ELECTRICITY GOVERNANCE INITIATIVE: CASE OF INDONESIA

FINAL REPORT

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1 SUMMARY

1.1 Introduction

The Electricity Governance Initiative (EGI) is a collaborative research-action initiative to promote good governance in the electricity sector. The EGI in Indonesia was started as part of the pilot implementation phase of the EGI in Asia. EGI is a joint undertaking of the World Resources Institute (USA), Prayas Energy Group (India) and the National Institute of Public Finance and Policy (India). It is also associated with the Renewable Energy and Energy Efficiency Partnership. The Indonesian Institute for Energy Economics (IIEE) served as the coordinator for an assessment of governance in the Indonesia electricity sector using the EGI toolkit of research indicators.

The assessment was implemented by a research team and an advisory team. The research team consists of the *Institut Bisnis dan Ekonomi Kerakyatan* (IBEKA), the Indonesian Center for Environmental Law (ICEL), the Indonesian Institute for Energy Economics (IIEE), the Pelangi, the Working Group on Power Sector Restructuring (WG-PSR), and the WWF Indonesia. The advisory team provided input and suggestions to the research team.

A main goal of this initiative was to draw together stakeholders from various backgrounds to create a common understanding of areas of best practice and relative weakness in electricity sector governance in Indonesia. Decisions made in the electricity sector fundamentally affect and have wide impact on the public interest. How decisions are made defines the decisions that result. Therefore, good governance is a necessary condition, although not always a sufficient condition, for reaching a good result.

The electricity governance research indicators developed by The World Resources Institute, National Institute of Public Finance and Policy, and Prayas, were applied to evaluate the processes of governance in the Indonesian electricity sector. This assessment only addresses the process by which decisions were made, and does not include an assessment of the substance of the decisions.

Methodology

The key principles of good governance are (i) transparency and easy public access to information, (ii) public participation (iii) public accountability and redress mechanism to address complaints and evaluation upon decisions made (iv) capacity of the various actors in the electricity sector.

Each component of the Electricity Governance Chain has a different emphasis:

- **Policy Process** addresses the structure and shape of the electricity sector policy making in general. Legislative and executive (Ministry) processes and capacity are addressed. The policy indicators were applied to the process for passing Electricity Law No. 20/2002 in Indonesia.
- **Regulatory Process** is an important mechanism to ensure that economic, financial, social, and environmental performances are aligned in the electricity sector. One of the important functions of the regulatory process is to balance the interests of various stakeholders (investors, workers, and consumers) of the electricity sector. Aspects being assessed, among others, include credibility and degree of certainty of the process itself,

also the implemented approach during the regulatory making process.

- **Environmental and Social Aspects** are often neglected in electricity sector decision-making, and consequently sector reforms could create unsustainable environmental conditions. Assessment in this section analyzes the scope of social and environmental considerations within the institutional jurisdiction, and capacity. The PLTGU (Gas Combined-Cycle Power Plant) Pemaron project was used as a case study for these indicators.

The EGI toolkit consists of 60 qualitative research questions. These include 28 priority indicators and over 30 additional indicators reflecting questions related to process, structure and substantive issues on the Electricity Governance Chain. From all of the available questions, the research team selected indicators relevant to the conditions in Indonesia (and subject to time availability). Moreover, the research team chose a case study for each process of the Electricity Governance Chain so that evaluation would be more focused.

The research outcomes for each country are unique, and the assessments of good governance in the electricity sector in different countries cannot be compared directly even though they are based on the same toolkit.

Methods used by the research team to gather data and information:

- Literature search, by collecting data and gathering information from various agencies and from the internet.
- Sending questionnaires, formal correspondence, and conducting interviews with key actors in the sector.
- Convening several forums for discussion among research team members, with advisory team, and with resource persons (individuals who have important roles in the electricity sector, and a target audience perceived as having strategic potential to facilitate the implementation of research outcome).

To facilitate analysis, the qualitative value of each indicator was mapped into scores ranging from ‘lowest’ to ‘highest’.

1.2 Research Outcome

1.2.1 Policy Process

Most indicators in the policy-making process were applied to the process of developing Law No. 20/2002 (the law to reform and privatise the Indonesian electricity sector).

The responsibilities for the electricity sector fall under the Department of Energy and Mineral Resources (DEMR), particularly in the Directorate General of Electricity and Energy Utilization (DGEEU). The DGEEU, that exists within the structure of the DEMR, is responsible for planning and regulating the electricity sector. However, the DGEEU also plays roles as an executive and regulator and thus there is no distinct planning body in the electricity sector. Legislative capacity of the power sector falls to Commission VII of the Indonesian Legislative assembly 2004-2009. Legislative capacity in the power sector is supported by ample human and financial resources with well defined rights. However, all these capacities are not supported by routine meetings.

Research findings show that steps of decision making in the executive and legislative body are clearly defined. However, information about the process of policy development and establishment inside those two institutions is not available to the public. Moreover, public participation in the process is less than it should be. Public involvement was limited to select organizations or individuals who were invited to participate. On the legislative side, although there was a consultation process open to the public, very limited information was made available so that few people in the general public knew what was happening.

As governed by the internal rules of the Indonesian House of Representatives (Tatib DPR-RI), a legislative member is prohibited from concurrently serving as state official or being employed by a state owned company or any body funded by the state budget. This is to maintain independence when making laws. However, there are no further rules to prevent conflict of interest, and no penalties if they break this regulation.

Besides the executive and legislative, other institutions evaluated included civil society organisations (CSOs) and donor institutions. CSOs have been proactive and have acted strategically by cooperating with other CSOs and related institutions during the development process of Law No. 20/2002. Donor institutions participated in the process by providing funding and giving technical assistance for projects benefiting sector reform.

1.2.2 Regulatory Process

Electricity Law No. 15/1985 says that the government has the responsibilities to regulate the electricity sector. In this case, the responsibilities fall on the Department of Energy and Mineral Resources (DEMR); more specifically on the Directorate General of Electricity and Energy Utilization (DGEEU). However, the important function of the regulator, namely, to balance various interests in the electricity sector, is not stated explicitly. Hence, the regulatory body in this sector is not independent, and the legal basis for its functions and mandate are not clearly defined.

In principle, all documents available at the DGEEU are open to the public. However, there is no procedure explaining how the public can access information from DGEEU. If one asks for a document officially and DGEEU decides that the document unrestricted, the document can easily be obtained. On the other hand, DGEEU does not have any guidelines about document confidentiality. This means that the documents status as confidential or accessible to the public is completely at the discretion of DGEEU officials.

Information dissemination has been ineffective during the process of regulating the power sector. Some regulations can be found on the government website, but there is no information about the decisions taken by the DGEEU, nor is there information available about its decisions on public complaints. Regulations are not translated into local languages and dialects.

At present there are no special laws that establish how the public can participate in decision-making. One legal basis that can make public participation possible is Law No. 15/1985, Article 5, which states that government has to take into account the opinions of the public during the general planning session for electricity,. However, there is no detail or explanation of a mechanism for implementing the regulation. This, in turn, creates a condition where public participation depends on the initiative of the government official in the chair position, and solely on the initiative of the public.

Institutionally, there are organizations which are set up by the government to represent the public, such as the Indonesian Electricity Society (*Masyarakat Ketenagalistrikan Indonesia*:MKI) and the Independent Monitoring Body for the Implementation of Electricity Tariffs (*Pengawas Independen Pelaksanaan Tarif Dasar Listrik*: PIP-TDL), to set tariffs. The government helped establish and found these organizations, and considers them to be "independent" institutions that represent the public.

As an implementing body that carries out a regulatory function, DGEEU is not required by law to include public input in any of its decisions. However, in one of its processes to set tariffs, the government has considered public views that were presented by PIP-TDL. Unfortunately, PIP-TDL which is portrayed as a representative of the public, does not have any right to disclose its views or submissions to the public and its inputs in to the process are confidential. This means there is little transparency about how well PIP-TDL has represented public views, or how the DGEEU has incorporated the input of PIP-TDL in the final decision.

1.2.3 Social and Environmental Aspects

DGEEU has directorates that are responsible for social and environmental aspects. These directorates are the Directorate of Electricity Business Management (*Direktorat Pembinaan Pengusahaan Tenaga Listrik*) that handles social aspects, and the Directorate of Electricity Engineering (*Direktorat Teknik Ketenagalistrikan*), especially the Sub-Directorate of Electricity Environment (*Subdit Lingkungan Ketenagalistrikan*), that handles the environmental aspects.

The primary state institution responsible for environmental management is the State Ministry for Environment (*Kementerian Lingkungan Hidup*: KLH). This Ministry has jurisdiction over all environmental aspects in general, including in the electricity sector. The jurisdiction is clear between the State Ministry for Environment (KLH) and DEMR, i.e. DGEEU, on environmental aspects, but there has not been adequate coordination between these two institutions.

The executive body has specific divisions for handling the environmental and social aspects. This division employs some staff with adequate knowledge and background in environmental and social issues. Furthermore, to increase the capacity of the staff, the department provides annual training. It is possible for DEMR staff in this division ot study and increase their capacity to evaluate environmental and social considerations, since there is funding accessible through the National Budget (*Anggaran Pendapatan dan Belanja Negara*: APBN) to support research and investigation.

In the legislative body, the social and environmental aspects of electricity utilization come under the Commission VII of the House of Representatives. Several staff working in this Commission have a background in social and environmental science. There are no designated special teams or bodies inside the Commission, however, to handle these aspects of the electricity sector.

The extent of CSO involvement in social and environmental aspects of the electricity sector is illustrated by the documentation of the Gas Combined-Cycle Power Plant in Pemaron (*Pembangkit Listrik Tenaga Gas Uap:* PLTGU) project case. In this case, Civil Society Organizations (CSOs) presented a petition that included the analysis of the social and environmental aspects of the project both to the House of Representatives of Buleleng Regency (the regional government) and DGEEU. In this case DGEEU, took the position of

facilitator and argued that based on the Law of Regional Autonomy, the jurisdiction for this project was with the regional government. This petition was rejected by all members of the Buleleng House of Representatives, while the DGEEU has not given any response. The CSO then submitted the petition to the State Administrative Court (*Pengadilan Tata Usaha Negara:* PTUN) in Denpasar, although this high court does not represent an independent judicial forum specifically to handle these issues.

Environmental considerations have been included in the General Planning of National Electricity (*Rencana Umum Ketenagalistrikan Nasional:* RUKN), but this is limited to a requirement to conduct an Environmental Impact Assessment (EIA) for all electricity generation activities that are expected to have significant impacts. In the context of electricity sector reform, environmental considerations are not discussed in any depth in the published documents prior to or after the passing of Electricity Law 20/2002. In addition, specific minimum environmental performance standards for the electricity sector have not yet been created.

The State-owned Electricity Company (*Perusahaan Listrik Negara*: PT. PLN) accommodates only provides communication or information to customers and the public on such activities which could create complaints against them, such as power blackout or shut-downs.

1.3 Conclusions

- From the evaluation of the policy-making process, the process of enacting the Law No. 20/2002 generally complied with existing regulations and procedures, however, the legislative and government bodies did not make the process clear to the general public, and little information was available.
- All the indicators of regulatory process have been applied to the government (DGEEU), because no Independent Regulatory Body exists in the Indonesian electricity sector. There is no strong legal base that makes it mandatory to provide information to the public, or provide a mechanism that ensures public participation, and to consider public opinion in the decisions-making.
- The government has reasonable capacity to accommodate environmental and social aspects of the electricity sector according to this assessment. However, environmental and social aspects have not been considered specifically during the sectoral reform process. Furthermore, in national electricity planning, consideration of these issues is limited to doing an Environmental Impact Assessment for all power generation activities expected to have significant impacts.

1.4 Recommendation

- The accommodation of public participation must be supported by a better socialization process during each phase of the decision making process, both in policy and regulation making, that makes people aware of their opportunities to participate. Better use of mass media can be very helpful to capture the public opinion extensively.
- To avoid jurisdiction overlapping inside the government, a planning body should be created, tasked with overseeing the long-term interests of the sector and country. This body could perform independently, and be an accountable institution, if it exists outside the DEMR operational structure.
- A clear judicial system is needed to control the regulatory body responsible for responding to public complaints, and to create fair and balanced policy.

- The social and environmental aspects in managing the electricity sector should be considered in every decision making process.
- A standard of mechanism for policy making process should be created.
- Even though the processes, procedures and mechanisms are important in implementing governance in electricity sector, individuals and public figures still play an important role.
- The information dissemination by the DPR and government through their website should be improved and enriched further (following the model of other Indonesian government bodies such as the KPK (anti-corruption)), and include a message board on its website.
- An independent regulatory body is needed to balance the needs of consumers, producers, and all stakeholders.
- Increasing public awareness for all stakeholders in electricity sector is also needed.

2 PREFACE

2.1 The Electricity Governance Initiative

The Electricity Governance Initiative (EGI) is a collaborative research-action initiative to benchmark best practices in governance and promote accountability in the electricity sector. The study of electricity governance in Indonesia, described in this report, is a country report that emerges from the EGI, which has an initial focus on Asia. This note provides further details on the motivation, objectives, methodology, and organizational structure of the EGI.

2.2 Motivation for the Electricity Governance Initiative

Electricity reform is underway in many parts of Asia. Experience with these reform efforts has been mixed at best. Sector reform has generally failed to win the confidence of the societies it is meant to benefit, and has also failed to attract sustained interest from private investors. Since electricity is an important ingredient for successful sustainable development, these failures are a considerable problem.

One central cause of this problem is the flawed process through which electricity reforms have been designed and implemented.[1] Governments, with the support of donor agencies, have designed reforms through closed political processes, and with inadequate public inputs into the goals of electricity reforms. These closed processes have not only constrained attention to sustainable development of the sector, but have also undermined the political sustainability of reforms because they lack the support of the public. The private sector has sought to insulate itself from what is a high-risk environment by seeking guarantees from governments, which have proven politically and financially unworkable. Civil society organizations, for their part, have been hampered by highly restricted access to decision-making, and by the technical challenges of advocacy around policy reform in the electricity sector.

In short, improving governance – which we define broadly as the processes of decision making and implementation – could be an important ingredient in working towards a fair and sustainable electricity sector in Asia with better performance. Governance mechanisms that function well will allow for better decision-making about the goals of electricity reform and ensure that these goals are tailored to local needs. Better governance will allow for flexibility and feedback mechanisms in implementation, and ensure the means of holding the private sector and governments accountable to the initial goals of reform. It will also provide predictable and politically viable rules for private investment.

However, there is currently little systematic understanding of what constitutes good process in reforming a large and technically complicated sector such as electricity. For example, what is an appropriate level and mechanism for public input into policy processes? How can regulators most effectively engage the larger community of stakeholders? What are adequate standards of transparency about technical matters, such as the details of power purchase agreements?

[1] See, for example, Navroz Dubash (ed.) *Power Politics: Equity and Environment in Electricity Reform*, Washington DC: World Resources Institute, available on line at http://www.wri.org/governance/powerpolitics_toc.html.

Goals of the Electricity Governance Initiative

By developing a "toolkit" organized around structured questions, or "indicators," which are used to conduct detailed empirical assessments of the state of electricity governance, the EGI aims to achieve the following goals:

- Develop a common language and metric for stakeholder discussion of governance;
- Establish benchmarks for best practices;
- Build the capacity of civil society to enforce accountability and monitor progress toward improved governance;
- Attract government attention to and build capacity to promote and practice good governance at the legislative, executive and regulatory levels;
- Promote accountability at the legislative, executive, regulatory and utility levels.

2.3 The Approach and Methodology

The conceptual framework of the EGI rests on three "pillars" or sub-divisions within the decision making process in electricity: policy, regulation, and environmental and social aspects. Policy is the starting point for decision making and encompasses key institutions such as the legislature, executive, and supplementary actors such as donors, consultants and civil society. Regulation has emerged as a key institutional arena for electricity, with distinct and separate governance arrangements. Finally, a separate category of environmental and social aspects recognizes that many public stakeholders are motivated to engage in the sector because of these key outcomes.

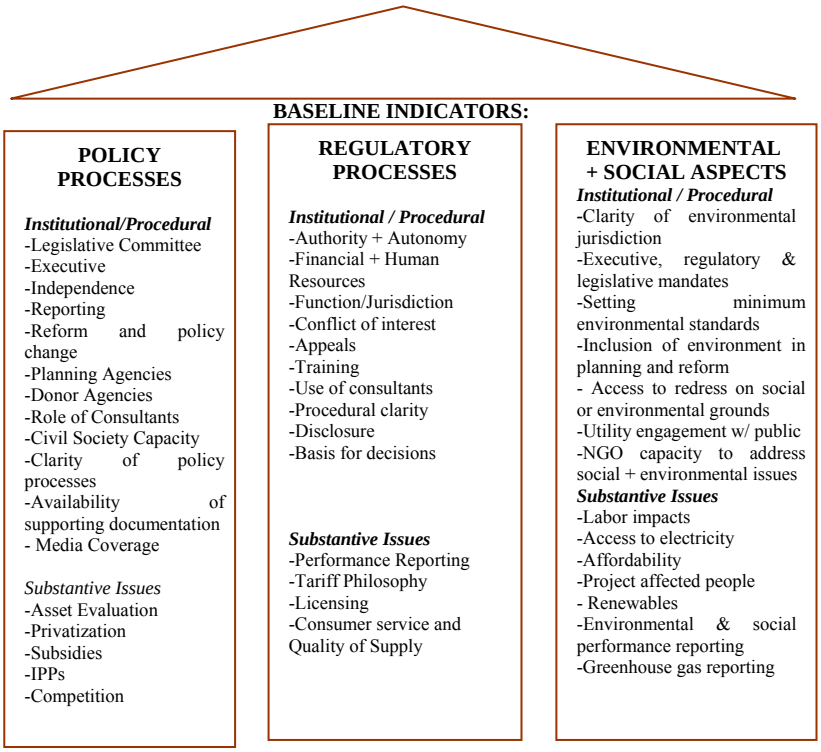

Figure 1: The Electricity Governance Approach

Within each pillar, the toolkit address principles of governance drawn from the Aarhus Convention – access to information, participation in decision making, accountability and redress. In addition, a fourth principle has been added: the capacity to meet the requirements of good process.

The toolkit itself consists of over sixty qualitative research questions organized by the three pillars, which are cross-referenced to address the four principles of governance, supplemented by a baseline survey of the sector. Figure 1 above provides a schematic that illustrates this structure.

Each indicator prompts the researcher to explore a set of characteristics of the decision

making process, which are then reported against a multiple choice format, as well as with detailed justification, explanation and documentation. A completed assessment therefore provides both a snapshot of governance concerns and issues, and a detailed set of annotations and documentary resources which provide a more fine-grained basis for analysis.

The EGI approach builds on the experiences of The Access Initiative, a global coalition coordinated by the World Resources Institute, which seeks to promote sound environmental governance through assessments of information, participation and justice using a common methodology.[2] The content and approach of the EGI toolkit also draws on the Prayas Energy Group survey of transparency, accountability, participation and resources in regulatory agencies in India.

