incentives and conveniences need to be based on business character, formulated through business sector approaches, functions, needs analysis, and risk/problem analysis.



Recommendations

- The government needs to accommodate power wheeling by considering various factors, including resource availability, technology availability, infrastructure availability, and costs.
- The Renewable Energy Bill needs to explicitly divide incentive and facilitation arrangements.
- Support for industries that produce Renewable Energy components from the government should be formulated in the Renewable Energy Bill which makes the design for the Renewable Energy business climate
- Clarify the norms governing the financing to switch to Renewable Energy including the presence of JETP and ETM financing schemes.
- Expand the various incentives and facilities for the businesses, including:
 - The provision of an integrated regulatory framework for financing the energy transition;
 - Insurance scheme for renewable energy projects;
 - Incentive scheme for business entities that provide renewable energy-based electricity of more than 50% of demand.



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