The EGI approach focuses on the *process* or on "how" decisions are made, not on "what" decisions or *outcomes* are reached. The premise is that good decision-making processes are necessary to ensure good outcomes, although in many cases they may not be sufficient. However, in practice, there is an iterative relationship between process and outcomes; the EGI process indicators were designed by scrutinizing and diagnosing the causes of problematic outcomes. The indicators are also written to capture not only formal processes, but actual practice. Since the EGI is a multi-country effort, the indicators are intended to be broadly generalizable, a challenging task given different political traditions and histories, while preserving space for country-specific commentary. The structure of the EGI indicators do not explicitly support cross-country quantitative analysis since differences are captured in the qualitative treatment rather than in the scores,

2.4 Organizational Structure of the Electricity Governance Initiative

The EGI was conceptualized and developed by the World Resources Institute (USA), the National Institute for Public Finance and Policy (India), and Prayas Energy Group (India). The toolkit was designed between December 2003 and July 2004, subjected to rigorous external review, and revised to incorporate expert feedback. Subsequently, the work has passed to implementing teams in India, Indonesia, Thailand and Philippines for national implementation and analysis.

The EGI has benefited from the generous support of the C. S. Mott Foundation, the Foreign and Commonwealth Office of the United Kingdom through the Renewable Energy and Energy Efficiency Partnership, the Netherlands Ministry of Foreign Affairs, the United States Agency for International Development, and the Wallace Global Fund.

[2] More information on The Access Initiative is available at www.theaccessinitiative.org

3 RESEARCH ACTIVITIES IN INDONESIA

3.1 Logical Framework in Indonesia

The key principles of good governance of this framework are (i) transparency and access to information by public, (ii) public participation, (iii) public accountability, redress mechanisms and policy evaluation, and (iv) capacity of players in the electricity sector. The indicator toolkit used in this research implements the key principles into Electricity Governance Chain that includes (i) policy-making process, (ii) regulatory process, and (iii) environmental and social aspects. For each component, the evaluation is carried out based on (i) jurisdiction structure and institutional system, (ii) policy- or regulatory-making process, and (iii) the outcomes.

Each component of the Electricity Governance Indicator toolkit has a different focus:

- The Policy Process addresses the structure and shape of the electricity sector policy making in general. Legislative and executive (Ministry) processes and capacity are addressed. The policy indicators were applied to the process for passing Electricity Law No. 20/2002 in Indonesia.
- The Regulatory Process is an important mechanism for ensuring the economic, financial, social and environmental performance in the electricity sector to be carried out in synchronized ways. One of the important functions of the regulatory process is to balance various interests of the stakeholders (investors, labor and consumers) in the electricity sector. The assessment addresses the credibility and the certainty of the process.
- The environmental and social aspects, in general, tend to be ignored in decision-making in the electricity sector, which can create unsustainable environmental conditions. The evaluation in this section explores the extent to which key institutions consider social and environmental issues part of their mandate, and their capacity to take these considerations in to account.

3.2 Research Methodology

3.2.1 Creating the Collaboration

This research is conducted in collaboration with several organizations and individuals active in the electricity sector. The Assessment Team performed the research and analysis activities to generate the indicators of governance. To this end they consulted and interviewed selected respondents -- individuals who have important roles in the electricity sector, and who might be a target audiences that can help implement recommendations based on these research findings.

The Assessment Team consists of:

- Research Coordinator who has responsibility in coordinating the research activities and keeping the collaborative efforts carried out according to the time schedule.
- Research Team compromises of several NGOs and has responsibility to collect and analyze the data.
- Advisory Team compromises of a group of experts responsible for supervising the research activities and keeping the research credible.

The Indonesian Institute for Energy Economics (IIEE) coordinated the NGOs doing research in Indonesia. These NGOs have various expertise and interests, including knowledge of policy and regulation in electricity sector, and have experience in social, environment and renewable energy issues and also on energy supply security.

The Research Team consists of:

- Indonesian Centre for Environmental Law (ICEL)
- Indonesian Institute for Energy Economics (IIEE)
- Institut Bisnis dan Ekonomi Kerakyatan (IBEKA)
- Pelangi
- Working Group on Power Sector Restructuring (WG-PSR)
- WWF Indonesia

The Advisory Team consists of government officials in electricity sector, experts and academicians. The primary function of this team is to provide opinions and inputs to the Research Team.

3.2.2 Research Activities

3.2.2.1 Guideline in Conducting the Research

The guideline used in this research is the Electricity Governance Initiative (EGI) Toolkit. This toolkit is a framework that consists of research questions on the electricity governance chain (i.e. policy-making process, regulation-making process, and evaluation on environmental and social aspects). These research questions are used to generate indicators of the quality of governance.

Every indicator is a focused question addressing a specific process, institution or issue (see box 1 for an example). Each indicator can have three to five values, assigned based on the statement that most closely reflects the condition of electricity sector in Indonesia. The numerical value of (i) and (ii) are 'Lower' i.e. governance performance is weak. The numerical value of (iv) and (v) are 'High' and reflect relatively strong governance performance.

3.2.2.2 Research Strategy

For implementing the EGI Toolkit in this research, some strategic steps are taken: (i) choosing the indicators, (ii) choosing case study used in each government chain process, (iii) data collection, and (iv) data analysis.

The set of indicators include basic mapping survey on the key facts of the Indonesian electricity sector, and more than 60 qualitative research questions to form governance indicators. In this set there are 28 priority indicators and more than 30 additional indicators that are related to process, structure and substantive issues in Electricity Governance Chain. From all of these indicators, the Research Team chose some indicators relevant to Indonesian conditions and by considering the time availability.

Box 1

Values and Elements of Quality for Indicator PP 4 - Annual reports of the Electricity Ministry / Department

(0) Not applicable / not assessed
(i) The electricity department / ministry does not prepare an annual report or the reports do not satisfy even one element of good quality in reporting
(ii) The electricity department / ministry prepared an annual report but it satisfies **only one** element of quality in reporting
(iii) The electricity department / ministry prepared an annual report but it satisfies **only two** elements of quality in reporting
(iv) The electricity department / ministry prepared an annual report but it satisfies **three** elements of quality in reporting
(v) The electricity department / ministry prepared an annual report, which satisfies **all the four** elements of quality in reporting

In this example,

- value (i) reflects the worst situation / practice,
- value (iii) reflects intermediate performance, that could improve
- value (v) represents the best practice.

Elements of Quality in reporting by the ministry / department include (no particular priority):

- Detailed financial reporting, including how much public revenue is being spent on the ministry (administration / establishment expenses, equipment expenses, consulting expenses, etc.) and details about the subsidies and grants paid to or guarantees given to various groups / companies, etc.
- Detailed review of progress made in the context of past policy initiatives / decisions by the ministry, and direction of future initiatives, projects and decisions
- The report is available to the general public in a timely and easy manner, especially immediately after it is finalized, through a web-site and/or for public sale at nominal cost
- The report is available in local languages

Based on your research for this indicator, select the value that best reflects the situation in your country.

There are 12 indicators to evaluate the policy-making process, 12 indicators to evaluate regulation-making process, and 14 indicators to evaluate environmental and social aspects. Moreover, the Research Team chose a case study for each process in the Electricity Governance Chain so it will be more focused:

- Law No. 20/2002 on Electricity for evaluating the Policy- and Regulatory Process.
- Pemaron Gas Combined-Cycle Power Plant (PLTGU Pemaron) for evaluating the Environmental and Social Aspects.

Indicators are applied to different issues, conditions and contexts by each country team. Therefore, the overall indicator values and scores for different countries cannot compared directly, even though they use the same toolkit.

The Research Team collected the data and information using the following methods:

- Performing literature studies (laws, regulations, case studies, conducts, references, news, scientific articles, etc.) based on softcopy and hardcopy sources from the libraries of NGOs, from other parties and also from the internet.
- Sending letters, questionnaires and direct interview with:
  - Legislative body: Commission VII of the House of Representative of the Republic of Indonesia (DPR-RI).

- Executive body: Department of Energy and Mineral Resources (DEMR), Directorate General of Electricity and Energy Utilization (DGEEU) and State of Ministry for Environment (KLH)
- Civil Society Organisations: Including the Indonesian Electricity Society (*Masyarakat Ketenagalistrikan Indonesia*, *MKI*), Indonesian Consumer Foundation (*Yayasan Lembaga Konsumen Indonesia*,*YLKI*),and the Independent Monitoring Body for the Implementation of Electricity Tariffs (*Pengawas Independen Pelaksanaan Tarif Dasar Listrik*: PIP-TDL)

- Conducting several discussion forums, between the Research Team, Advisory Panel, and with resource persons through focus group discussions and other meetings.

The Advisory Panel provided general direction and support during the evaluation process, and comments and an evaluation of the draft assessment report.

Every indicator has five values that reflect the quality of governance, and range from "low" to the "high" (see Table 1). Each value from each indicator is then converted into numerical value (scoring). This conversion is done by comparing the whole indicators in each side. The graphical representation is used to help further on the comparison. The complete list of conversion between value and score can be seen in Table 1.

Table 1: Value conversion of the indicator

Value of Indicators	Score
NA	0
Low	1
Low-Medium	2
Medium	3
Medium-High	4
High	5

The final results of the data and information assessments are a spreadsheet that presents these assessments in graphical form. These graphical representations that include the numerical values are then converted again to qualitative valuation to avoid wrong interpretation of the numerical values.

4 RESEARCH FINDINGS

4.1 Policy Process

The policy making process involves the determining of the function and performance of the electricity sector, and is the key to managing the sector. This section contains the research study's assessment of how policy is formulated, developed and established, as well as the roles of various institutions. Attention was focused on the criteria for selection of officials to various institutions; the standards and other requirements for reporting; the explanations of duties and authority, and the systematic space and procedures for consultation with and the participation of the public. A great deal of the analysis in this section refers to the process of formulating electricity reform law No. 20/2002.

4.1.1 Capacity

The capacity evaluated within the policy process covers the existence of the institutions responsible for the electricity sector, as well as executive capacity, and the legislative and Civil Society Organizations (CSO) involved in the electricity sector.

4.1.1.1 Institution Responsible for the Electricity Sector

Within the government, the responsibility for the Indonesian electricity sector is that of the Department of Energy and Mineral Resources (DEMR), particularly in the Directorate General Electricity and Energy Utilization (DGEEU), which is under the direction of the DMER.

The House of Representatives (DPR) as the legislative body has a commission that is responsible for the electricity sector --namely Commission VII of the House of Representatives (DPR-RI) for the period of 2004-2009-- which has been assigned to cover energy and mineral resources, research and technology, and environmental sectors.

4.1.1.2 Institutional Capacity

The DGEEU exists within the structure of the DEMR, and is responsible for planning and regulating electricity sector. However, the DGEEU plays the roles as an executive and also regulator and there is no distinct planning body in the electricity sector.

Inside DEMR, there are rules and regulations that specify the general criteria for the assignment of officials. However, these assignment criteria are available only within the department and cannot be accessed by the public. Moreover, there are no written regulations concerning the tenure, or about dismissals during the tenure, or any mention of the obligation for DEMR (including DGEEU) officials to terminate any affiliations with businesses or electricity projects.

A relatively strong level of legislative capacity in the electricity sector can be observed from the existence of trained expert staff; access to documents; budgetary allowances for expert

staff and research; opportunities for training for the purpose of enhancing capacity, as well as the authority to call in the appropriate representatives or appointed officials in relation to information gathering efforts.

In carrying out duties, the legislator can request input from experts and invite resource person to provide information when deemed necessary. The provision of expert staff and the invitation of resource persons are done in consideration of the fact that not all members of the legislature, particularly those in Commission VII concerned with the electricity sector, have backgrounds relating to electricity. Funding for the expert staff and resource person is available through the budget allocation under the authority of the Commission.

Access to information is supported by the existence of the Internet; the openness of commission documents; the availability of a library, and other facilities for requesting documents directly from the government. Unfortunately, the capacity of the legislature is not supported by routine forums (seminars, training sessions, workshops, etc.) for building capacity in relation to the electricity sector. The summoning of representatives of the government by the legislature is made possible under the Constitutions, UUD 1945 amendments and Internal Rules of Indonesian House of Representatives (DPR-RI).

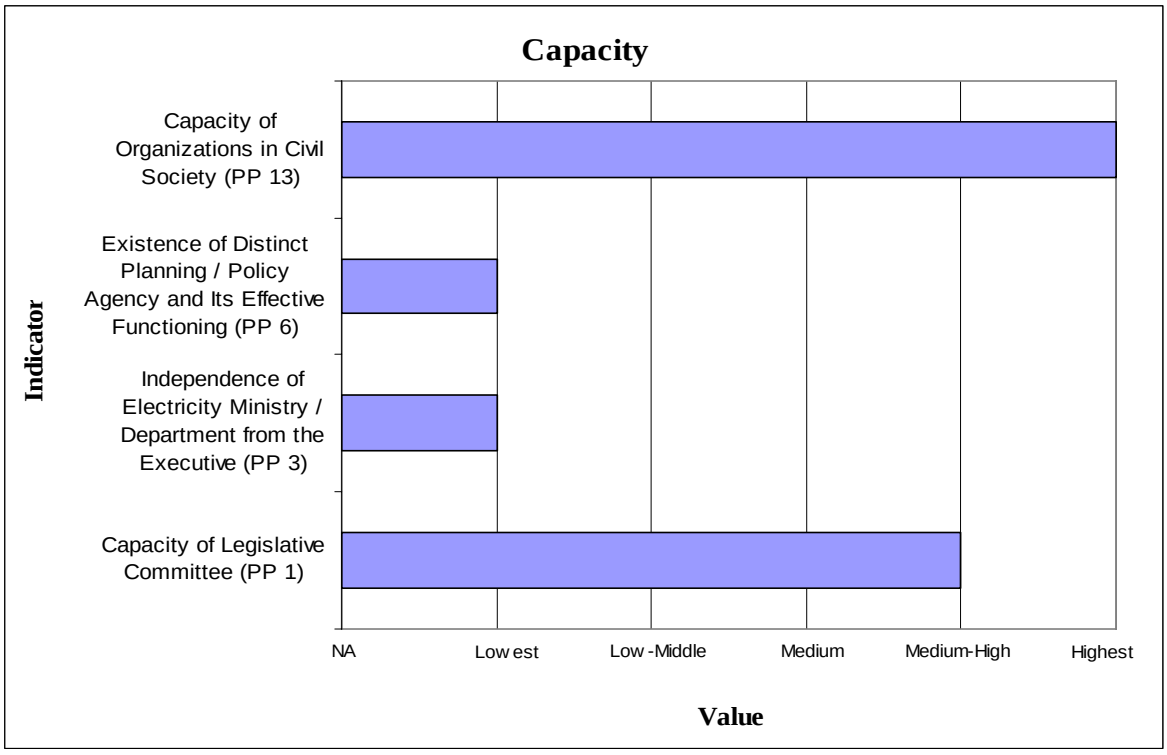

Figure. 2. Evaluation of Policy Process Capacity

The number of Civil Society Organizations (CSO) involved in the policy making process is very limited. According to the development process of Law No. 20/2002, the participation of CSOs is fulfilled by the Indonesian Electricity Society (MKI) and the Working Group on Power Sector Restructuring (WGPSR). And in the process of policy making related to electricity tariffs, the CSO involved is the Independent Monitoring Body for the Implementation of Electricity Tariffs (*Pengawas Independen Pelaksanaan Tarif Dasar Listrik*: PIP-TDL).

The above-mentioned CSOs are widely regarded as being capable of carrying out techno-economic analysis, taking a proactive stance in policy processes and taking strategic action. They have even developed effective strategies of cooperation with other CSOs in the form of information sharing; formulation of strategy and cooperation programs, and the establishment of sustainable study and learning processes. The participation of these CSOs in formal activities undertaken by the government is considered credible because it is supported by their adequately significant track records in the electricity sector.

4.1.2 Transparency

The results of this study indicate that although the decision making process on the legislative and executive levels in Indonesia are clear, information concerning the process of formulating and establishing policy in both institutions is not made available to the public. Further, neither the legislative nor executive levels of government involve the public adequately in this process.

4.1.2.1 Clarity of Decision Making Process

The establishment of a reform policy within the Indonesian electricity sector resulted after a long process in Law No. 20/2002. At the beginning of the 1990s there were several studies done by consultants either for the State-owned Electricity Company (*Perusaahan Listrik Negara*: PLN) or for government on restructuring the electricity sector. In 1998 there was a guideline, known as the White Paper (WP), for the restructuring of the electricity sector.

After that, the Indonesian government formulated an initiative to compile an electricity bill, containing core references or points on the thinking concerning the restructuring of the sector, provide the background of restructuring needs and Indonesia's achievements in the power sector, and provide an overview of government vision and restructuring objectives. However, this initiative there was no public consultation about whether and how to begin this initiative. Moreover the government considered this initiative an academic document.

The next step involved the compilation of this bill, whose process allowed for consultations with the public. The government then presented this Electricity Bill to the House of Representatives (DPR) in 2001. These phases fulfilled the procedural requirements for developing regulations stipulated in Presidential Decision No. 188/1998. The chronological details of the process of developing Law No. 20/2002 can be found in Appendix C.7.

The focus of the study was sector policy as set out in the regulation, so that the legislative process in the legalization of the regulation also plays an important role. The authority of the House of Representatives (DPR) in the establishment of the regulation is defined and set out in The 1945 Constitution of Republic Indonesia (*Undang-Undang Dasar*: UUD 1945) that Amendment on August 10, 2000, while clarification of the decision making process utilized in the DPR can be found in the House of Representatives internal rules (*Peraturan Tata Tertib*: Tatib DPR-RI). The clarity of this process is supported by the existence of a documentation system for every decision made in the legislature, including during commission level meetings.

Even though explanations of the decision making process existed in the form of the decision itself and in the documentation system, during the process itself there was no clarification of the period of time is required for the completion of the decision making process, the extent of

public involvement, or explanation of the mechanism for receiving and responding to input from the public, along with efforts to seek alternatives approaches to solving problems in the sector.

Furthermore, in order to support the transparency of the decision making process, it is necessary that efforts be made to distribute information about the initiation of any given process and disseminate this information through more than one distribution channel, so that even the most marginal segments of the community are reached.

Different from Law No. 20/2002, the policy concerning the involvement of the private sector in the provision of electrical power was developed internally within the government. The process for the establishment of the policy for Independent Power Producers (IPP) is considered to have failed to meet the criteria for making a rational policy. The establishment of a rational IPP policy should have involved the legislature and adequate consultation of the public. Besides, the decision should have been based on, among other things, detailed and transparent analysis of supply and demand projections and assumptions, as well as analysis of the impact of the IPP projects on tariffs.

When the IPP policy was first introduced, the need for IPPs was certainly based on detailed analysis of supply and demand, as well as detailed analysis of the impact of the IPP projects on tariffs. However none of the results of these analyses were accessible to the public, and therefore were not subject to any scrutiny.

4.1.2.2 Availability of Information

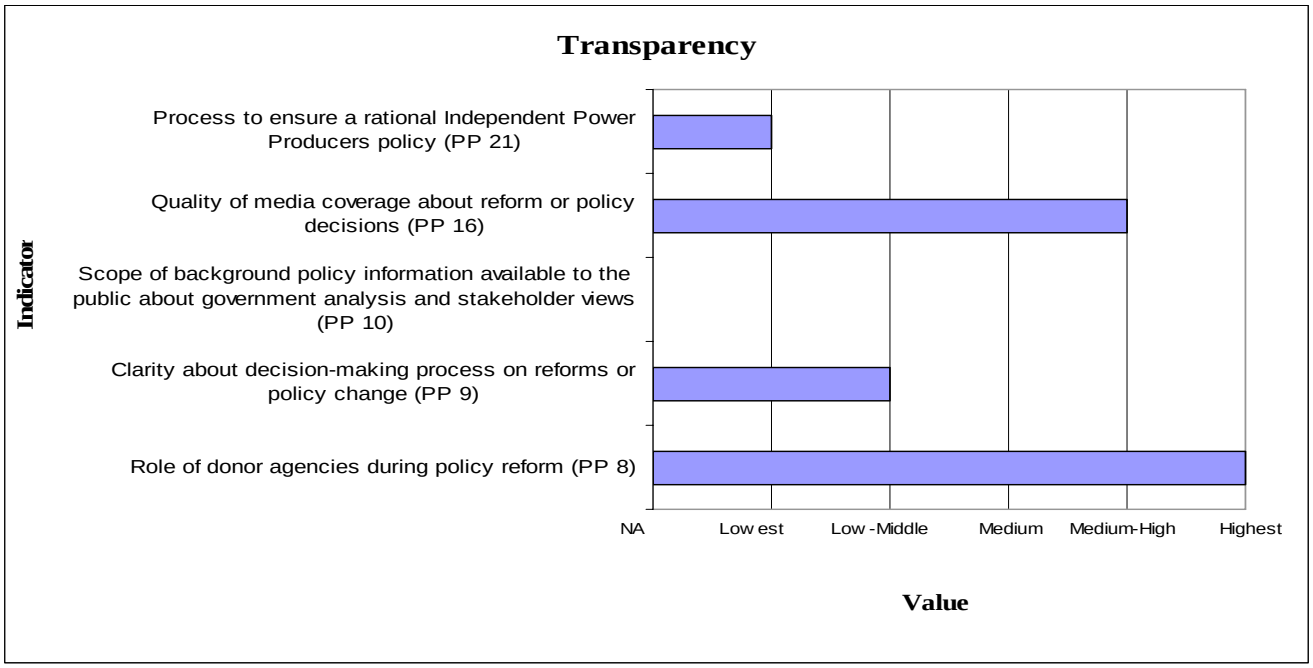

Figure. 3. Evaluation of Transparency in the Policy Process

Information related to the process of formulating and establishing Law No. 20/2002 was not available to the public. There is no record of a systematic effort to circulate information at the beginning of the process and to reach the segments of public that had the most potential to be disadvantaged. Documentation systems at the executive and legislative level were both difficult for the public to access.

Some information is now available on websites, such as information about structure of organization, main tasks and function, policy, electricity business, technical, Independent Power Producers, and draft regulations. However, information on the process for formulating and establishing Law No. 20/2002 was not available on any website at the time because the DEMR and DGEEU websites did not become active until 2002 (and the reform process for the sector started long before then). The public has had to actively seek out the desired information.

In general, the same thing is true of the DPR, where information relating to the formulating and establishing of policy is not readily available to the public. For example, the schedules and agendas for meetings are not published, so the public has to make a special effort to find out which processes and meetings are taking place at the DPR. On the other hand, the DPR does have a system for documenting the entire process occurring in relation to every commission meeting. The documentation system involves recording minutes, and making meeting transcripts. However the filing system is not yet well organized, so that it is difficult to find specific documents. Also, special channels have to be followed to get permission for accessing such documents.

Media coverage is one of the indicators of the potential for public awareness of the policy making process. Limited and inaccurate coverage hinders transparency and results in the incomplete presentation of the problem or matter in question. The process of formulating Law No. 20/2002 got adequate coverage by the media, and the reports included the opinions of various parties with different points of view. However, no data was available to evaluate whether any of this information had been publicized in any of the regional languages.

4.1.2.3 Role of Institutions

Government

After the annulment of Law No. 20/2002 by the Constitutional Court in December 2004, Law No. 15/1985 was reinstated to fill the gap in the legal base before a new electricity law could be formulated. Stipulations for its implementation can be found in Government Decree No. 10/1989 concerning the provision and utilization of electrical power. However Government Decree No. 10/1989 was considered inappropriate for current conditions, in particular as regards regional autonomy, so adjustments were made and issued through Government Decree No. 3/2005. The revision process of this regulation took place solely inside the government, without public or legislative involvement.

The process of making the new Electricity Law has begun since a new electricity bill has been placed on the DGEEU website (April 5, 2005). However, no explanation of the process has been made available to the public.

Under the present legal framework and procedures, there is practically no requirement whatsoever that the government should behave in a transparent manner. The only exception is the mention of the requirement that the government should take into consideration the thinking and views of the public in relation to the formulation of general planning for the electricity sector (Law No. 15/1985, Chapter V, Section 5). However, there are no details in this regulation about the mechanism for implementation.

House of Representatives (DPR-RI)

The DPR invites the public to its Public Hearings (*Rapat Dengar Pendapat Umum*: RDPU), as required by the internal rules of the DPR-RI. However, there is no clear mechanism about how DPR can respond to public inputs. Provision of information to the public could be increased through the DPR website and special television coverage (TV Swara) of the legislature's activities. In particular, it is important to publishing the schedules and agendas for the various meetings; improve the organization and management of the documentation system in the DPR archives; and improve the mechanism for accessing such information.

Donor Institutions

The policy making process involves the participation of donor institutions in relation to the provision of funds and technical assistance projects for reform of the sector. The evaluation of donor institutions indicates that they are transparent in the provision of information and documents, concerning loans as well as the position of the donor institutions within the policy making process in the electricity sector, though the ease of access to information for the public varies for every institution.

4.1.3 Public Participation

Public participation enables the more marginal segments of society to have their voices, opinions and aspirations heard and their various interests considered, as well as providing channels through which Civil Society Organizations (CSO) can be heard. Public participation thus constitutes a mechanism for balancing inputs in order to prevent abuse by authority in power.

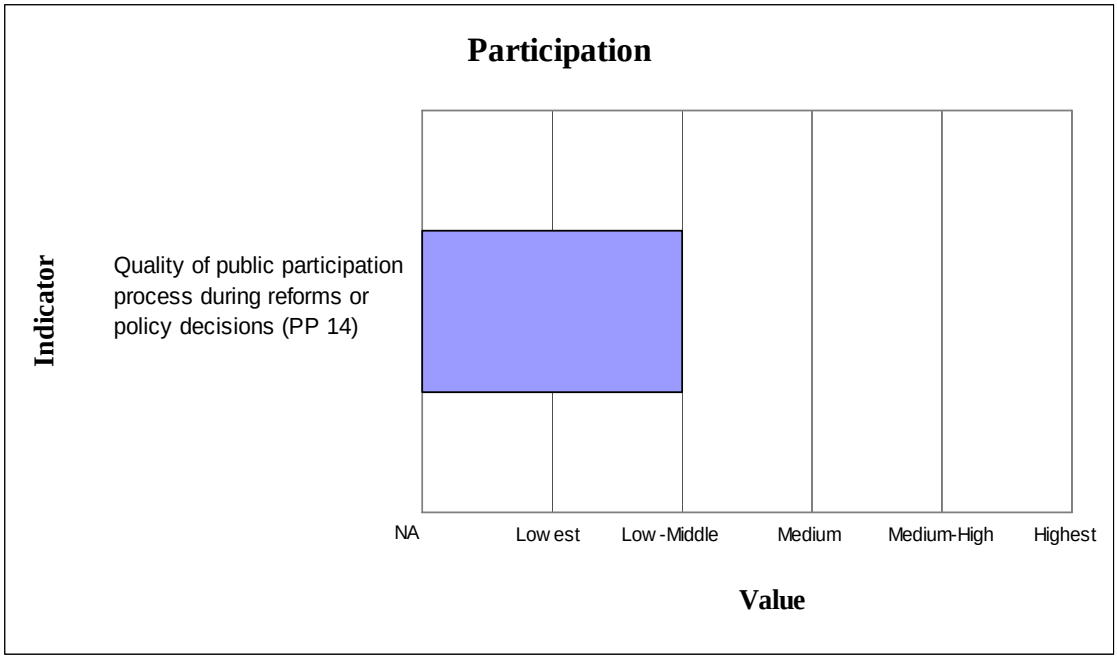

Figure. 4. Evaluation of Public Participation in the Policy Process

In the process of drafting and establishing Law No. 20/2002 there were opportunities and time allowed for public participation, both at the executive and legislative levels. However,

the results of this public consultation were not communicated clearly. Furthermore, the members of the public involved at the executive level were limited to parties that had been invited to participate. While on the legislative level, even though there was an opportunity for the public to participate, the distribution of information was so limited that very few members of society knew about it.

Neither the executive nor legislative processes involved any announcements, either previous to the inception of the process or during the process. Information and documents relating to the policy being formulated were also unavailable or not communicated to the public. Besides, there is no record of any systematic effort being made to circulate information to the segment of society most likely to be disadvantaged by the policy, nor were any efforts made to utilize more than one kind of communication channel or facility to distribute information.

4.1.4 Accountability

Within the policy process, legislative accountability can be observed from independence; the availability of documents containing the thinking of commissions that provides the background for the decisions made; how active the commissions are in decision making and carrying out their monitoring duties; the existence of a mechanism for observing the executive branch of government's implementation of the recommendations by the commissions, as well as the potential for input and participation by the public and the availability of public access to documents.

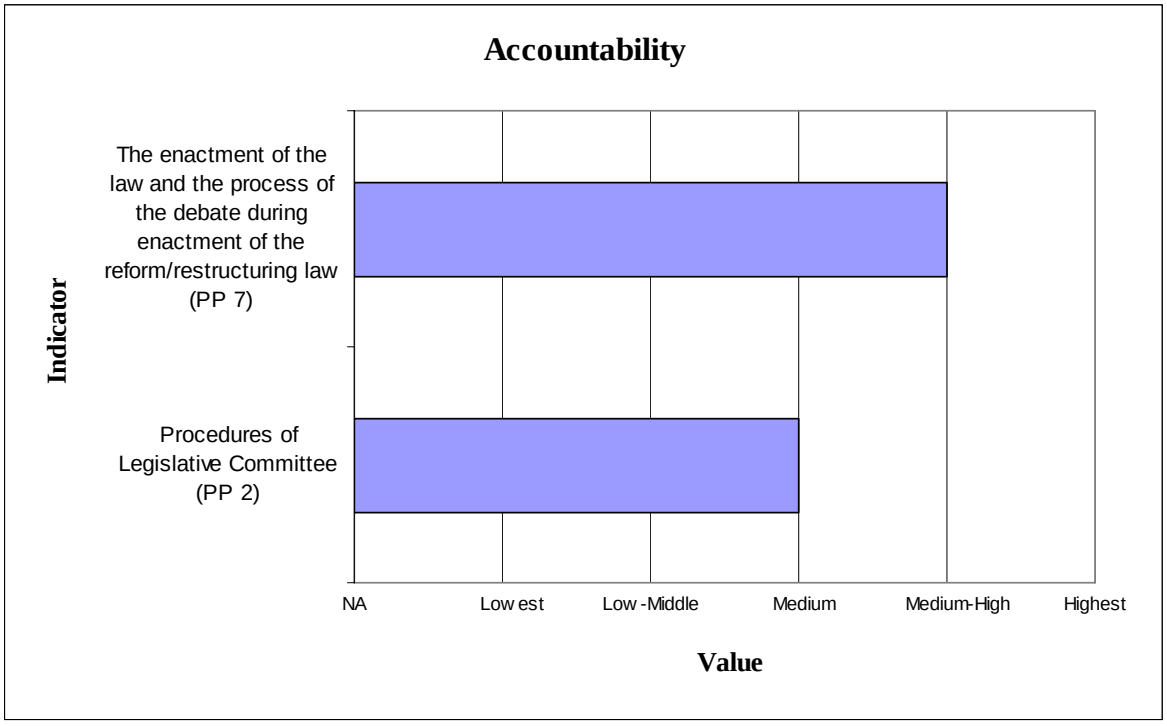

Figure. 5. Evaluation of Accountability in the Policy Process

4.1.4.1 Independence and Legislative Activity Levels

The independence of the legislature in the establishment of regulations can be observed in the

stipulations in the Internal rules of the DPR-RI forbidding members of the DPR from holding civil service posts; positions at state enterprises and State-owned Government (*Badan Usaha Milik Negara*: BUMN/*Badan Usaha Milik Daerah:* BUMD), or in other sectors funded by the State Budget (*Anggaran Pendapatan dan Belanja Negara:* APBN). However, there is no obligation for DPR members to make written statements about their work backgrounds, nor is there any punishment stipulated should a member of the DPR be in breach of rules.

Before policy is established, there is a mechanism to compile an Inventory List of Problems (*Daftar Inventarisasi Masalah*: DIM) that contains the responses of the legislative commissions toward the policy being discussed. Furthermore, a schedule, including the meeting activities and other items, is set out for the implementation of the process toward establishing policy for a period of one year into the future. However this is not yet adequate to create an effective process because systematic public consultation on this plan is also required, along with the provision of documents for the public before the deliberation process begins (including recommendations from each of the party factions in the commissions). In addition, it is important that the executive provide a response and update the legislature on follow up activities undertaken in relation to every decision made by the legislature within a given period of time.

4.1.4.2 Mechanism for the Establishment of Laws and Regulations

The mechanism for establishing laws and regulations in the legislature is clearly set out in the internal rules of the DPR-RI. In the DPR-RI for the period of 1999-2004, Commission VIII, which covers the electricity sector, was responsible for the establishment of Law No. 20/2002. The discussion process in relation to this law required six terms/sessions. When the decision was made to establish the law, a quorum was fulfilled. This legislative process also involved parties both in favour of and against the establishment of Law No. 20/2002 in line with the procedural mechanisms stipulated.

4.1.4.3 Documentation System

The DPR has a documentation process system relating to the establishment of regulations in the legislature. However, this documentation process is not noted on the website, and access to such documentation requires the submission of a special request.

4.2 Regulatory Process

The Regulatory Process constitutes an important mechanism in relation to the optimal performance of the economic, financial, social and environmental systems within the electricity sector. One of the most important functions of the regulatory process is the creation of a system to balance the interests of the main stakeholders (investors, workers, consumers, and the general public) in the electricity sector. Effective regulation motivates technical and cost efficiency, as well as the provision of high quality and reliable services. Effective regulation is also expected to increase to confidence in the sector and to motivate investment.

Based on Law No. 15/1985, the government is responsible for regulating the electricity sector. In this case, the DEMR i.e. the DGEEU, is a “quasi regulatory body” holding the dual

functions of both the regulatory body and the executive. DGEEU is responsible for creating and developing an efficient electricity sector that is able to achieve the targets outlined in the national policy. This task is implemented through regulating the selling price of electricity and setting the standards for provision and utilization of electricity, as well as carrying out management and supervision.

This section of the study addresses the credibility and certainty of the above-mentioned process, as well as the approaches taken within the formulation of regulations, the authority and independence of institutions, the process for appointment of officials, access to information and management of documents on the regulatory processes, and the extent to which there is room for public participation to accommodate public interests in management of the sector.

4.2.1 Capacity

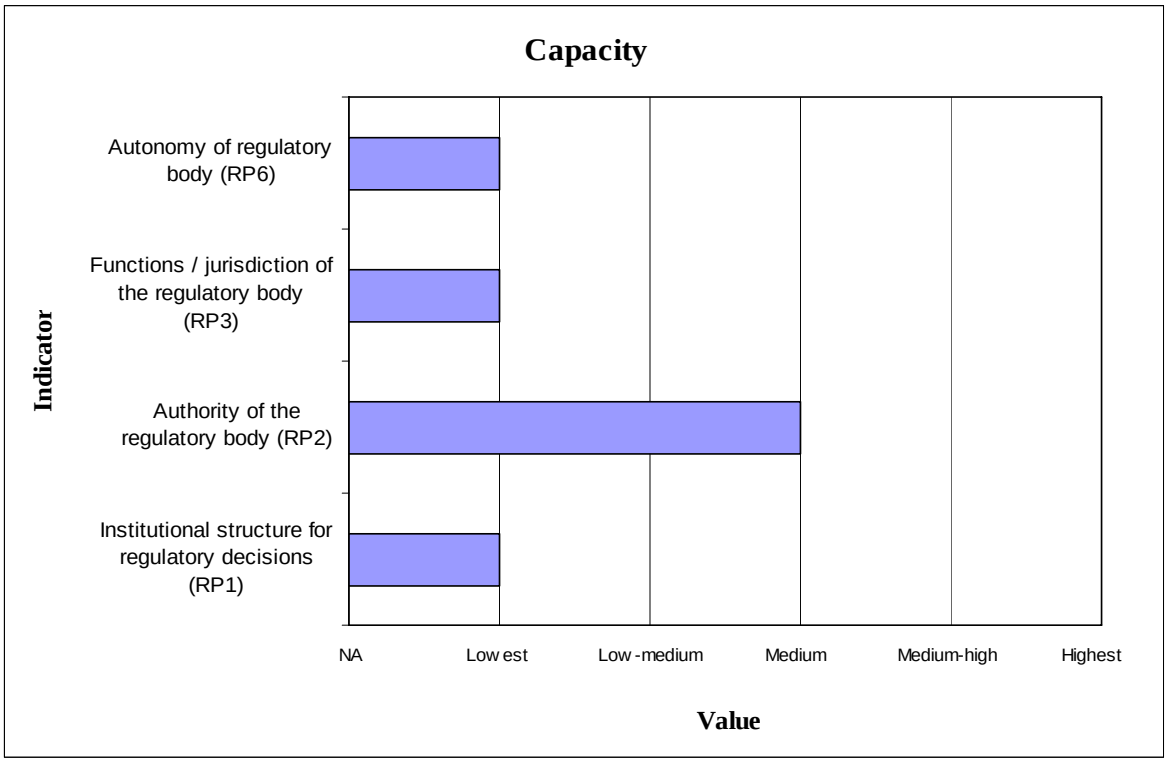

Figure. 6. Evaluation of Capacity in the Regulatory Process

Law No. 15/1985 concerning electricity states that the regulation of the electricity sector is the duty of the Indonesian government, in this case the DEMR, and in particular, the DGEEU, which is responsible to efficiently develop the electricity sector to achieve the targets included in the National Policy. This responsibility is implemented by determining the selling price for electricity as well as stipulating the requirements for the provision and utilization of electricity, along with directing and monitoring the electricity sector (Law No. 15/1985 Sections 16, 17, and 18). However, the important functions of the regulator in relation to balancing the interests of various stakeholders in the electricity sector are not set out explicitly.

Furthermore, the organizational structure of the concerned institutions shows that the

decisions made by DGEEU require the approval of the Minister of Energy and Mineral Resources (MEMR) as the regulator who has the highest authority. Besides, the DGEEU under the DEMR also plays a role as an executive in the electricity sector. Thus, the regulatory body in this sector is not independent, and its functions are not clearly defined in the law.

By law (Law No. 15/1985), DGEEU, has the authority to seek information, procure data from stakeholders and investigate all problems in the electricity sector. The form that this authority takes in implementation depends on the context of the formulation and application of policy. However, DGEEU appears to have no power to influence other parties, or to impose punitive or penalizing measures in the case of infractions of regulations, so that the implementation of its regulatory function is very weak.

The size of the budget and the number of human resource personnel required by the DGEEU to carry out its function are determined by departmental policy, because DGEEU is under the DEMR.

4.2.2 Transparency

Transparency is observed from the existence of information provided by the regulator to the public. The legal basis for the provision of information and the ease of access to information are also considered.

All of the documents with the DGEEU are basically considered available to the public. However, there is no procedure that explains how the public can access information from the DGEEU. Should information be requested formally and not be considered as confidential by the DGEEU, the requested documents will be released. On the other hand, DGEEU has no rules or regulations concerning the confidentiality of documents.

Not all research results in the possession of the DGEEU are available to the public. Studies presented in seminars are categorized as open information. However, the reports on the results of these studies cannot be accessed by the public even after the seminars have been held. The results of studies that have are not presented at seminars are classified as closed / confidential information and cannot be accessed by the public. This is justified on the basis that the results of these studies could have various interpretations, and that it is not certain that the government will act on the recommendations therein. If released to the public, this may result in misunderstandings.

Furthermore, there is information that is not for the public, such as Business to Business information and other classified information whose status is determined internally by the department.

However, the Independent Monitoring Body for the Implementation of Electricity Tariffs (*Pengawas Independen Pelaksanaan Tarif Dasar Listrik*: PIP-TDL) as the government designated representative of the public in the electricity sector, can follow set procedures to access information and documents from DGEEU. However, none of the information and documents accessed by PIP-TDL can be released to the public.

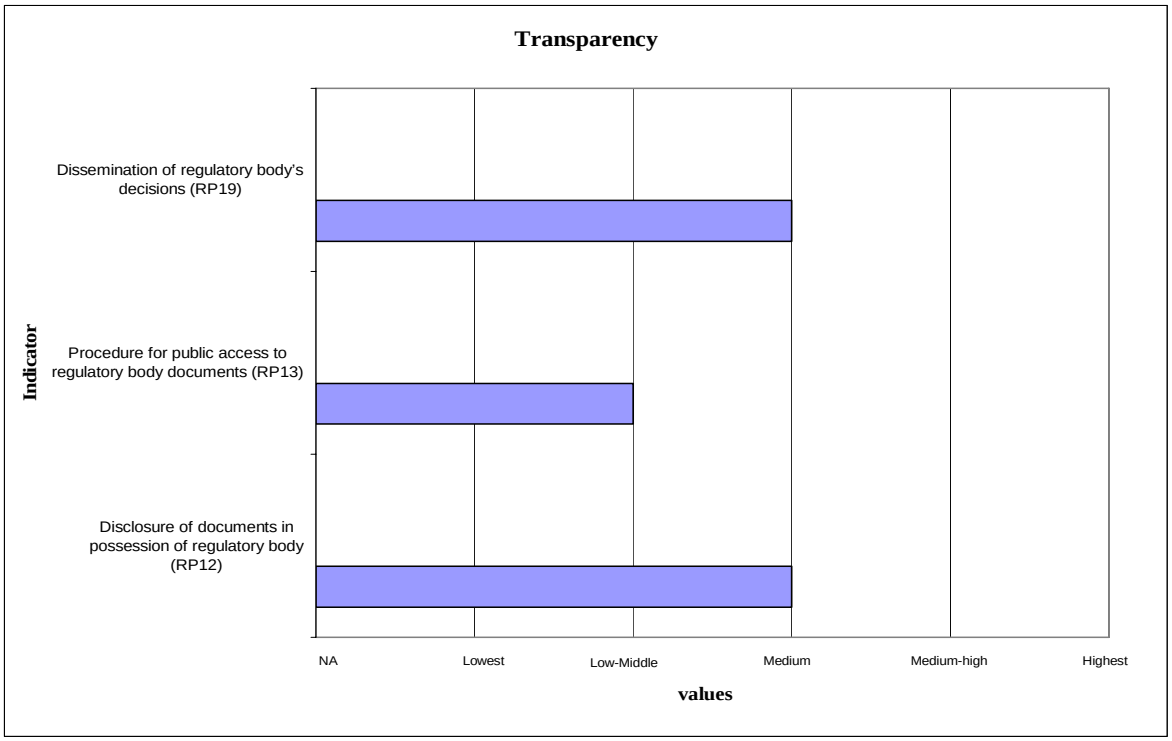

Figure. 7**.** Evaluation of Evaluation Transparency in the Regulatory Process

Although information about the various rules and regulations relating to the electricity sector is available at government websites of the DEMR and DGEEU, printed material on these topics is limited in quantity and dissemination. There is no information available about decisions made by DEMR, i.e. DGEEU, so the public only knows about the results and cannot follow the process as it unfolds. There is also no information concerning decisions made by the DGEEU about complaints from the public or infractions of set standards by parties in the electricity sector. Besides, the rules and regulations listed on the website are presented only in the national language, as a formal language both in central or region government.

4.2.3 Participation

Sectoral regulations have a direct impact on the public and for that reason public participation is imperative within the overall policy making process. A clear legal basis is necessary to establish room for the public to participate, as well as for explanations about the institutions responsible for managing public participation. This sub-section of this report also discusses the quality of public participation within the regulatory process.

4.2.3.1 Legal Basis

At this time, there is no specific regulation in Indonesia determining how the public can participate in the process of decision making relating to establishing regulations. One of the aspects of the law that makes public participation possible is Law No. 15/1985, Section 5, which states that the government is required to take into consideration the views of the public in relation to all general planning in the electricity sector. However there are no details, nor any mechanism stipulated for the implementation of this ruling. This result is that the

participation of the public in the policy making and regulatory processes is dependent on the initiative of officials in authority at any given time.

PIP-TDL was formed by the government (specifically the DGEEU) to accommodate the concerns of the people in relation to various matters concerning setting electricity rates and tariffs. The function of the PIP-TDL constitutes the expansion of the function of the DGEEU in relation to protection for electricity consumers. However PIP-TDL is not an independent body, since is only allowed to convey its opinions to the DGEEU.

The functions of the PIP-TDL are:

1. Balancing the interests of PLN (the national utility) and the public
2. Inspecting the central and regional offices and facilities in order to collect data, all of which will be turned over to the possession of DGEEU (and which will not be made available to the public)

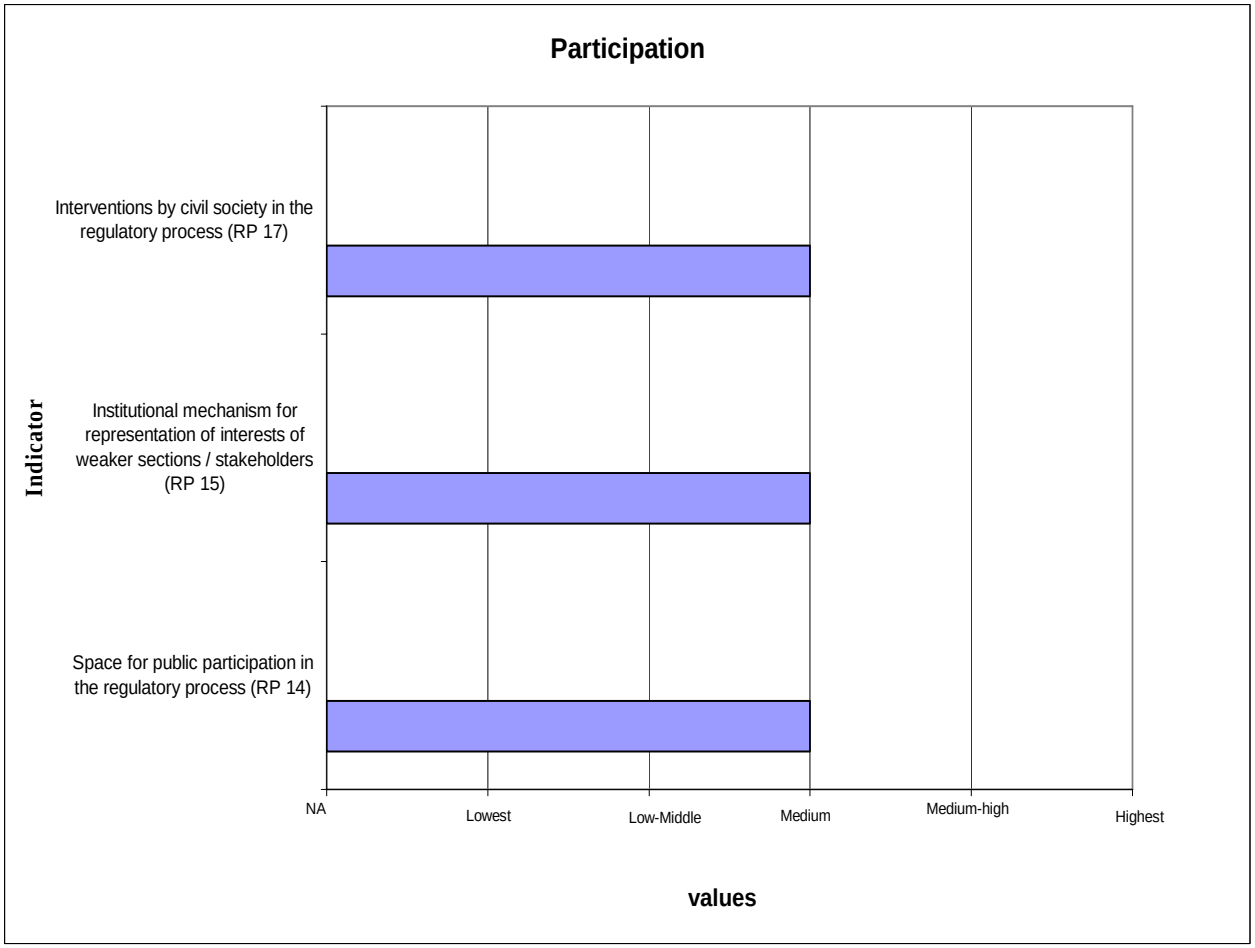

Figure. 8. Evaluation of Public Participation in the Regulatory Process

4.2.3.2 Quality of Public Participation

The quality of public participation is determined by, among other things, the number of cases raised by CSOs related to the electricity sector.

There are three cases of public input and CSO engagement over the previous two years:

1. The case of the Development of a Gas Combined-Cycle Power Plant (PLTGU) in Pemaron, Bali
2. The People's Coalition for the Pemaron Problem (Koalisi Masyarakat untuk Masalah Pemaron: KMMP) sent a letter/petition in February 2004 concerning the construction of the Pemaron Power Plant by PT Indonesia Power, but never received an answer from DGEEU (experience of the Working group of Power Sector Restructuring: WGPSR).
3. The case of Independent Power Producer (IPP)
4. Discussions related to the chronology of Law No. 20/2002 concerning electricity

4.2.4 Accountability

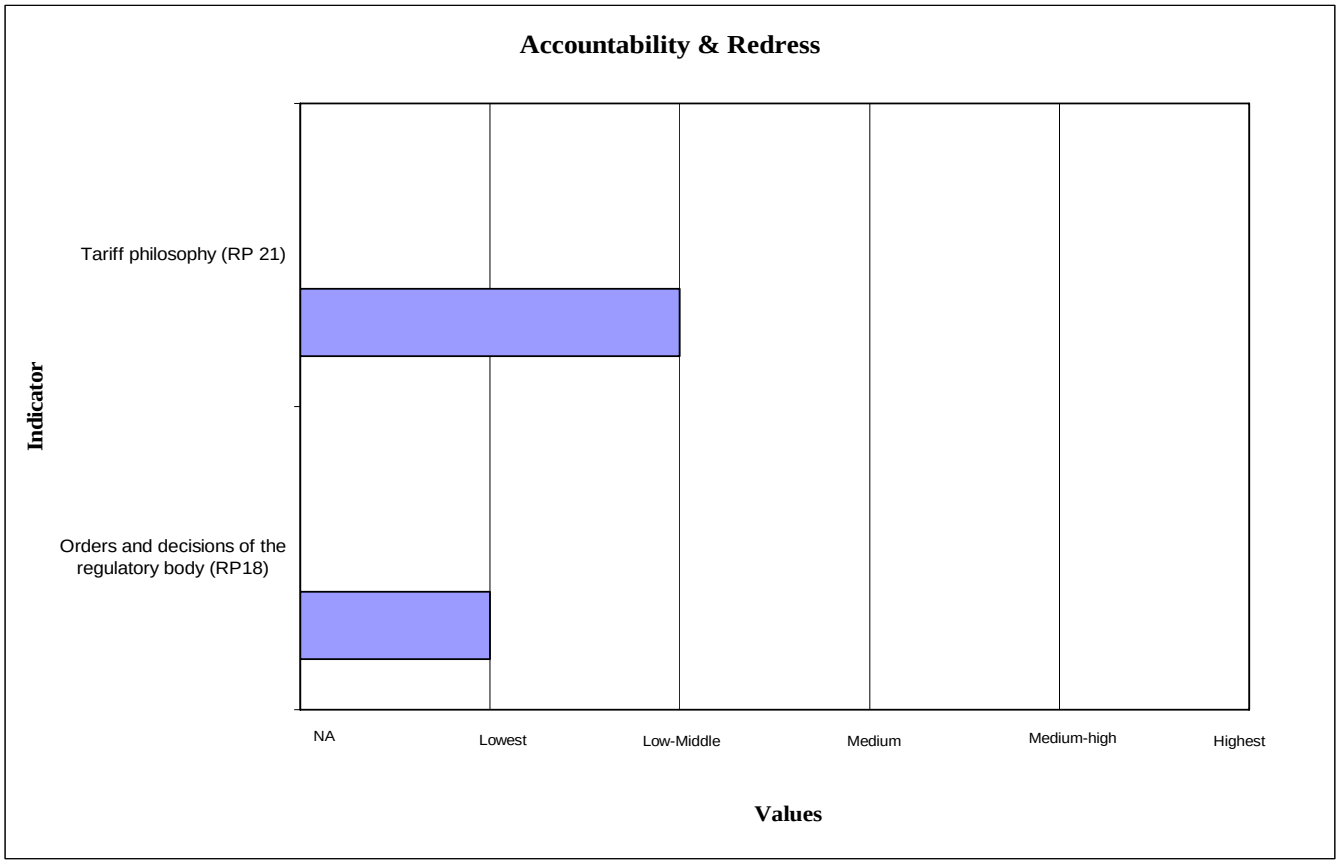

Figure. 9**.** Evaluation of Accountability in the Regulatory Process

4.2.4.1 Legal Basis for Decision Making by Regulators

There is no legal basis that sets up the nature of DGEEU's role as regulator or clarifies the reasoning or response to the public concerning its decisions required of the DGEEU.

4.2.4.2 Tariff Philosophy

It is important for it to have a coherent tariff philosophy. The tariff philosophy establishes how the electricity rate will be determined, and the extent to which it is based on detailed analysis, taking into consideration the impact on other parties, and whether this stipulation is

set out in easy to understand language and established through the process of public participation.

The electricity tariff philosophy established by the government is based on the following:
1. Affordable price
2. Input from PLN in connection with input from other parties (DGEEU, PIP-TDL)

Decisions are made based on the approval or rejection of various elements. If the rate suggested by PLN does not meet the standard for losses (9%), PLN will not be allowed to raise the tariff.

The electricity tariff philosophy in relation to PLN:
1. Ideal Cost Coverage → inefficiency outside of scientific criteria
2. Fairness based on the ability to pay
3. Added value

The tariff agreed upon is then submitted to the legislature (DPR) for approval.

The process for the establishment of the tariff philosophy in the electricity sector involved detailed analysis, and took into consideration the impact on other parties, as well as the need for the utilization of easy to understand language.

The formulation used in creating the tariff philosophy is not prepared in language that the general public can understand. However, the consumption tariff (bill) uses a formulation that can be understood easily by the public so they can calculate the electricity consumption for each month.

PLN creates tariff classification based on the kWh installed and the total consumption for lower-income communities. This is done as part of PLN's cross-subsidy policy as follows:

- Tariff classification that has 450 watt installed capacity with total consumption less or equal to 30 kWh will receive subsidy from the government.
- Tariff classification that has 450 watt installed capacity, but with total consumption more than 30 kWh, will be excluded and will pay the normal tariff, i.e. the basic production cost.

In the past, PIP-TDL has served as a representative of the public in the matters related to tariff. PIP TDL is asked to share its opinions on the tariff proposed by PLN, and has even contributed to designing the tariff philosophy itself.

However, PIP-TDL has not been involved in the recent tariff review processes -- Tariffs have been set exclusively by government representatives.

4.3 Social and Environmental Aspects

Environmental and social aspects are often ignored in electricity sector decision-making, so that the reform of this sector could result in unsustainable environmental conditions. The analysis in this section covers the social and environmental considerations within the authority of the existing institutions, and their capacity to carry out their authorized duties and functions.

4.3.1 Transparency

A key component of environmental approvals is the Environment Impact Assessment (AMDAL) which is one of the requirements for procuring permits for business activities from the authorized officials. Authority for the Environment Impact Assessment (AMDAL) procedure is clear in existing regulations, and lies with the State Ministry for Environment (KLH). However, in practice, particularly from the point of view of quality, the AMDAL requirement is not adequate. For example, the composition of the AMDAL Commission is still dominated by the government, and there is not yet any mechanism for public participation within the AMDAL process. Also, there are no clear mechanisms through which the public can convey concerns or opposition to planned projects.

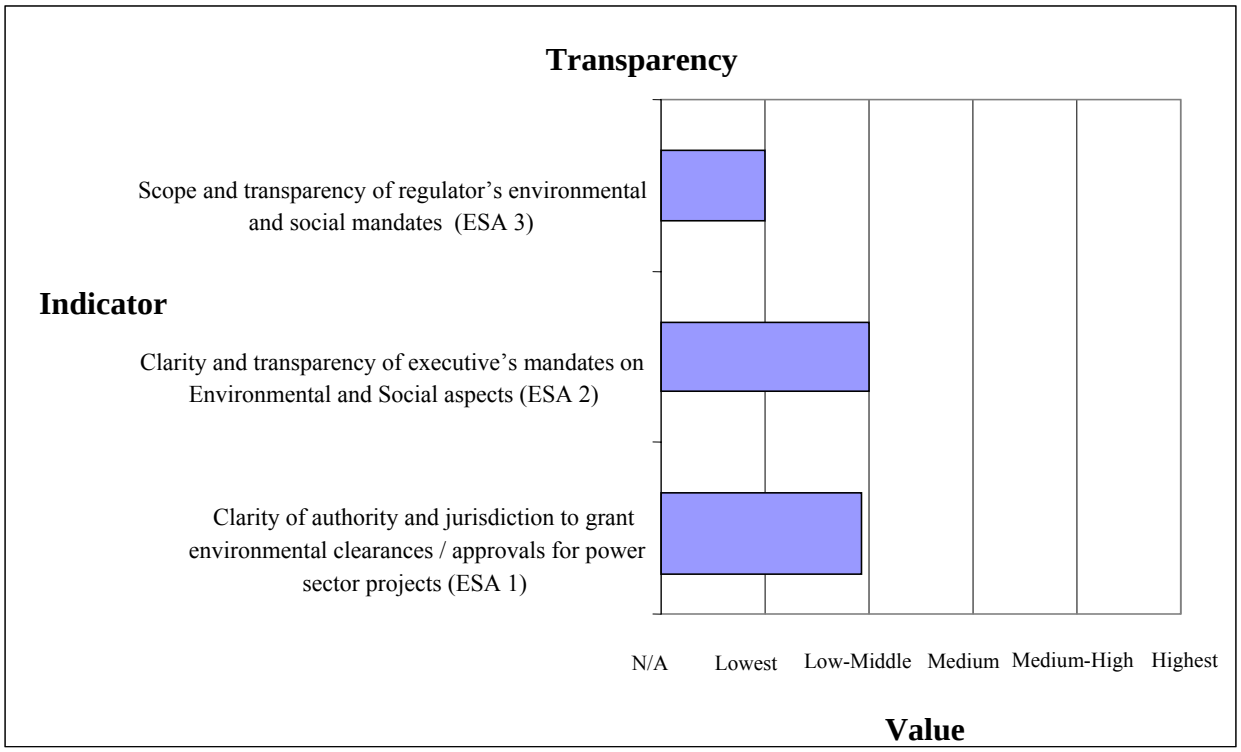

Figure. 10. Evaluation of Transparency in the Evaluation of Social and Environmental Aspects

4.3.1.1 Authority

The State Ministry for Environment (*Kementrian Lingkungan Hidup*: KLH) is responsible for evaluating and analyzing the social and environmental aspects, while the electricity sector is under the authority of the DEMR i.e. DGEEU. While there are limitations on the authority of the KLH and the DEMR respectively, coordination between these two executive bodies is not systematic or adequate.

Based on Ministerial Decree No. 17/2001 concerning Types of Business Plans and/or Activities that Require an Environment Impact Assessment (AMDAL), the development of the following types of projects requires an AMDAL: large-scale network development (on a scale of ≥ 150 kv), Diesel Power Plant, Gas Power Plant, Steam Power Plant, Gas Combined-Cycle Power Plant, the exploitation and development of Geothermal Steam Power Plant (on a scale of ≥ 100 mw) or Geothermal Power Plant (*Pembangkit Listrik Tenaga Panas Bumi*: PLTP) itself (on a scale of ≥ 55 mw), and the construction/development of Hydro Power Plant (*Pembangkit Listrik Tenaga Air*: PLTA) with a dam height of (≥ 15 meter), or with

reservoir coverage of ≥ 200 ha, or electrical power generation capacity of ≥50 mw, or the development of other types of large-scale (≥ 10 mw) electricity generation centres (solar, wind, biomass and peat).

4.3.1.2 Roles and Scope of Responsibility

Based on Law No. 15/1985, the government is responsible for regulating the electricity sector. In this case, the DEMR i.e. the DGEEU, has regulatory authority. DGEEU is responsible for creating and developing an efficient electricity sector that is able to achieve the targets outlined in the national policy. This task is implemented through regulating the selling price of electricity and setting the standards for provision and utilization of electricity, as well as carrying out management and supervision. DGEEU is a "quasi regulatory body" with the DGEEU holding the dual functions of both the regulatory body and the executive. However, the important function of regulator, which is to balance various interests in the sector, has not been stated explicitly. As discussed in the analysis of regulatory process above, DGEEU does not have the authority to penalize defaulters or parties responsible for the breaching of orders, or the authority to enforce or require others to comply with its decisions/orders.

There are no documents specifically stipulating the roles and responsibilities of regulatory bodies (referential documents are Law No. 15/1985, Government Decree No.10/2005, and TUPOKSI DGEEU). In addition, the functioning of DGEEU as both an executive and regulator can often conflict.

The DGEEU Main Task and Function (Tupoksi) document provides a general explanation of the role of the DGEEU as executive in the social and environmental fields. The field of the environment is under the authority of Directorate of Electrical Engineering *(Direktorat Teknik Ketenagalistrikan*) within the DGEEU which is responsible for policy analysis related to environmental sustainability, electricity sector safety, monitoring installations, ensuring the competence of technical/engineering staff, and environmental protection and safety.

The Directorate of Electricity Business Management (*Direktorat Pembinaan Pengusahaan Tenaga Listrik*) within the DGEEU addresses social issues including tariff setting, settlement of commercial differences among the provinces and electrical power suppliers, as well as service to electricity consumers. It is also responsible for licensing, consumer protection, and commercial relationships.

The State Ministry for the Environment is generally responsible for integrating environmental standards into the electricity sector (through, for example the establishment of Ministerial Decree of State Ministry for Environment No. 17/2001 concerning the Types of Activities requiring AMDAL and Ministerial Decree of State Ministry for the Environment No. 13/1995 concerning Standard of Quality for Emissions of Static Energy Sources {*Baku Mutu Emisi Sumber Tidak Bergerak*}).

4.3.2 Capacity

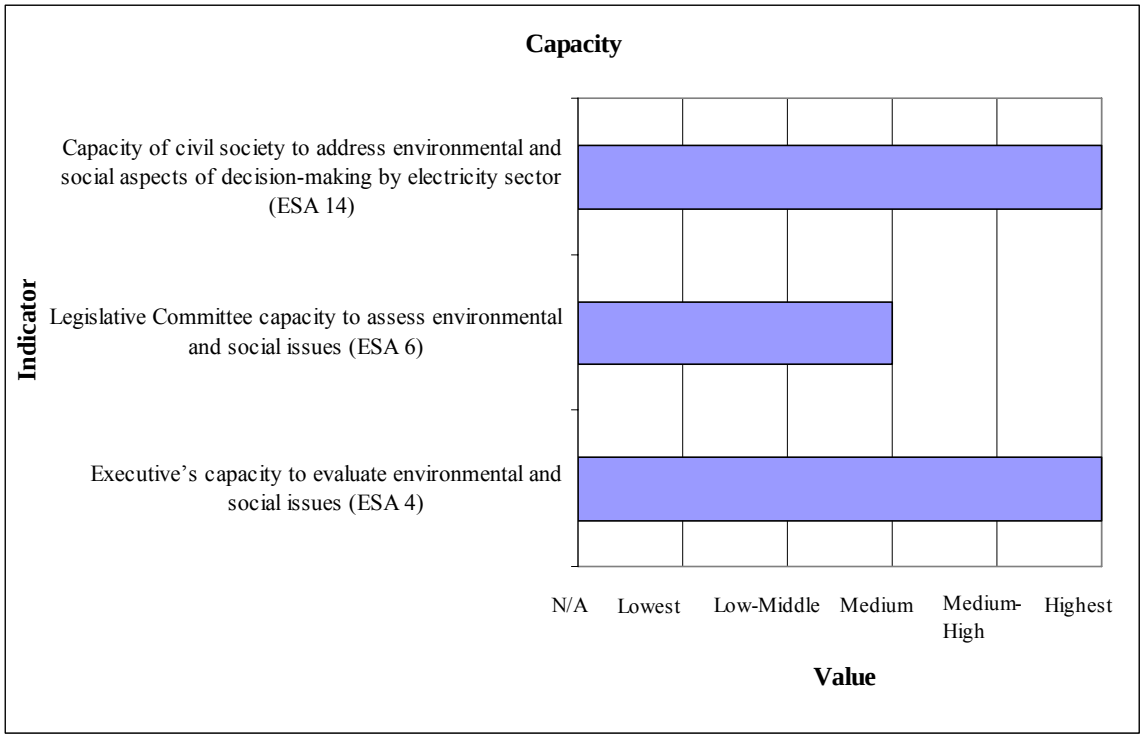

Figure. 11. Evaluation of Capacity for Evaluating Social and Environmental Aspects

4.3.2.1 Executive Capacity

As discussed above, The DGEEU (which is both regulator and executive) has directorates responsible for social and environmental issues, that is, the Directorate of Electricity Business Management, (handles social issues) while environmental issues are handled by the Directorate of Electrical Engineering, and in particular the Sub-directorate of Electricity Environment (Sub-Diriktorat Lingkungan Ketenagalistrikan). Both of these directorates have staff specifically responsible for handling social and environmental issues in the electricity sector. The DGEEU staff under the Sub-directorate of Electricity Environment were found to have a specific background in environmental issues related to the electricity sector. However responsibility for the environment also falls on other government offices, including the State Ministry for Environment.

Efforts to expand the capacity of the staff are included in the agenda of the Directorate of Electrical Engineering of the DGEEU. Each year, this directorate offers its employees training opportunities -- including training in environmental issues-- at the Energy and Electricity Training Centre. Training in EIA processes (AMDAL A and B courses) are also available. In addition, several staff of Directorate of Electrical Engineering have taken training courses abroad covering topics such as Health and Safety, Auditing, and Clean Coal Technology,.

Funding for training is allocated from the portion of the State Budget (APBN) earmarked for research and investigation into subjects relating to the handling of environmental and social issues approved by the Director General of Budgeting, Department of Finance.

4.3.2.2 Legislative Capacity

The handling of social and environment aspects by the legislature is under the authority of Commission VII of the DPR-RI. However, Commission VII has never formed a body under its auspices to focus on environmental considerations or problems in the electricity sector.

In Commission VII, there are some (three persons) staff with social and environmental backgrounds. However their performance in the observation/ monitoring of the social and environmental aspects is not supported by availability of funds or special allocations. Besides, there is no training provided to improve their knowledge and capacity.

4.3.2.3 The Involvement of CSOs in the Social and Environmental Aspects of Making Decisions

The efforts of CSOs to involve themselves in the decision making process related to social and environmental aspects are demonstrated by their documentation of a petition process relating to the Pemaron Gas Combined-Cycle Power Plant, which was expected to have negative environmental and social impacts on the community and local environment.

The CSOs involved in the petition process were the Working Group on Power Sector Restructuring (WGPSR); the People's Forum Concerned with the Development of Bali (*Forum Masyarakat Pemerhati Pembangunan Bali*: FMP2B), and The Indonesian Forum for the Environment (*Wahana Lingkungan Hidup Indonesia*: WALHI), all of which were involved in the People's Coalition for the Pemaron Problem (*Koalisi Masyarakat untuk Masalah PLTGU Pemaron*: KMMPP).

In addition, there were a number of local CSOs involved, such as the Indonesia Hotel and Restaurant Association (*Perhimpunan Hotel dan Restoran Indonesia*: PHRI); The Darma Samudra Fishermen's Association of Tukadmunngu Village; the Communication Forum in Concern of Pemaron (*Forum Komunikasi Peduli Pemaron*); the Institute for the Analysis of the Empowerment and Development of Bali (*Lembaga Pengkajian Dan Pemberdayaan Pembangunan Bali*: LP3B) and the Communication Forum on Concern for Buleleng (*Forum Komunikasi Peduli Buleleng*).

The CSOs included environmental and social analysis in the process of setting forth and submitting the petition[3]. DGEEU took on the role of a facilitator in this case, because the project was under the authority of the local government. However, this particular petition was rejected by the Buleleng legislative council while DGEEU gave no response whatsoever. At this time, the construction of the Gas Power Plant at Pemaron is already in process.

The involvement of these CSOs was documented by the WGPSR. The WGPSR focuses on energy issues, in cooperation with groups including WALHI, YLKI and ICEL in relation to legal matters.

[3] The analysis was completed by the People's Forum Concerned with the Development of Bali and the Institute for the Analysis of the Empowerment and Development of Bali

4.3.3 Accountability and Appeal Mechanisms

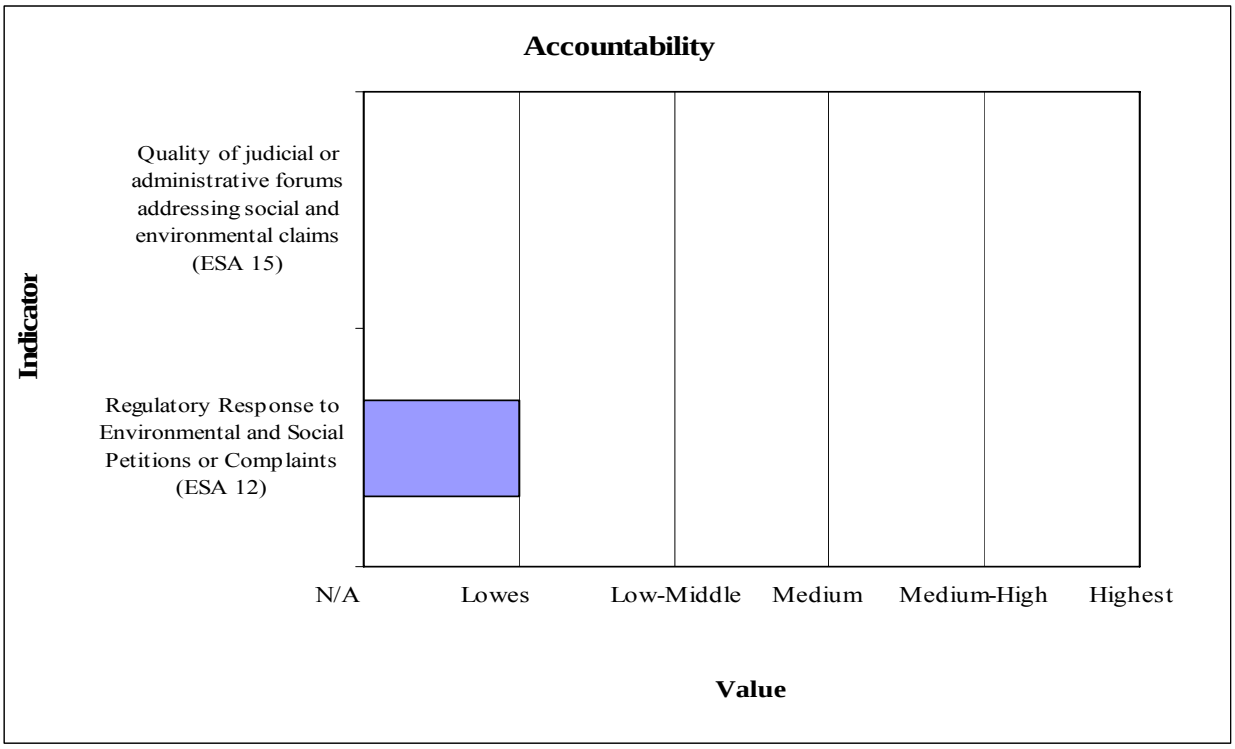

Figure. 12. Evaluation of Accountability in Relation to the Evaluating of Social and Environmental Aspects

The only social and environmental problem documented by DGEEU in the past five years was that relating to the Pemaron Power plant (and in this case, the DGEEU claimed that it was merely a facilitator because the authority over this matter was in the hands of the regional government).

Indonesia does not have any independent judicial forums dedicated to addressing social and environmental issues. However, administratively it is possible for the public to make claims or complaints, or bring forth charges relating to social and environmental problems to the State Administrative Court (Pengadilan Tata Usaha Negara: PTUN). Complaints can also be made, in general, to High/Appellate Court (Pengadilan tinggi Negeri: PTN). Consumer problems related to electricity can be reported to DGEEU by mail and by telephone to PLN customer service. In addition, claims or complaints related to the law itself can be sent to Constitution Court (*Mahkamah Konstitusi*: MK), as can be seen from the case of Law No. 20/2002 on Electricity.

4.3.4 Public Participation

Evaluation of the opportunity for public participation looked at national planning in the electricity sector; the sectoral reform process; establishment of a standard performance environment, as well as to decisions about access to electricity systems. Moreover, the team also evaluated the existence of opportunity for the public to participate in decision-making by the national utility, PT. PLN (Persero).

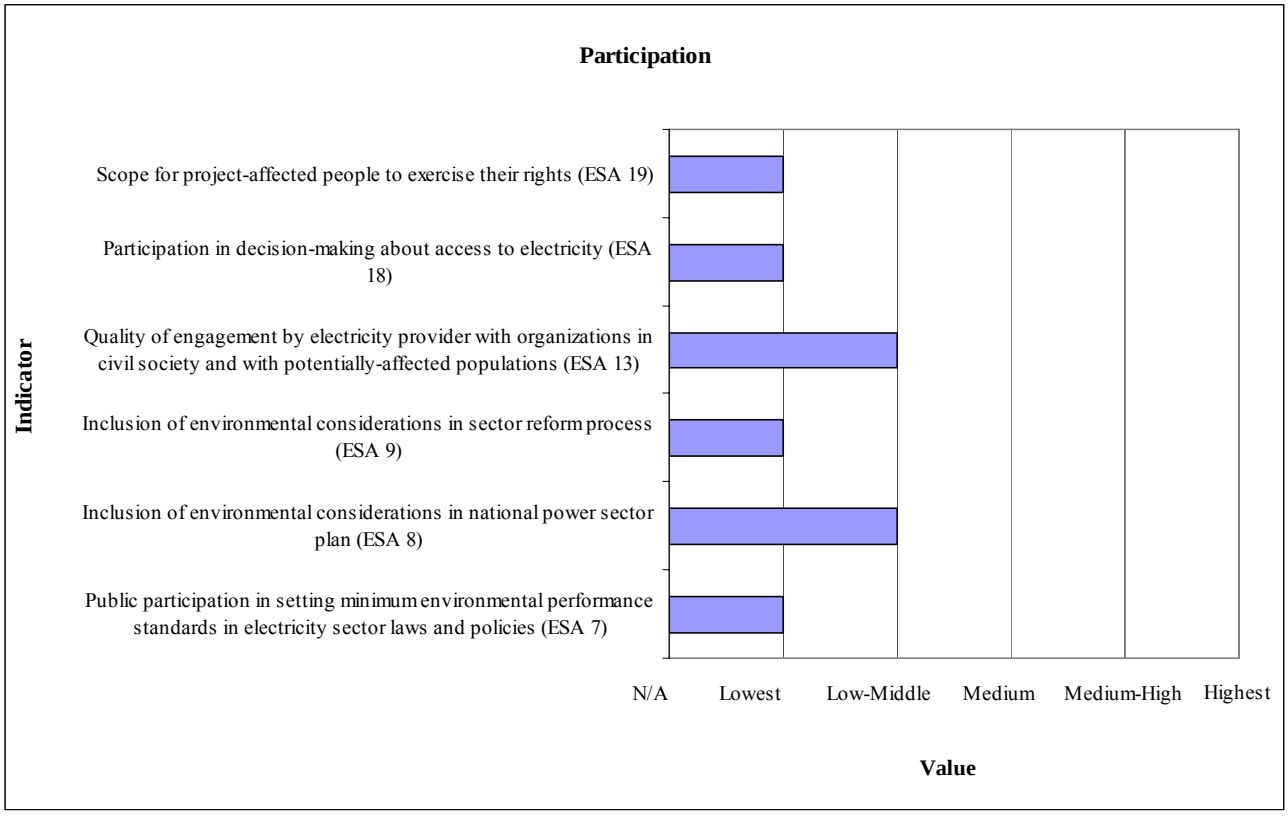

Figure. 13. Evaluation of Public Participation in Relation to the Evaluating of Social and Environmental Aspects

4.3.5 National Planning in the Electricity Sector

Law No. 15/1985, Section 5, Article (2) contains the statement, "In the formulation of general planning as understood in Article (1) the Government is obligated to consider the thinking and opinions of the public." However, this law does not provide a clear or detailed explanation of how to accommodate or respond to the thinking and opinions of the public, nor on how to involve the public. Ideally, the formulation of General Planning of National Electricity (*Rencana Umum Ketenagalistrikan Nasional*: RUKN) on the national level should involve inputs from the regions and the public in general. However, in practice, the formulation of Electricity Planning on the regional level (*Rencana Umum Ketenagalistrikan Daerah*: RUKD) has only just begun and in many regions there are still no local plans, and still no guarantee that the public will be involved in their formulation.

A survey by the Indonesian CSO Pelangi (2003-2004) regarding plans to build the Sekam Padi Power Plant in Metro, Lampung, indicated that the Regional Division of DEMR was not aware of the regional plan and regulations developed under the RUKD.

National Planning documents do mention environmental considerations explicitly (as mentioned in RUKN Chapter II, point 6 about Environmental Protection Policy). However, this is limited to stating that all power plants expected to have significant impacts require an Environment Impact Assessment (AMDAL). In addition, the General Planning of National Electricity (RUKN) has also included renewable energy utilization, although still considering technical, economic, and environmental safety aspects. Renewables are also included with a view to reducing dependence on fossil fuels and to ensure security of energy supply.

4.3.5.1 Sectoral Reform Process

Regarding the restructuring process in the electricity sector, environmental issues are mentioned in some documents, such as: Law No. 20/2002, Government Decree No. 3/2005, and RUKN 2005. However all of these issues are not explained in detail. For example, in RUKN Chapter 2, point 6 mentions about Environmental Protection Policy. However, the explanation is very general.

Within the process of restructuring the electricity sector, there is no explicit, detailed consideration of environmental impacts and issues in the documents published before or after the restructuring process commenced.

4.3.5.2 Process for the Establishment of Environmental Performance Standards

The existing stipulations concerning minimal standards are contained in the Ministerial Decree of the State Ministry for Environment No. 13/1995 concerning Standard of Quality for Emissions of Static Energy Sources. In this document, only a few matters are regulated, among these are emissions into the air, and the utilization of coal for electrical power production. There are no general minimum environmental performance standards specifically set for the sector.

Because there are no general standards for all power plants, it is very difficult to determine the environmental impact of the power plants existing in the entire system operated by PLN. Besides, PLN has never done an audit of its power plants -- or if such an audit has been done, it has never been publicized.

4.3.5.3 Decision Making Process

No documents were found that proved public participation in the decision making process at the executive level of planning in the electricity sector, or the making of decisions by independent bodies responsible for electrification. When efforts have been made to get inputs from the public, it is still limited only to invited parties. Systemic efforts have not been made to assemble those sections of the public who are most sensitive to the impact of power sector projects. Moreover, there is no discussion of the comments or inputs from the public found in the documents or materials that are directly relevant to the planning process, or related to expanding access to electricity services.

The study of the Pemaron Power Plant was used as a case study to evaluate whether project affected people were included or consulted in the decision to construct this plant. In the case study, no evidence was found to indicate that the public had been involved in the decision making process, and the local government and national authorities were not responsive to civil society efforts to draw attention to the concerns of project affected people.

4.3.5.4 Opportunity for Public Participation Provided by the PLN Utility Company

There is no specific allocation of responsibility for public consultation other than in relation to public relations in PLN. The Directorate of Trade and Customer Service at the PLN central offices has a business and customer services division. But this division is more oriented toward business matters and does not handle social and environmental matters.

Further, there is no company policy that clarifies when or in relation to what issues the company will seek public input, or whether any input from the public will have any impact on the final decision. There is also no documentation that indicates that the company pays any attention to --or allocates resources for-- the groups most vulnerable to the impacts of any given project, or whether the company takes any initiative to include the public in its decision-making.

PT. PLN has made an effort to communicate information to customers and the segments of the public affected by company development activities that could give rise to complaints. This is done only in relation to select matters such as the announcement of electrical power shutdowns, or electricity conservation drives, which are conveyed through the print and electronic media. However, this information is never in-depth. For example, informational materials seldom explain the rationale for why we (consumers) should conserve electrical power, or why there is an electricity crisis and a need for power shut-downs.

5 SUMMARY AND RECOMENDATION

5.1 Summary

1. The results of the Assessment of the Policy Making Process indicate that the policy making process relating to Law No. 20/2002 in the DPR followed the appropriate steps in line with the Internal's Rules DPR-RI. However, both the legislative and executive bodies failed to adequately inform the public and make them familiar with the policy making process.
2. The legislature are found to operate in a fairly transparent manner, and donor organizations were found to be fairly transparent in the case of Indonesia as well. In addition, civil society was found to have relatively high capacity to engage in policy issues.
3. The legislative committee is independent in nature and plays an active role, including by providing forums to accommodate participation by the public and for the conveyance of input during Public Hearings (*Rapat Dengar Pendapat Umum*: RDPU). However, the distribution of information about these forums is very limited, with public participation limited to invited parties, and with no explanation of how the input form the public is included within the decision making process.
4. The active role and independence of the legislature is supported by the authority and availability of human resources and budget for expert staff, with research being done in connection with the legislature's function of dealing with issues and problems arising in the electricity sector.
5. The legislative body can access information on which to base its decisions, as it is supported by the existence of the internet, the openness of commission documents, the availability of library facilities, as well as channels for requesting documents directly from the government. However, this is not supported by routine forums (seminars, training, workshops, etc.) to improving the legislative member capacity in the electricity sector.
6. Representatives of government, the legislature, and CSOs agree that the CSOs have been pro-active, engaged, and acted strategically in the process of passing Electricity Law No. 20/ 2002, and demonstrated the capability to undertake technical and economic analysis within the provision of input.
7. Donor institutions have also contributed support in the form of funds and technical assistance for projects in connection with sector reform.
8. There is no independent regulatory body in the electricity sector in Indonesia, and the regulatory process was not found to be independent of political influences.
9. Related to the process of regulation, no legal basis was found for the provision of information to the public, no mechanism was discovered for facilitating public participation, and it was also determined that there was no way to find out the reasons behind the decisions being made by the regulators.
10. The legal basis, authority, and function of the government, which also regulates the sector, is not yet clearly defined.
11. The staffing policy within the DGEEU is neither transparent nor independent. The policy lacks transparency because there are no set procedures (although criteria exist for reference in the appointment of officials at certain levels).

12. While the government does have a tariff philosophy as a basis to determine electricity tariffs, the formulation of this tariff philosophy has yet to involve public participation as a means to consider the input and perspectives of affected stakeholders.
13. The public can access all documents from the government offices that pertain to regulatory functions, if those documents are not classified as confidential. However, there are no clear guidelines or basis on which documents are classified as confidential
14. In general, the government and the legislature have provided some mechanisms for public participation. However, these have not been properly implemented because of a lack dissemination of information about opportunities to participate through public awareness campaigns or other channels, so that not everyone with interests in the activities of the electricity sector is adequately informed.
15. Although there are CSOs that monitor electricity sector processes who have been actively engaged, there are no regulations that specifically and in a detailed manner provide space for public participation.
16. In relation to social and environmental aspects, the government's capacity is considered adequate. However, social and environmental issues are not yet specifically addressed as an integral part of electricity reform and regulatory processes.
17. Within national planning for the electricity sector, social and environmental issues are noted only to the extent that there is a requirement that an Environment Impact Assessment (AMDAL) be conducted for all power plant activities which are expected to cause significant impact.
18. Human and financial resources are available for the management of environmental and social matters at both the executive and legislative levels of government. CSOs are also capable of providing input on social and environmental issues in relation to the decision making process.
19. The authority and jurisdiction of the government (KLH and DGEEU) in relation to approval of environmental standards for electricity projects are clear and transparent. However, there is lack of coordination between these organizations, and there is little clarity about the roles of the related governmental bodies clear in relation to social and environmental problems.
20. There is no independent court forum for handling social and environmental matters.
21. There are no minimum environmental performance standards for the electricity sector, so national planning in the electricity sector does not include detailed environmental considerations.
22. The public is not yet involved in decision-making processes related to access electricity services.
23. There is no forum to accommodate the rights of parties who are directly affected by electricity projects.

5.2 Recommendations

Based on our research, the EGI Indonesia Team makes the following recommendations:

Legislative Processes: DPR-RI

Transparency

1. The format of decision made by legislative body has been clear, but the general public must be made to understand these processes and formats.
2. The timeframe for a given decision making process should be stated at its inception, so that the public can understand and follow the various phases of the process. Until now, the legislature has had schedules and agendas for all of its meetings, but this information is held at the Consultative Body of the DPR-RI and not released to the public.
3. The period of time for responding public input must be clear.
4. A clear mechanism that establishes how public input will be collected, considered as part of the final decision, and responded to by decision maker must be established.
5. The basis on which any specific document is deemed confidential must also be made known to the public, including in the case of research study documents and the statements of the views of stakeholders.

Public Participation

1. There is a need for a mechanism to enable direct public participation and input during the period of deliberation over a policy by the DPR (legislature) and DGEEU/DEMR (executive). At this time, there is a mechanism in the DPR that allows input at the initiation of a discussion session, that being the Level II period of Deliberation during Public Hearings (RDPU).
2. A mechanism for feedback, within a clear timeframe, must also be established, and systematic efforts made to accommodate the rights of communities vulnerable to the impacts of the decisions being made. For example:
    a. Provide a special email address to accommodate and respond to input, including complaints, from the public;
    b. The public should be informed of the process for submitting input through pertinent websites and through television programming and the printed media on both the local and national level. The DPR can use the SWARA television station to inform the public of the processes and deliberations going on;
    c. The existing Post Office Box program should be expanded to better accommodate the members of the public who do not have Internet access.
3. A mechanism must be provided to ensure the public access to documents, throughout and after all decision making processes, so that the public can monitor the process. For example:
    d. Copies of every transcript or the minutes of every meeting filed by any Secretariat Commission should be accessible to the public at institutional libraries.
    e. Website facilities should be used to make announcements concerning the initiation of a decision making process and its duration, and to post periodic updates on

each phase of the deliberation process.

f. It is necessary to increase use the existing DPR-RI website to provide information and updates to the public.

4. It is necessary to have strong legal base for public to participate in decision-making process in DPR-RI. A Public Participation Law may be necessary to this end.

Capacity

1. The establishment of routine training opportunities for Commission VII DPR-RI is required to increase and update the capacity of commission members and staff, particularly with regards to environmental and social aspects.
2. Special funds should be earmarked to allow the legislature to address social and environmental considerations in electricity sector.

Accountability

1. To support accountability of the committee members, it is important to have a rule that requires committee members to disclose their past links and commercial interests in the electricity sector industry before joining the committee. It is also necessary to have punitive measures in the case of infractions.
2. The List of Problem Inventory (*Daftar Inventarisasi Masalah*: DIM) brought by the legislative members to plenary session should be accessed by the public, so they can be well informed on the topic discussed.
3. Routine public hearings should be established
4. A system to enable the legislature to observe how the government follows up on their recommendations is necessary.

DEMR i.e. DGEEU

Transparency

1. There must be a clear explanation of the status of all documents held by DGEEU. DGEEU must clarify which documents can be accessed by the public and which are classified as confidential. If documents cannot be accessed, the reason for denial of access must be stated.
2. The procedures for accessing documents at DGEEU must be easy to follow, and the process made more convenient, time efficient, and inexpensive.
3. The results of analyses/findings issued by the PIP-TDL must be made available to the general public and not just to the DGEEU for internal use.
4. In order to establish a rational Independent Power Producer (IPP) policy (policy involving the private sector in the provision of electrical power), the government must make the following efforts:
   a. Involve the legislature and the public through adequate consultation
   b. Decisions must be based on detailed, analysis supported by the principle of transparency and taking into consideration the matters of supply and demand and other assumptions
5. Better coordination of duties and functions between the DGEEU, as the executive

body with authority in the electricity sector, and the Ministry of the Environment (KLH), as an institution with general authority at the national level, is required in relation to handling social and environmental issues.

6. It is necessary to introduce environmental requirements other than (or in addition to) the Environment Impact Assessment (AMDAL), to get permits from the proper authorities for the implementation of any business and/or activity.

Public Participation

1. A clear system for the involvement of the public must be established that is not dependent on who is in authority at any given moment. This mechanism or system must have a strong legal basis.
2. Facilities or channels for the dissemination of information must be made more effective. For example:
    a. A place should be provided on the website for the public to make comments on the decisions made by the DGEEU, as well as for responses from DGEEU, as can be seen at the Corruption Eradication Commission (KPK) website (www.kpk.go.id)
    b. It is necessary to hold Public hearing regularly
    c. The existing Post Office Box program should be expanded to better accommodate the members of the public who do not have Internet access.
    d. There should be a special division in the DGEEU that handles and responds to complaints from the public.
3. The government should establish a convenient and clear mechanism for the public to make complaints, as well as setting out formal procedures for documenting those complaints.
4. It is necessary to disseminate information related to policy and regulation making process to the public.
    a. Announcements or information concerning the decision making process should be placed on the appropriate website, and include the date and place of discussions and other meetings for deliberation on the formulation of decisions.
    b. The documents available for access by the public on government websites up until now are generally related to organizational structure, main tasks and functions (Tupoksi), policy, business, electricity, technological, and information concerning private sector electricity, slides, drafts, licenses, examples of licenses, activity agendas, consumer protection, PO Box address, customer complaint channels, announcements, etc. It is necessary to expand this information to include availability of documents relating to the policy process (from the inception of the deliberation process to the final outcome in chronological order).
    c. The public should be allowed an adequate period of time to consider and establish their positions on the formulation of decisions
5. Public participation in the decision making process related to social and environment problem is necessary. This can be done by the government by following examples:
    a. The public should be given the opportunity to provide input for the executive-level decision making process related to planning in the electricity sector, as well as for decisions made by independent parties responsible for electrification.

b. The minimum environmental performance standard must also contain input from the public.

Capacity

1. An Independent regulatory body is needed to make independent decisions that protect consumers and producers alike. These regulators should be insulated from external changes, and able to carry out their short and long term vision and mission without interference from other parties.
2. This independent regulatory body should have independent human resources and funding.
3. Regulatory bodies need more authority. For example: authority to force other parties to adhere to the regulatory bodies' decisions, and/or the ability to impose punitive measures in the case of infractions.
4. The DGEEU should have a clearer function, set out in a detailed manner with a strong legal basis.

If DEMR i.e. DGEEU is the Regulatory Body, then, the above capacities and characteristics need to be better accommodated within this institution.

Accountability

Each and every decision made by the DGEEU must have a strong legal basis. This legal basis must be able to clarify that the DGEEU is required to justify the reasons for its decisions and its response to public opinion.

State of Ministry for Environment (KLH)

Transparency

1. The government should establish specific minimum environmental performance standards for the electricity sector in order to eliminate or prevent negative impacts on the environment and also to help the electricity planning processes.
2. As mentioned in the context of recommendations for the DEMR/DGEEU, better coordination of duties and functions between the DGEEU, as the executive body with authority in the electricity sector, and the Ministry of the Environment (KLH), is required in relation to handling social and environmental issues.
3. Ease of access to documents related to clarity of authority and jurisdiction in giving environmental standard approval.
4. Information about authority and jurisdiction of this institution must be distributed widely.

Public Participation

1. The process of establishment of minimum environmental performance standards must also contain input from the public.
2. Minimum standards for electricity sector should address standards for effluents, noise, Nitrous Oxides, Sulfur Oxides, and radiation for nuclear power plant.

Judicial Forum

It is important to establish an independent Judicial Forum specifically to settle social and environment problems.

State-owned Electricity Company (PLN)

Public Participation

1. It is necessary to assign PLN specific social and environmental responsibilities, separate from a public relation function.
2. The existence of corporate policy that describes the time and the issue the corporate accepts opinions from the public or the community that has direct impacts on the project.
3. PLN should pay attention to people sensitive to the impact of their projects, and allocate resources to this end.
4. The following measures to establish active public participation in decision making processes for new projects are recommended:
    a. Public consultation before PLN approves projects .
    b. Educate the people in the surrounding area about the project.
    c. Public participation in the public consultation process is conducted in a transparent matter, and not just as a formality.
    d. Project decision-making rules and regulations should be grounded in the principle of free, prior and informed consent
    e. PLN should undertake routine audits of its electricity production and distribution facilities, and publish the results of this audit widely.
5. PLN, as the provider of electricity services, must increase public awareness of its activities and pay more attention to public opinion, in particular the needs of the weaker/more vulnerable social groups, while expanding its capacity to accommodate public consultation.
6. Information related to projects that may have negative impacts on must be made public with detailed analysis of impacts.

APPENDIX A

APPENDIX A.1: TABLE OF KEY ATTRIBUTES IN POLICY PROCESS					
Indicator		**Key Attributes**	**Status**	**Score**	**Remarks**
Transparency					
PP 8	Role of donor agencies during policy reform	• Information about policy positions • Availability of loan documents and conditions • Information about financial disbursement • Information about technical assistance	1 1 1 1	**High**	
PP 9	Clarity about decision-making process on reforms or policy change	<u>Clarity About the Process</u>: • Clarity about the decision-maker • Pre-laid out time-frame • Clear format for decisions • Timeframe for public input • Specification for the use of public input • Anticipation of feedback • Specification of a mechanism for recourse • Provision for documentation of the process <u>Ease of access and breadth of information</u>: • Information circulated with reasonable lead time • Information available on internet and more than one other tool • Systematic efforts to reach out to disadvantaged communities	 1 0 1 0 0 0 0 1 0 0 0	**Med-Low**	The assessment was based a case study on the process of establishing Law No. 20/2002 on Electricity. Currently, the process of making a new electricity law has not been transparent. The new Electricity Bill is available on the DGEEU website (April 5, 2005), without any notice for public involvement in the process. At least three parties are understood to be working independently (self initiative) on some aspects of the new electricity law. Note: After the annulment of Law No. 20/2002, the judicial court gave assignment to government to make a new law on electricity. The previous Law No. 15/1985 and Governmental Decree No. 10/1989 on supply and the utilization of electricity power was used for the implementation was used to fill the empty legal space while work on the new law began. However, these laws and decrees considered inappropriate for current conditions so Governmental Decree No. 10/1989 was revised into Governmental Decree No. 3/2005 (this process was not transparent either).
PP 10	Scope of background policy information available to the public about government analysis and stakeholder views	• Breadth • Ease • Timeliness	0 0 0	**Low**	There is information available on background documents provide the basis for policy decision but do not meet three criteria for transparent information sharing (breadth, ease and timeless)
PP 16	Quality of media coverage about reform or policy decisions	• Volume of coverage • Local language coverage • Balance of coverage • Quality of coverage	1 0 1 1	**Med-High**	The assessment was based a case study on the process of establishing Law No. 20/2002 on Electricity. Note for indicator: Local newspapers that discuss the national issues usually use Indonesia language, not local language. Thus, the second element of this indicator is not relevant for Indonesia condition. The process of making the new law in electricity which is still in progress does not get sufficient media attention either.

PP 21	Independent Power Producers	• Legislative involvement • Competitive bidding • Transparent and detailed analysis of demand-supply scenario • Detail analysis of tariff impacts • Public consultation while approving PPAs • Public consultation during IPP policy development	0 0 0 0 0 0	**Low**	
Participation					
PP 14	Quality of public participation process during reform or policy decisions	• EoQ in a good process of public participation • Public notification • Public registries of documents • Communication of decisions within one month • Use of diverse communication tools • Adequate time for public consideration • Opportunity for consultation • Clear communication on the results of public participation • Outreach to vulnerable communities	0 0 0 0 1 1 0 0	**Low**	The assessment was based a case study on the process of establishing Law No. 20/2002 on Electricity. Currently, the government is developing a new draft of law in electricity without the public being informed about and involved in the process. They use website to communicate the draft to the public, so public had adequate time to consider the new draft. Unfortunately, using one communication tool such as website might not sufficiently inform the stakeholder. Proactive efforts are needed to inform the public that such processes are taking place.
Accountability					
PP 2	Procedures of Legislative Committee	• Disclosure of interests of the members • Reasoned reports • Active, with regular meetings • Public consultations and open proceedings • Public availability of submissions • Public availability of own documents • Action Taken Report	1 1 1 0 0 0 0	**Medium**	Note for indicator: The indicators need to include effective process elements, which do not only view from quantitative perspective but also include qualitative questions from each of the elements to capture the qualitative one.
PP 7	Debate on Reform / Restructuring Law or other key Policy Change Law	• The reform/restructuring law was enacted through the legislature • Criteria of effective legislative process • Adequate time for debate • Attendance of members • Duration of debate • Availability of transcripts of debate	• 1 • • • 1 • 1 • 1 • 0	**Med - High**	The assessment was based a case study on the process of establishing Law No. 20/2002 on Electricity. Note for indicator: the value guideline used to assess duration time between tabling of legislation and passage of the law could not be implemented, considering that every country different policy on it. The new draft of electricity law is still under preparation, hence have not been submitted to the legislative.

Capacity					
PP 1	Capacity of Legislative Committee	• Existence of committee • Trained staff • Opportunities for training • Financial resources • Authority to call for evidence	1 1 0 1 1	**Med-High**	
PP 3	Independence of Electricity Ministry / Department from the Executive	• Criteria for appointment • Fixed tenure and removal procedure • Disclosure of interests • Rules about Conflict of Interests	0 0 0 0	**Low**	
PP 6	Distinct planning / policy agency	• Existence • Mechanism for consultation by executive • Authority to seek information • Availability of resources • Requirements for transparency • Requirements for consultation	0 0 0 0 0 0	**Low**	DEMR i.e DGEEU is responsible for the electricity planning, but it does not stand as distinct planning agency.
PP 13	Capacity of Organizations in Civil Society	• Number of organizations • Techno-economic capacity • Proactive engagement and strategic capacity • Grass-roots links • Capacity for ongoing learning • Networking • Broad credibility	1 1 1 1 1 1 1	**High**	The assessment was based a case study on the process of establishing Law No. 20/2002 on Electricity. Currently, the process of making the new law on electricity does not involve CSO. This could be seen from informal activities carried out by CSO and other parties independently.

APPENDIX A.2: TABLE OF KEY ATTRIBUTES OF THE REGULATORY PROCESS

Capacity					
RP 1	Institutional structure for regulatory decisions	• Regulatory decision through independent commission	0	**Low**	Law No. 15/1985 on electricity power stated that the regulation for the power sector is the task for the government, in this case the Ministry of Energy and Mineral Resources (MEMR) in particular the General Directorate of Electricity and Energy Utilization (DGEEU). The Decision issued by DGEEU should have the approval of the Minister of MEMR, therefore the regulatory body and the decision made is not independent.
RP 2	Authority of the regulatory body	• Authority to call for evidence from stakeholders • Authority to investigate • Authority to penalize • Authority to enforce	1 1 0 0	**Medium**	The two authorities are included in the main task and function (Tupoksi) of DGEEU. Those authorities are more in the form of policy making and supervising that cannot make any enforcement or penalize or impose any sanctions if it is not carried out by related party.

RP 3	Functions / jurisdiction of the regulatory body	• Mandate or tasks of regulatory body is clearly defined • Mandate is sufficiently wide	0 0	**Low**	The functions of DGEEU stated in the MTF are related to the function of the Regulatory Body, but are not described in detail and not the functions of an ideal and independent regulator. Final decisions are still made by the Minister of MEMR.
RP 6	Autonomy of regulatory body	• Fixed tenure of members and removal procedures • Financial autonomy • Human resources	0 0 0	**Low**	The amount of the budget and number of the Human resource needed by DGEEU to carry out its function is determined by MEMR.
RP 12	Disclosure of documents in possession of regulatory body	• Availability of law, rules and regulations of the regulatory body to sharing of documents with the public (Legal provisions) • Clear procedures and rules to classify confidentiality of documents	0 0	**Medium**	The public can make an attempt to access document from DGEEU by requesting it directly in person. Whenever it is not considered as a secret the public can have an access to it. But there are no rules describing the criteria of document secrecy in DGEEU.
RP 13	Procedure for public access to regulatory body documents	• Well-indexed database to ensure the availability of documents to the public • Simple, well-defined procedure to obtain documents • Reasonable cost for assessing the documents • Wide dissemination of information about procedure for public access	0 1 0 0	**Low**	Case Study: Independent Supervisory Body of the Implementation of Basic Electricity Tariff (Pengawas Independen Pelaksanaan Tarif Dasar Listrik (PIP-TDL)). PIP-TDL is an ad-hoc body formed by DGEEU with objective to increase the control over the implementation of the Basic Electricity Basic which was executed by the state-owned electricity company PT. PLN (Persero). PIP-TDL is considered as the public representative in the electricity power sector relating to the tariff issue. DGEEU has no separate agency or body for other issues such as those relating to the issue of efficiency, environment etc. PIP-TDL has the authority and facilities to obtain information and documents from the regulator. But all information and documents accessed and produced by PIP-TDL are not open to the public.

Transparency					
RP 19	Dissemination of regulatory body's decisions	• Easy availability of regulatory body's decision • Timely availability of regulatory body's decision; as soon as possible after finalization • Availability of regulatory body's decision in local language	0 0 1	**Medium**	Information on various regulations on power sector is available in the ministry's website (MEMR, DGEEU). As for the printed version is only available in a very limited number, thus the distribution is also limited. Examples of documents accessible by the public: PEN, RUKN, Electric Power Bill etc. No information is available on various decision made by regulator during the process of the regulation formulation, therefore the public only know the final result and cannot monitor the progress on time/ Bahasa is a formal language used in governmental matters, both in central and local administrative. With assumption that local language refers to Bahasa, then indicator element related to the local language is fulfilled.
Participation					
RP 14	Space for public participation in the regulatory process	• Availability of law that all proceedings before the regulatory body are open for the public (Open proceedings) • Public has the right to participate in such proceedings	0 1	**Medium**	At the moment there is no Act that specifically regulates the way public can participate in the decision making process to determine a regulation, decree or any rule. One of the opportunity that allow public participation is Act 15/1985, article 5, that stated in creating the general plan of electricity power, the government has to consider existing views among the people. Yet no details and mechanisms provided on the implementation in the regulation
RP 15	Institutional mechanism for representation of interests of weaker sections / stakeholders	• Routine considerations • Ad-hoc considerations • Availability of diverse institutional structures	1 0 1	**Medium**	PIP-TDL is formed by the government (i.e. DGEEU) to accommodate the public interests in various implementation of the basic electricity tarriff. The function of PIP-TDL is an extended function of DGEEU for the protection of the electricity consumers, however PIP-TDL is not an independent agency regarding the information and documents accessed as well as those produced by PIP-TDL are solely for DGEEU and are not opened for the rest the public.

RP 17	Interventions by civil society in the regulatory process	• Number of cases filed • Private interest cases and appeals • Public interest cases and appeals • Presence of active CSOs	1 0 1 0	**Medium**	There are three documents reflecting the opinion of the public in the last two year period: 1. The Problem of the building of Steam Gas Power Plant in Pemaron, Bali 2. The case of Independent Power Producers, 3. Related Discussion to the Act No.20/2002 on Electricity
Accountability					
RP 18	Orders and decisions of the regulatory body	• There's a law that assist in directing the contain of a new law/decision • Order / decision of the regulatory body contain reasons (Reasoned orders) • order / decision of the regulatory body must respond to public comments / objections	0 0 0	**Low**	There is no legal basis imposing DGEEU as a regulator body to provide reasons in any decision made or response to motion or inputs from public.
RP 21	Tariff philosophy	• Existence • Based on detailed analysis • Provision for mitigating adverse impacts • Simple language • Public participation	1 0 1 0 0	**Med-Low**	Tariff philosophy of electricity is determined by the government which had been confronted with utility agency (state electricity utility, PLN). It was made based on detailed analysis, but the analysis itself was not for public domain. Moreover, the calculation used in formulating philosophy of electricity tariff was not easily read by public. To help poor people/weaker sections, PLN makes grouping on electricity tariff based on installed capacity and the amount of electricity had been used

APPENDIX A.3: TABLE OF KEY ATTRIBUTES OF THE ENVIRONMENTAL AND SOCIAL ASPECTS

Transparency					
ESA 1	Clarity of authority and jurisdiction to grant environmental clearances / approvals for power sector projects	• Provisions in law / implementing regulations • Definition of how authority is shared across jurisdictions • Adequacy of access to relevant information • Provisions published in official journal/gazette • Provisions posted on the websites • Public sector agency with principal authority issues brochure, poster, information sheets, etc. • Provisions may be obtained from public information office/library • Public sector agency discloses projects granted approvals in timely fashion • Principal authority discloses all projects requesting / pending approval	1 0 0 1 1 0 1 0 0	**Med-High**	*Environmental approval* reviewed in this indicator is the approval related with environmental aspect, one of them is the approval on environmental impact assessment (AMDAL). AMDAL is one of the prerequisite which has to be fulfilled in order to obtain operational license for performing such activities issued by the authority. Notes for indicator: The indicator has to describe the definition of *Environmental Approval* more clearly.
ESA 2	Clarity and transparency of executive's mandates on Environmental and Social aspects	• Reference to environmental and social performance of sector in description of responsibilities of executive • Guidance on how executive will cooperate or consult with regulators or other authorities Commitments to information disclosure • Reporting on ESA of performance of electricity sector • Availability of documents on executive's environmental and social responsibilities • Availability of these documents in a range of forms • Dissemination using various media/outlets • Efforts to aware marginalized socioeconomic or cultural groups	1 0 0 1 0 0 0	**Med-Low**	The Task, roles and responsibilities explain in general the roles of DGEEU in social and environmental aspects. DGEEU is a "quasi regulatory body" where it has partly the regulatory body as well as the executive functions. The function as a '*quasi regulatory body'* which relates to social aspect is performed by DGEEU c.q. , Directorate of Electricity Business Management DGEEU, The scope of social aspect to include: tariff regulation, conflict resolution on commercial relationship between provinces and electricity company and consumers services.

ESA 3	Scope and transparency of <u>regulator's</u> environmental and social mandates	• Reference to environmental and social responsibilities in documents describing role and mandate of regulatory body • Certification or assurance of the mitigation of impacts • Consideration of social and environmental issues in tariff setting <u>Adequacy of access to relevant information</u> • Publication of regulator's environmental and social responsibilities in the official govt. journal • Posted on the regulator's website • Available at low cost or free to the public • Availability in range of forms/formats • Dissemination through various media/outlets • Efforts to aware marginalized/less privileged population	1 0 1 0 0 0 0 0 0	**Low**	Assessment towards this indicator is conducted by the Directorate General of Electricity and Energy Utilization as the 'quasi regulatory body' performing part of the functions of regulatory and executive body since institutionally there is not yet any specific institution functioning as Regulatory Body which is independent from the government.
Participation					
ESA 7	Public participation in setting minimum environmental performance standards in electricity sector laws and policies	• Minimum environmental performance standards for the electricity sector in regulatory policies and laws <u>Elements of quality for participation</u> • Evidence of public consultation in determining standards • Evidence of communication of public input • Existence of explanation for existing standards • Regular reporting on industry compliance with standards	0 0 0 0 0	**Low**	In Indonesia, Minimum Environmental Performance Standards for the electricity sector do not yet exist

ESA 8	Inclusion of environmental considerations in national power sector plan	• Analysis of environmental considerations in most recent plan • Inclusion of project-specific impacts and broader sectoral impacts <u>Public access to relevant documents</u> • Mechanisms to seek public input • Inclusion of less-privileged and affected populations • Communication of how public input is incorporated • Reasonable public comment period • Availability of public comments	1 0 0 0 0 0 0	**Low**	The National Electricity General Plan (RUKN) explicitly contains environmental considerations (contained in page 9 in point 5.3. Environment Protection Policy). However, it is merely mentioned that all electricity generating activities having significant impact must prepare a study regarding the Analysis Regarding Environmental Impact (AMDAL) Article 5 paragraph (2) of Law No. 15 of 1985 states that "In formulating the general plan as meant in paragraph (1), the Government is obliged to observe the idea and point of view living in the community." However in such Law, it is not explained in detail how is the effort to observe the idea and point of view living in the community and how such involvement of the community is conducted.
ESA 9	Inclusion of environmental considerations in sector reform process	• Inclusion of environmental considerations in official documents, before reform • Broad framing of environmental issues <u>Access to documents</u> • Restrictive confidentiality rules applied to reform related documents • Adequacy of public comment period • Effort to reach affected and less-privileged populations • Mechanisms to seek public input • Availability of public comments • Communication of how public input is incorporated	0 0 0 0 0 0 0 0	**Low**	In the restructuring process of electricity sector, environmental considerations are not explicitly contained in the documents which are publicized pre- or post-date the restructuring process.
ESA 13	Quality of engagement by electricity provider with organizations in civil society and with potentially-affected populations	• Existence of specific department / staff to engage with the public • Requirement to engage public is defined in corporate policy • Support to vulnerable weaker sectors to enable engagement • Availability of information on how public can lodge complaints • Disclosure of its own EIAs • EIAs include non-technical summary and summary of public consultation	0 0 0 1 0 0	**Med-Low**	PT PLN (Persero) is the Electricity Providing Company in Indonesia. In PT PLN (Persero), there is no specific allocation of responsibilities to handle public consultation separate from public relation functions. However, for certain issues, there is an effort from PT. PLN (Persero) to communicate information to the customers or to the community experiencing the impact of the company's activities/construction activities which are anticipated to cause complaints, such as notices regarding power shut-downs through printed and electronic media.

ESA 18	Participation in decision-making about access to electricity	• Consultation with relevant socio-economic sectors on developing access objectives • Efforts to reach vulnerable groups • Use of more than two participation mechanism • Public input referenced in relevant planning or policy processes	0 0 0 0	**Low**	No documents evidencing the presence of community participation in the decision making process were found.
ESA 19	Scope for project-affected people to exercise their rights	• Existence of explicit requirements or procedures for consultation of project affected people in project review and approval • Efforts to educate potentially affected people on their rights • Use of more than two participation mechanism • Free Prior Informed Consent	0 0 0 0	**Low**	In the case study of Pemaron PLTGU, there are no documents indicating that the parties responsible for evaluating and approving a project having impact towards the community at large have involved the public in their decision making process.
Accountability					
ESA 12	Regulatory Response to Environmental and Social Petitions or Complaints	Formal cases or evidence of environmental or social complaints filed Response from regulatory body	1 0	Low	Case Study: PLTGU Pemaron In the last five years, there is a formal case of complaints and petition to DGEEU as a regulator, but it has only acted as a facilitator, stating that the decision on the construction of PLTGU Pemaron is at the authority of local government. There are no formal procedures to file complaints at DGEEU.
ESA 15	Quality of judicial or administrative forums addressing social and environmental claims	• Capable of issuing binding decisions to redress social and environmental damages • Independence and impartiality • Capacity and training to influence the quality of decision • Access to information • Definition of triggers for claims and standing in laws • Applicable provisions of law define what parties have 'standing' before the forum	0 0 0 0 0 0	**Low**	This indicator could not be evaluated as there is no independent *judicial forum* that specifically concerned with environmental and social issues.
Capacity					
ESA 4	Executive's capacity to evaluate environmental and social issues	• Financial resources to support research or to investigate social and environmental issues • Existence of dedicated staff • Expertise of staff • Availability of training	1 1 1 1	**High**	Executive's capacity is evaluated from the existence and capacity of dedicated staff and efforts in building the capacity of them for social and environmental aspects, the evaluation also includes specific allocated budget for research and investigation on environmental and social related matters in the State Budget.

ESA 6	Legislative Committee capacity to assess environmental and social issues	• Financial resources to support research or to investigate social and environmental issues • Existence of dedicated staff • Expertise of staff • Availability of training	0 0 1 0	**Medium**	The concern of social and environmental aspects in the legislative is one of the responsibilities of Commission VII DPR-RI 2004-2009. However, in the Commission there is no division that specifically manages the social and environmental aspects. Commission VII, employs several staffs that have a background in social and environmental (3 staffs). However, their function in reviewing social and environmental aspects is not supported by the specially allocated funding. Besides, there is no training for staff capacity building.
ESA 14	Capacity of civil society to address environmental and social aspects of decision-making by electricity sector	• At least one CSO has used appeal or redress mechanisms • Existence of independent CSO assessment of social / environ. implications of sector policy • Records of CSO participation in official consultations related to electricity sector regulation, policy or law • CSO input on most sector EIAs • Evidence of CSOs specializing in sector issues or providing legal support to vulnerable groups	1 1 1 1 1	**High**	Case Study: PLTGU Pemaron For Pemaron case, there is environmental and social assessment conducted by CSO in relation to the postponed policy, decision, or legislation in electricity sector. In this case, FM2B, LP3B prepare environmental and social review for Pemaron case. Yet, this petition was only responded by the acclaimed rejection by the Regional Parliament Members of Buleleng, whilst DGEEU was not responding at all as it only acted as facilitator because the authority is under the local government.

APPENDIX B

Appendix B.1: Example of Filled Indicator of Policy-Making Process

PP 1 - Legislative Committee Capacity

Governance Principle: Capacity

Relevance of the indicator:

In any democratic political framework, legislative bodies play a critical role by defining macro policies within which the executive, regulatory bodies and all other stakeholders operate. Since not all legislators can be expected to focus equally on all issues, the Legislative Committee process is an important mechanism that allows for detailed scrutiny of specific sectors and issues. Depending on the country situation, there may be different nomenclature for legislative committee with responsibility for the electricity sector (standing committee, sub-committee, etc.). Since electricity is a technically and economically complex sector, legislative committee members and their staff must have adequate capacity to perform their role of setting and overseeing the direction of policy. Special efforts may be needed to empower legislative members in this regard.

Values	Select	Explanation and Justification
Not applicable/ Not assessed	**(0)**	*Value: Medium-High* There are three elements of capacity exist: - *'Trained staff and access to documentary resources'* o There are expert staffs for each Legislative Commission and sub-commissions, and there are resource persons that can be invited to assist the commission when necessary. o Every members of House of Rep have an access for documentary resources to examine electricity sector issues, such as: - Internet. - Commission's archives managed by the Secretary of the Commission - Library of the House of Rep - Documents provided by PLN and the Government (MEMR) as requested by the Commission - *Availability of financial resources* The expert staff and resource person were financed under the House Budget Notes: budget for 3 experts and 1 administration staff - *Authority to call elected representatives* As stated in Constitution 1945 Amendment, 10 August 2002, and Internal Rules of Parliament 2004 Element of capacity which do not exist: - *Periodic opportunity* There is no routine agenda for building capacity, although there are internal as well as external forums to enhance the Commission' capacity in electricity
There is no mechanism of legislative oversight through committee process OR there is a committee but none of the four elements of capacity exist	**(i) ☐ Lowest**	
There is a mechanism of legislative oversight through committee process but only one element of capacity exists	**(ii) ☐ Low-Middle**	
There is a mechanism of legislative oversight through committee process and two elements of capacity exist	**(iii) ☐ Medium**	
There is a mechanism of legislative oversight through committee process and three elements of capacity exist	**(iv) ☒ Medium – High**	
There is a mechanism of legislative oversight through committee process and all the four elements of capacity exist	**(v) ☐ Highest**	

Guidance for assessment teams:

The four elements essential for enhancing the capacity of legislative members are:

- Trained staff and access to documentary resources to examine policy issues of relevance to the electricity sector
- Periodic opportunities for knowledge enhancement (e.g. training courses, conferences etc.) for legislators and staff
- Availability of financial resources to hire experts and undertake studies. These financial resources must be predictable and under the control of the committee
- Authority to call relevant elected representatives or appointed officials in order to seek information and answers, and exercise of that authority in practice

Obtain the formal documents under which an electricity legislative committee has been established to ascertain its role, the resources allocated to it, and its authority. Interview legislators and staff to assess the capacity of staff, opportunities for knowledge enhancement, the availability of financial resources, and the formal authority to call elected representatives or officials.

Researcher Name and Organization:

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Sources of Information:

1. Written comments by:
   - Mr. Agusman Effendi (Chairman of Commission VII, House of Representatives, Period 2004-2009; Member of Commission VIII, House of Representatives, Period 1999-2004). Received on May 11, 2005
   - Mr. Ahmad Djuned (Head of Proceeding Bureau, House of Representatives, Period 2004-2009). Received on May 11, 2005
2. Interview with:
   - Mr. Arip Musthopa (Staff of Commission VII, House of Representatives, Period 2004-2009) on May 19, 2005 at House of Rep. building
   - Mr. Muhono (Secretary of Commission VII, House of Representatives, Period 2004-2009) on May 19, 2005 at House of Rep. building
   - Mr. Tunggul Sirait (Member of Commission VIII, House of Representatives, Period 1999-2004; Expert Staff for Commission VII, House of Representatives, Period 2004-2009) on May 23, 2005 at YPEI (Yayasan Peduli Energi Indonesia)
   - Agusman Effendi (Chairman of Commission VII, House of Representatives, Period 2004-2009; Member of Commission VIII, House of Representatives, Period 1999-2004) on May 26, 2005 at House of Rep. building
3. Information from DPR website (www.dpr.go.id)
4. Records from Scoping Meeting at Grand Flora, May 11, 2005
5. Records from Report Workshop at Cinta Mekar, June 30-July 1, 2005
6. Book on the Profile of Parliament Members 2004-2009
7. Tatib DPR-RI tahun 2004 (House of Representative's Internal Rules 2004)
8. Legal Products:
   - Constitution 1945 Amendment, 10 August 2002

Additional Information:

About 10% of the current 50 (fifty) members of Commission VII (energy, mineral resources, research-technology, environment) have formal education or suitable background on electricity. However, every member of House of Rep has an access for documentary resources to examine electricity sector issues. Mr. Agusman stated that internet access is available at their respective computer in the office. Commission's archives managed by the Secretary of the Commission and the Library of the House of Rep contain a large amount of data, including documents provided by PLN and the Government (MEMR) as requested by the Commission.

There are forums to enhance the Commissions' capacity in electricity, although there are no routine agenda. Furthermore, Commissions can obtain knowledge to enhance their capacity during Kunjungan Kerja (official visits) during recess periods. Mr. Sirait said that there is an informal forum called '*Forum Parlemen untuk Kependudukan dan Pembangunan*' (parliamentary forum for population and development). This forum provides training activities and discussions, which was formed by the parliamentarians to improve their capacity. However, this forum discusses a wide range of issues, not only about electricity.

A written comment by Mr. Agusman describes the support that the present parliamentarians have in undertaking their responsibilities:
1. Assistant to the Commission, which also perform secretarial task (1 person).
2. Expert Staff for each Fraksi/sub-commission (1 person)
3. Expert Staff for the Commission (3 persons)
4. Personal Assistant for the Commission member (1 person)

Budgets are available for 1, 2, and 3, which was approved by the Budget Team Meeting. Personal Assistant is under each member's budget responsibility.

The Expert Staff role is to prepare studies, formulate policies and the respective legal base for existing issues. In addition, legislative members also receive supports from resource persons they invite to the House, under the House's budget.

As stated in Constitution 1945 Amendment, 10 August 2002 and internal rules for the House of Representative 2004, the legislative committee has an authority to call relevant elected representatives or appointed officials in order to seek information and answers. The authority to call the Executive can be divided into:
- working meeting
- consultative hearing
- public hearing

According to Mr Muhono, all of the above meetings are open for public. However, an open meeting can be called or proposed to become a closed meeting based on article 94 of the Internal Rules.

Appendix B.2: Example of Filled Indicator of Regulatory Process

RP 3 - Functions / Jurisdiction of the Regulatory Body

Governance Principle: Capacity

Relevance of the Indicator:

As explained in RP 2, this indicator focuses on 'functions' / jurisdiction or substantive authority of the regulatory body. Functions imply the mandate or tasks entrusted to the regulatory body, and may include: approval of tariff revision; approval of power purchase and/or fuel cost; ensuring fair competition; prevention of market power / monopoly; setting service standards.

A regulatory body, which scores high on indicators RP 1 and 2 -- independent regulatory body and legal authority-- can still be rendered ineffective if its substantive mandate is very limited / narrow. For example, in certain cases, the electricity reform act or privatization concession / license (which are issued by the government), have pre-decided key parameters such as power purchase costs / procedures or possible efficiency gains. In such cases, the role of the regulatory body is very limited and the 'real' decision-making remains non-transparent and non-participatory. This indicator assesses the extent of substantive authority (functions) and freedom of decision-making entrusted to the regulatory body.

Values	Select	Explanation and Justification
Not applicable / Not assessed	**(0)**	*Value: Lowest* The DGEEU functions as stated in Tupoksi in relation to the Regulatory Body are not described in detail and are not the functions of an independent and ideal Regulatory Body. This is also caused by the decisions produced by DGEEU are more as proposals, the final decisions are still made by the minister of Energy and Mineral Resources.
Functions of the regulatory body **are not clearly defined** and there is considerable ambiguity about the jurisdiction of regulatory body	**(i) ☒ Lowest**	
Functions of the regulatory body are **clearly defined.** But **three or more** critical functions are not entrusted to the regulatory body	**(ii) ☐ Low-Middle**	
Functions of the regulatory body **are clearly defined.** But **two** critical functions are not entrusted to the regulatory body	**(iii) ☐ Medium**	
Functions of the regulatory body **are clearly defined.** But **one** critical function is not entrusted to the regulatory body	**(iv) ☐ Medium – High**	
Functions of the regulatory body **are clearly defined and all** the essential critical functions are entrusted to the regulatory body	**(v) ☐ Highest**	

Guidance for assessment teams:

This indicator assesses two aspects of 'functions' entrusted to the regulatory body. First, the indicator looks if the functions of the regulatory body are clearly defined. Here **"clearly defined"** means clearly defined in the applicable laws, rules, regulations or decrees. It is desirable that such legal instruments should leave no ambiguity about the mandate of the regulatory body. Ambiguity about such crucial matters often leads to a decision-making process, which is more susceptible to subversion / capture. If there is such ambiguity for major functions, then a value of **one** should be assigned for this indicator.

The second aspect covered by this indicator is the range of functions entrusted to the regulatory body. For the regulatory body to be effective it is essential that the mandate is sufficiently wide. Of the many possible functions that the regulatory body can have, which functions are critical and which are not critical depends on the particular country scenario in terms of market structure (monopoly v/s competition); industry structure (integrated v/s unbundled utilities) and ownership (public sector v/s private sector).

For example, if the reform model requires all distribution utilities to purchase power from power exchange, then the function of regulating power purchase is not critical but the function of designing / regulating power exchange becomes critical. Similarly, if the reform model is based on retail competition (i.e., allowing consumers to choose suppliers and negotiate prices) then rather than tariff-setting, ensuring fair competition becomes critical functions.

Before assigning a particular value to the above indicator, the assessment teams should adequately reflect on which are the critical functions and should clearly explain why the team assessed that a particular function is critical and also state the basis for selecting a particular value. Here the assessment teams should also list the critical functions, entrusted to the regulatory body. Apart from the study of all legal instruments, discussions with regulatory body members / staff, utilities and consumer groups (actively intervening in the regulatory process) would be helpful to understand the two aspects being considered in this indicator, i.e. clarify about functions of the regulatory body and range of functions entrusted to the regulatory body.

In cases where the legal instruments themselves entrust particular critical functions to the regulatory body but leave very little freedom for regulatory decision-making, this in effect renders the body unable to perform those functions. For example, if the electricity law says that the regulatory body should set tariffs, but the privatization concession / license makes it obligatory for the regulatory body to consider only certain specified values for key performance parameters (e.g. T & D losses or capital investments), then in such a case it should be assessed that the regulatory body does not have the function of tariff-setting.

Researcher Name and Organization:

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Sources of Information:

1. Information from DEMR website (http://www.esdm.go.id, http://www.setjen.esdm.go.id, http://www.djlpe.esdm.go.id, http://www.litbang.esdm.go.id, http://www.badiklat-esdm.go.id)
2. Interview with Mr. J. Purwono (Director of Electricity Business Management DGEEU) on Thursday, 16 June 2005, in DGEEU
3. Regulatory Legislation:
   - Act No. 15 /1985 on Electricity Power
   - Law No. 20/2002on Electricity Power
4. Recording result of Advisory Panel consultative meeting on Thursday 18 August 2005 in IIEE

Additional Information:

Regulator's elements need to be fulfilled are:

- Independence
- Competence
- Legitimacy

The function as a regulator is embedded in DGEEU. Yet the regulatory function of DGEEU is not clearly defined as a part of the tupoksi of DGEEU. Therefore the regulatory function cannot enable DGEEU to meet its entire authority related to its regulatory functions. As the body implementing the regulatory functions, DGEEU should actually implement consumers' protection. Yet since it is not clearly defined, the activity is not practiced. In the other hand, there is no sanction for DGEEU for not implementing it. Further more, DGEEU was not established as an independent regulatory body. DGEEU is placed below the DEMR organizational structure, where DGEEU also carry out the duty of policy making. No regulation is explicitly available that stated the delimitation between policy making duty and regulation making duty. The preferred regulatory form is an independent regulator. The existence of such regulator will produce a body that has immunity against political climate changes etc. Thus, the regulator has the freedom to carry out its vision and mission without any excessive interference from other party. The regulator can also function as the counterpart between producer and consumers. It can act as a protector of consumers as well as to producers.

Appendix B.3: Example of Filled Indicator of Environmental and Social Aspects

ESA 14 – Capacity of civil society to address environmental and social aspects

Governance Principle: Capacity

Relevance of the indicator:
Open and participatory decision-making is only as important as the extent to which there is a vibrant civil society that will avail of opportunities to contribute to decision-making processes, use and act upon available information, and make use of available redress mechanisms. It is therefore important to include an assessment of the capacity of civil society organizations in your country to address environmental and social aspects of decision-making.

Values	Select	Explanation and Justification
Not applicable / Not assessed	**(0)**	*Value: Highest* This indicator meets all elements: • *At least one civil society organization has made use of appeal or redress mechanisms* In the case of Pemaron PLTGU, a claim/petition/objection was submitted by CSOs demanding the government pay attention to environmental and social issues. A Community Coalition for Pemaron PLTGU Issues (Koalisi Masyarakat untuk Masalah PLTGU Pemaron/KMMPP) was established, which included members of several non governmental organizations, including WGPSR, FMP2B, WALHI. At the local level, the members included several Non Governmental Organizations such as: PHRI, Dharma Samudera Fishermans Group of Tukadmungga Village (Kelompok Nelayan Dharma Samudra Desa Tukadmungga), Pemaron Concern Communication Forum (Forum Komunikasi Peduli Pemaron), LP3B, and Buleleng Concern Communication Forum (Forum Komunikasi Peduli Buleleng). The coalition sent a letter objecting to the construction of the power plant. • *Existence of independent civil society assessment of environmental and/or social implications* For Pemaron case, an environmental and social assessment was conducted by CSOs in relation to the postponed policy, decision, or legislation in electricity sector. FM2B, and LP3B prepared an analysis of environmental and social issues. • *Record of participation by civil society organizations representing environmental and social concerns in most recent public consultation process* In the Pemaron case, there is attendance list note considered as CSO participation note representing environmental and social interests in the public consultation process relating to the arrangement in the electricity sector, policy and law. • *Evidence that more than two civil society organizations provided comments on most recent power sector EIA posted for public* comment There are two CSO, i.e., LP2B and FKPB who provide input in the Pemaron case even though it is not clear whether this input is considered by the government. • *Evidence that civil society organizations, which specialize in energy issues* There are CSOs specializing in energy issues or there is a group providing legal aid without charge, especially for citizens having no access to electricity, traditional community, women group, or poor e.g. WGPSR, IBEKA, and Pelangi. To provide legal aid, this CSO of energy sector cooperates with other CSO (e.g., WALHI, YLKI and ICEL).
Civil society engagement in sector decision-making meets **none** of the elements of capacity	**(i)** ☐ **Lowest**	
Civil society engagement with sector decision-making meets **one or two** elements of capacity	**(iii)** ☐ **Medium**	
Civil society engagement with sector decision-making meets three or more elements of capacity	**(v)** ☒ **Highest**	

Guidance for assessment teams:

Elements of Quality to be assessed:

- At least one civil society organization has made use of appeal or redress mechanisms (i.e., filing challenges suits in court, petitions before the regulator, use of utility's complaint mechanisms) to raise concerns about or demand attention to environmental and social problems
- Existence of independent civil society assessment of environmental and/or social implications of sector level policy proposals, regulatory decisions or pending power sector legislation
- Record of participation by civil society organizations representing environmental and social concerns in most recent public consultation process related to electricity sector regulation, policy or law (e.g., environmental advocacy groups, labor unions, women's groups, rural cooperatives / consumers, advocates for poverty alleviation, etc.)
- Evidence that more than two civil society organizations provided comments on most recent power sector EIA posted for public comment
- Evidence that civil society organizations, which specialize in energy issues or groups that provide pro bono legal representation, regularly facilitate or support the advocacy concerns of vulnerable populations, in particular populations without access to electricity, indigenous / aboriginal communities, women's organizations, or populations in extreme poverty

Guidance for interpretation of the elements of quality:

- *Civil society use of redress mechanisms:* Identify the most important appeal mechanism(s) available to environmental and advocacy organizations (regulator, ministry administrative procedures, etc), and collect documentation regarding efforts by civil society to make use of these mechanisms. This will require interviews with staff from the relevant forum / institution, as well as civil society organizations that might have made use of it
- *Existence of independent civil society assessments of policy proposals:* Carry out a documentary search, and verify that the report's contents related to the pending or new regulatory policy or laws.
- *Record of participation:* This may be difficult to document, but the team should collect records of meetings or participant lists. Support this documentation by interviewing relevant groups that participate in such consultation processes or meetings.
- *Evidence of civil society comments on a recent power sector EIA:* The assessment team should select a very recent power sector project that required an EIA, and which included an opportunity to comment on the draft or final EIA. Interview the authority responsible for reviewing and posting EIAs, as well as a subset of NGOs that focus on power sector advocacy to collect information on the volume of civil society comments
- *Civil society support to vulnerable groups:* This element attempts to measure the existence of NGO efforts or networks to support participation by more vulnerable socio-economic groups. There will probably be a need to contact / interview both the NGOs that potentially support (legal aid clinics or public interest lawyers) such groups, as well as legitimate representatives of one or two of the identified vulnerable groups (such as the leaders of indigenous people's organizations)

The team should limit its assessment to the past five years. It is possible that applying this indicator may constitute a self-assessment of sorts for the team. In this case, the team will need to ensure the credibility of the score selected, by relying solely on verifiable evidence, drawing on independent sources, and asking that this indicator receive careful review by the team's advisory committee.

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Sources of Information:

1. Interview with WGPSR
2. Contesting the Feasibility of Pemaron PLTGU Construction: Electricity System Planning Study [Menggugat Kelayakan Pembangunan PLTGU Pemaron: Studi Perencanaan Sistem Ketenagalistrikan], Dr. Ing. Nengah Sudja, 2004
3. The Chronology of Pemaron PLTGU Project [Kronologi Proyek PLTGU Pemaron], LP3B
4. Articles in the website: www.lp3b.or.id
5. Collection of correspondences relating to the Pemaron case (obtained from WGPSR)
6. "We Still Refuse PLTGU in Pemaron", Statement of Standing of Bali Development Observer Community Forum ["Kami Tetap Menolak PLTGU di Pemaron", Pernyataan Sikap Forum Masyarakat Pemerhati Pembanguan Bali], November 5, 2003

Additional Information: -

Comments on this Indicator: