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The Regulatory State in Developing Countries: Can It Exist and Do We Want It? The Case of the Indonesian Power Sector

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ABSTRACT *In the rush for development, the regulatory state has assumed the mantle of a new panacea: the instruments and mechanisms necessary for better government, better governance, and better lives. This paper poses two basic questions in response to the rise of the regulatory state and its increasing diffusion into developing countries. First, can regulatory states exist in developing societies or, more accurately, can effective regulatory states emerge and hope to function in a manner similar to their counterparts in developed countries and deliver the types of benefits and outcomes they promise? And second, do regulatory states offer the most effective modalities for delivering enhanced social well-being? By unpacking the concept of the regulatory state and addressing its underlying assumptions and implicit normative values, it is suggested that the modalities of governance entailed in the regulatory state model may not be well suited to developing countries, hurting rather than enhancing governance outcomes. These issues are explored in relation to the Indonesian energy sector, specifically the upstream electricity generation, transmission and distribution sectors, and the machinations involved in governing the sector.*

KEY WORDS: Regulation, regulatory states, Indonesia, electricity, policy diffusion, neo-liberalism

The last 30 years or so have witnessed a near revolution in the form, function, extent, role and practices of the modern nation-state – at least the Western nation-state. The state as the penultimate, all-encompassing entity that designs, finances, owns, manages, and delivers various services directly to the public has withered. Central planning, state-led development, and the state as co-ordinator and orchestrator of economic and social innovation, are now artefacts of a bygone era. The ''interventionist'' Keynesian welfare state along with its extensive bureaucracies and command and control governance mechanisms has been progressively dismantled, while its footprint on the economic life of the state has been massively downsized. In the space of a single generation we have witnessed one of the great

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transformations of the modern era; the death of the "interventionist" state and the rise of the "regulatory state" (Hood et al., 1999; Levi-Faur, 2005; Majone, 1999: 1).

The contours of this transformation are now well recognised. Beginning in the 1970s state monopolies were deregulated, state-owned assets divested through privatisation, and marketisation strategies implemented to encourage the private provision of public services. The ethos of user pays and cost recovery for service provision has replaced the previous role of the state in risk pooling and the allocation of services on the basis of entitlement. Whatever the combination of forces, be it the rise of neo-liberalism, fiscal constraints, perceptions of inefficiencies in the delivery of state services, voter backlash against high tax regimes, or ideational changes about the appropriate balance between the state and market, the outcomes have been ubiquitous: an expanded role for markets, greater private sector participation in all facets of society, and the withdrawal of the state from the direct provision of services and as the employer of last resort.

Unlike its predecessor, the regulatory state is a more circumspect one, focused on the efficient management of monetary policy, the stabilisation of inflation and interest rates, balancing national fiscal accounts, and setting in place the parameters for market expansion through private sector capital formation and efficient market operation. The discourses of national politics reflect this change with political elites judged on the basis of their abilities to "manage" the economy, create optimal investment conditions, attract investment capital, secure the blessings of ratings agencies, and make markets work by sustaining private sector interest. As much as anything, the age of the regulatory state is an age of managerialism.

The rise and legitimacy of the regulatory state is all but complete. What we are left to observe is its growth and, more recently, diffusion across an increasing number of jurisdictions, not least into less developed countries. As a tool of government and a modality of governance, regulation now constitutes a new order; a set of governance standards and procedures that are both prescribed as preferred instruments to secure development, and a set of measures by which governments and governance are assessed for their quality and capacities. As the International Finance Corporation (2010: 1) notes:

> Reforms that increase quality in regulatory procedures and requirements – and more importantly, in regulatory institutions, capacities and incentives – can simultaneously improve a country's quality of social life and the conditions for economic activity. Where such reforms have been pioneered . . . in OECD countries, they are equally or more important for emerging, developing, and transition countries, where poor quality regulation and implementation are formidable barriers to entrepreneurship and investment, and where regulatory failures expose people and the environment to horrific risks.

The regulatory state is thus championed not just as a means to achieve market efficiency, but as a modality of governance that sets in place the parameters necessary for growth and the realisation of net social benefits. As Philips (2006: 23) observes, the "new development agenda has come to adopt and deploy the regulatory state model as both a useful descriptor of the functions and roles of contemporary states, and an ideological statement about what those functions and roles should be". In the rush for development, the regulatory state has assumed the mantle of the new panacea: the instruments and mechanisms necessary for better government, better governance, and better lives.

In this article I pose two basic questions in response to the rise of the regulatory state and its global diffusion. First, can effective regulatory states emerge in developing countries and hope to function in a manner similar to their counterparts in developed countries and deliver the types of benefits and outcomes they promise? And second, do regulatory states offer the most effective modalities for delivering developmental outcomes and enhanced social well-being in developing countries? These questions are designed to unpack the underlying assumptions on which the notion of the regulatory state rests; specifically, the institutional technologies, capacities, and functional requirements necessary for the operation of effective governance by regulation. Far from being a simple exercise of policy diffusion and the grafting of new governance mechanisms on to pre-existing institutional arrangements, regulatory governance assumes the formation of new and complex institutional capacities; specifically, new modes of participation and engagement, procedural and administrative systems, the implementation of accountability mechanisms, juridical review and transparency processes. In other words, the institutional fabric necessary for the formation and functioning of a regulatory state is complex, costly, and rests on the availability of *soft institutional capacities* – capacities that help structure the complex reflexive relationships between agential actors, formal institutions, procedural authority and norms. Further, these capacities are often absent, dysfunctional, too difficult, or too time consuming to construct in a way that would allow them to deliver the outcomes necessary to sustain regulatory efficiency. Hence, the adoption of the regulatory state model may pose regulatory risks: unintended outcomes such as regulatory capture, reduced probity, or expose governments to possible regulatory failure. And finally, I suggest that pursuing blindly the modalities of governance entailed in the regulatory state and constructing these unilaterally in developing countries, might weaken state capacity and "traditional" command and control regulatory functions to the detriment of developmental agendas.

These issues are explored in relation to the operation of the Indonesian power sector. Electricity is an essential ingredient for industrialisation and economic growth, and positively correlated with poverty reduction, development of the formal economy and employment (Besant-Jones, 2006; Yoo, 2006). In the case of Indonesia, the development of electricity infrastructure has been a task complicated by the country's economic and political geography, covering a vast archipelago of 17,000 islands, a population of 240 million people, and a nascent political system that has suffered amid political turmoil, violence, and only recently evolved democratic institutions after the fall of Soeharto in 1998. Indonesia thus represents a state in the midst of economic and social transition, eager to fulfil its developmental aspirations but still beset by some of the region's worst indicators for human well-being.

This paper is organised into three sections. In the first section I theorise the regulatory state by exploring the literatures from which the concept arises. Images of the regulatory state are amorphous. What elements comprise its functional and constitutive elements or the authority mechanisms that inform its power, are questions that remain unsettled. Yet in the absence of a robust image of the institutional and functional elements of the regulatory state, how do we proffer its diffusion into developing countries, assess its likely impact, or its suitability for policy diffusion and adoption? Too little work has gone into theorising the regulatory state and thus constructing analytical frameworks that might allow us to understand its precise forms, dimensions, and the institutional capacities necessary to support its efficient operation. Further, I argue that images of the regulatory state contain normative values about its role, functions, and the legitimate boundaries of its reach, each of which serve to constrain the power of the state relative to markets. In the following section I address the institutional fabric surrounding the energy sector in Indonesia, and the institutional mechanisms that govern the sector. I then return to the two basic questions of the paper; whether a regulatory state could exist in Indonesia and if it could, would it be desirable?

Theorising the Regulatory State

The rise of the regulatory state is more often asserted than theorised. What precisely constitutes a regulatory state remains a vexed question, and what forms, functions, modalities, operational and institutional mechanisms define its parameters tend to be inferred rather than systematically outlined. This makes for a conundrum: a celebration of its arrival, recommendations for its adoption, and affirmations about the benefits it can deliver, yet little theoretical clarity about its precise form or the institutional and capacity requirements necessary for its successful adoption.

Part of the explanation for this state of affairs rests in the multiple discourses that have contributed to conceptions of the regulatory state. Rather than a singular school of thought or a compact literature, the regulatory state emerges from a conflation of debates as much about the rise of transnational capital, globalisation, and perceptions of the decline of the state as it does concerns with regulation. Liberal internationalist perspectives, for example, conflate the emergence of the regulatory state with the rise of a neo-liberal order, seeing the regulatory state as part reaction to the loss of fiscal authority, and part reaction to the rising power of markets. Since the 1970s many have thus declared the decline of the state. Susan Strange (2000: 3), for example, proclaims the state in retreat, its authority and power shrinking. Heads of governments, she notes, "may be the last to recognise that they and their ministers have lost the authority over national societies and economies that they used to have." For Strange, this "progressive loss of real authority" masks the emergence of transnational actors, international finance, and the rise of market dominance, each of which are evolving non-state authority and legitimacy over their functional domains (Strange, 2000: 3, 91-9).

More consequential for many theorists has been the ascent of markets combined with globalisation. As markets have become transnational and capital mobility heightened through financial liberalisation, the power of the state to tax and control its economic domain has been seen as increasingly imperilled, imposing fiscal constraints on the state or, at worse, "hollowing out" the state and its capacity for governance (see Holliday, 2000: 167-8; Rhodes, 1994: 138-40). In this view, states are now disciplined by market sentiment and neo-liberal rationalism, forcing nation-states to conform to the demands of capital save capital migrates to more attractive jurisdictions. The decline of the welfare state since the 1970s is thus explained as a combination of diminishing state fiscal capacity due to the pressures of globalisation, mobile capital, and labour migration – too higher tax regime and mobile, highly qualified labour will migrate (see Razin and Sadka, 2005). Similarly for Ulrich Beck (1999), increasing capital mobility forces Western nation-states to abandon the very tools that for so long made them successful: the ability to pool economic, social and individual risk through state-provisioned health and unemployment insurance, state ownership of key resources and utilities, and state-guaranteed entitlements in respect of education and social security (see Jarvis, 2007). For Beck, the power of the state relative to capital is now inverted, forcing nation-states in a "race to the bottom."[1] The regulatory state thus represents the triumph of capital, with the state forced to retreat to managerialism – a hollow shadow of its former self.

Still others proffer the decline of the state as a process of the globalisation of regulatory norms and standards as power is transferred between agential actors. Liberal internationalists, such as Cobden and colleagues (2005), see the power of the state being systematically transferred to international organisations and global rule regimes, depriving the state of political and economic sovereignty because of the exigencies of globalisation and the transnationalisation of economic, political and social activity – everything from growing international trade, investment, and the movement of people that require the formation of global standards, codes and practices to facilitate a global political-economy (see Braithwaite and Draos, 2000; Scott, 2004). Global governance thus transposes the functional imperatives of state-based governance, systematically diminishing the propinquity of state agential authority and the *raison d'être* of the state itself.

These approaches share a common framework, assuming state power to be predominantly located in the fiscal capabilities of the state and derived from its taxing authority over markets, where the power of each is inversely related to the other; a kind of zero-sum continuum – as markets rise, states decline, and vice versa. Such approaches have a particularly narrow conceptualisation of the sources of state power, however, perhaps unfairly characterising the regulatory state as weak, eviscerated, and powerless. But as Majone (1996: 54) observes, the sources of state power are more diffuse and spread across several functional domains:

(1) *Redistributive function* where resources are transferred between groups to correct social inequalities, or public goods provisioned to groups who are then compelled to consume them (elementary education, public transportation, public health care, for example), and financed through taxation, borrowing and the spending power of the state.
(2) *Stabilisation function* in which the state manages employment, inflation and interest rates through a determination of industrial and labour policy and the manipulation of fiscal and monetary policy.
(3) *Regulatory function* in which the state sets rules that define the allocative and settlement mechanisms of markets and the requirements for market participation; define standards, procedures, and practices, and enunciate codes that order social, economic and political engagement.

In this schema, state power is essentially dichotomised between *fiscal authority* (the ability of the state to tax, borrow and spend) and *regulatory authority* (the ability of the state to set and make rules, enforce compliance, and delegate authority) (Majone, 1997: 13; Majone, 1999: 4-6). The importance of this distinction for the state is that fiscal constraints or a diminished legitimacy to tax and spend does not imply a diminished capacity to make rules and regulate. Rather than a reduction in state power the means by which the state exercises its authority is simply transposed from direct to indirect forms of government. More importantly, as Majone (1997: 13) observes, rule-making is largely free and imposes few fiscal burdens on the state apart from the time, effort and paper needed to make and print rules. Measuring the reach or impact of the state simply in terms of its interventionist or fiscal capacities is thus a poor proxy of state power since states can govern and exercise authority equally effectively through rule-making and regulation. As the US Office of Management and Budget (cited in Majone, 1997: 13) observes:

> Budget and revenue figures are good summaries of what is happening in welfare, defence or tax policy, and can be used to communicate effectively with the general public over the fray of programme-by-programme interest group contention ... In the world of regulation, however, where the government commands but nearly all the rest takes place in the private economy, we generally lack aggregate numbers to describe what is being "taxed" and "spent" in pursuit of public policies.

These twin sources of state power, however, are not always reconciled. For Strange (2000: xi) it represents a paradox; what she observed as an obvious "decline of state power" but at the same time the increasing "intrusion of governments into our daily lives" in a quantum that is palpably greater than at any time before in history:

> Statutory or administrative law now rules on the hours of work, the conditions of safety in the work-place and in the home, the behavior of citizens on the roads. Schools and universities are subject to more and more decisions taken in ministries of education. Planning officials have to be consulted before the smallest building is started or a tree is cut down. The government inspector ... has become a familiar and even fearful figure.

Yet, for theorists like Majone, this paradox lies at the heart of the rise of the regulatory (rule-making) state and the decline of the interventionist (tax and spend) state. It produces both a reduction in the size of government while expanding its powers of governance. At one and the same time we thus observe the implementation of a neo-liberal agenda ("downsizing" the state, shedding bureaucracies, cutting taxes, reducing fiscal expenditures) simultaneously with the emergence of greater regulatory authority (more rule-making, and more indirect forms of state control). In the UK this transpired into a 25% reduction in the number of civil servants between 1976 and the early 1990s, but a relative explosion in staffing levels in regulatory bodies, growing by over 90% (Hood et al., 1999: 29-31; Levi-Faur, 2005: 20). Indeed, a glance at the composition of the UK civil service in the late 1980s compared to the mid-1990s might lead one to assume government had shrunk. By 1994 ministerial departments had staffing levels only about a third of levels at the commencement of the programme. Yet the sense in which government shrank or its power to govern diminished is problematic. The profusion of statutory bodies and regulatory agencies witnessed fully 62% of civil servants in ministerial departments transfer into statutory and delegated agencies charged with regulatory oversight (Dowding, 1995: 72-3; Majone, 1997: 10). At the same time, rule-making and the depth of regulatory direction over domain specific areas increased enormously.

For Majone, the regulatory state is thus not necessarily a weaker state but a reconfigured state that uses alternative modalities of governance to affect its power. Indeed, for many proponents the regulatory state strikes the right balance and modality of governance. In the UK, the regulatory state became synonymous with "New Labour" and the premiership of Tony Blair, and was constructed around a range of governance programmes that relied on managerial and institutional arrangements to enhance market operation and efficiency, said to be for the broader social good (Jayasuriya, 2005: 12).

The Regulatory State: Modalities of Governance

These images of the regulatory state produce mutually reinforcing and contradictory theorisations as to its rise. On the one hand the regulatory state is seen as an outcome of the decline of traditional forms of statist power amid the rise of markets, and on the other, the outcome of changing modalities of governance that preserve the centrality of the state but in ways that confine it to new, less interventionist instruments of government. Both acknowledge the rise of markets, the globalisation of rule-governed behaviour and the formation of global rule regimes, and thus both accept these new modalities as legitimate and, in a sense, optimal given the new political-economy of markets. For these theorists, the adoption of regulatory modes of governance is thus seen as a "necessary condition for the functioning of markets" and not just a "compromise between economic imperatives and political and social values" (Levi-Faur, 2005: 19).

As a typology of the composite elements of the regulatory state, however, "rule making" does not get us very far. Governments are making rules, and perhaps more of them, and exercise power through issuing rules and directives. But governments have always made rules, issued decrees and directives, and exerted power by doing so. How does this constitute the emergence of a new state entity – the regulatory state? Again, the answer to this question lies across multiple literatures. For Majone, its distinctive modalities are situated in increasing levels of administrative decentralisation, the breakup of unified forms of administrative control (central bureaucracies), the creation of single-purpose regulatory units with budget autonomy, delegation of public service delivery to profit/not-for profit agencies, competitive tendering and the introduction of contractual/quasi-contractual relationships where "budgets and decision making powers are devolved to purchasers who, on behalf of their client group, buy services from the supplier offering the best value for money" (Majone, 1997: 10). At base, the regulatory state is thus distinctive because of the reorganisation of how the state does business: who provides services, how tendering is done, how contracts and quality assurance is administered, and through what instrumentalities this is achieved. It is this latter element that is perhaps most important: "the rise of a new breed of specialised agencies and commissioners operating at arm's length from central government" that represents the "most obvious structural consequence of the shift to a regulatory mode of governance" (Majone, 1999: 17). The delegation of authority to statutory, independent agencies marks a fundamental change in how rules are made and, in turn, a fundamental reallocation of power among government instrumentalities moving it progressively towards decentralised administrative units (Blankart, 1990: 230-6; Legaspi, 2006: 139; Majone, 1997: 21).

For proponents, this agency model offers a series of advantages over previous modalities of governance. First, it allows specialised agencies to develop specific expert knowledge, improving governance capacity especially in domains where technical complexities operate. Second, it is claimed to de-politicise governance, moving decision making to technocrats, where decisions are seen to be more likely to be evidence-based, balancing social and economic objectives. Third, it provides technical-expert decision makers with autonomy, freeing them from the constraints of short-term political pressures and, in the process, creating technocratic policy spaces that allow for longer-term planning to support sustainability of the sector. Fourth, freed of these pressures, the agency model improves policy continuity, increasing policy certainty and the efficiency of governance. Fifth, the model enhances the credibility of regulatory commitments, reduces political risk and the prospects of "devastating ministerial interference," and thus increases policy and regulatory stability which in turn helps mobilise private investment into the sector. Finally, agency-based modalities of governance elicit high levels of legitimacy: "[F]aith in the power of expertise as an engine of social improvement," notes Majone (1997: 17), which "neither legislators, courts nor bureaucratic generalists" possess provides "an important source of legitimization for regulators" (see also Cook and Mosedale, 2007: 45-8). The twin pillars of *expertise* combined with *independence* thus provides the cornerstone that cements regulatory governance as an effective, if not superior modality of governance.

For others, the regulatory state is more than just a modality of governance: it is also a means of reform and suggests an alternative, de-politicised agency via which to achieve market operation, efficiency, and development. Indeed, for many it represents a modality able to overcome obstacles to reform and transform the whole of government incentive structures in developing countries, where reforms have historically been "bogged down" by the operation of perverse incentives, inefficient bureaucracies, poor institutional design, accountability, and oversight systems. For such proponents, while the regulatory state is about the design and construction of new regulatory institutions and instruments, more fundamentally it is also about the realisation of state-market outcomes (Hira et al., 2005; International Finance Corporation, 2010: 21-2; United Nations, 2006: 128-9). As the IFC (2010: 1) observes, "Reforms that increase quality in regulatory procedures and requirements – and more importantly, in regulatory institutions, capacities and incentives – can simultaneously improve a country's quality of social life and the conditions for economic activity." For the IFC, the regulatory state model is thus seen as a means to:

- making public policy more efficient by allocating national resources to higher value users, by reducing the risk of policy failures, and by finding effective policy designs that respect market principles;

- lowering policy costs and barriers to market entry for firms, goods, and services, which in turn boosts foreign direct investment (FDI) and trade, increases the returns on participation in formal markets, speeds the uptake of new technologies and other innovations, and frees resources for other uses;
- reducing policy risks for market actors by increasing transparency in the design and use of policy and by involvement of stakeholders in shaping policies important to them;
- improving business security and market neutrality of policy by increasing accountability for policy implementation and results, and lowering corruption and vulnerability to capture government functions (International Finance Corporation, 2010: 13).

Clearly, this image of the regulatory state is laden with objectives that go beyond governance and encompass forms of policy transfer designed to construct markets and a series of specific institutional types defined by neo-liberal market rationalism. The regulatory state thus assumes a larger political project, one designed to embed developing states in a specific economic and political order. As Julia Black (2000: 598) notes, the focus on regulatory techniques "can result in a radical rethinking of the ways in which societal ends can be achieved. However, it can [also] divert attention from the issue of how those ends should be defined, and by whom." The danger, as Black (2000: 598) observes, is that in pursuit of an increasingly "proceduralised" approach to regulation, the literature and practices of regulation become "technicised;" the predominant concern being with the implementation of regulation rather than with the values that are pursued: that the focus on the epistemological character of regulation is obscuring issues of its moral form" (see also Levi-Faur, 2005; North, 1990).

While Black is correct to suggest that "technicised" discourses can conceal the values that underlie them, it remains the case that constructing regulatory states in developing countries of whatever "moral form" rests on a series of technical instrumentalities. These fall into three areas: (i) design of regulatory instruments, including institutional composition, functional structure and rule deployment; (ii) capacity and operational requirements, including resource, technical, administrative and analytical capacities; and (iii) institutional technologies for normalising and proceduralising regulation, including the instantiation of legitimacy, trust, and compliance regimes. In the most visceral sense, these requirements speak to the displacement and redesign of entire institutional landscapes in a process that involves new rules, new ways of making and enforcing rules, new incentive systems for engendering compliance and distributing costs and economic gains among sectoral actors, and new accountability, participation, and transparency instruments that serve as functional mechanisms to sustain governance and efficiency in the sector.

While much attention focuses on the institutional design elements of regulatory governance, the greater and more significant quantum rests in evolving a series of highly complex reflexive relationships between agential actors, institutions, procedural authority and norms about the new institutional and rule environment (Cook and Mosedale, 2007: 45). It is this latter series of institutional and socio-political technologies that suggests a much greater, more complicated, problematic, and costly set of relationships to construct and a political space where, potentially, errors, possibilities for malfeasance, regulatory capture, corruption, and less than optimal sector outcomes, ultimately rest. Constructing governance regimes that are legitimate and perceived to be so, observed to be transparent and free from special interest capture, and function in a way that are perceived to balance public and private sector interests and deliver enhanced social and economic outcomes, is a highly complex task. These dimensions of regulatory governance thus suggest necessary costs, capacities, and institutional technologies across a wide spectrum of socio-political sites, including the judiciary, administrative review systems, tribunals and appeals processes, enforcement and compliance regimes, consultation and engagement systems, and so on. Indeed, while proponents of regulatory governance laud their cost effectiveness and suggest they impose few fiscal burdens on the state, in reality the acquisition and realisation of the soft institutional technologies necessary to ensure their efficient functioning represent extensive acquisition, set up, implementation, and maintenance costs (see Minogue, 2004). These capacities and costs are outlined and compared with the interventionist state in Table 1.

In the following section these issues are explored in relation to the Indonesian electricity supply industry (ESI) and how regulatory governance may or may not be suited to effective governance outcomes.

The Indonesian Electricity Sector: Governance Gaps, Regulatory Dilemmas

On 6 August 2010 operations at Soekarno-Hatta International Airport were thrown into chaos. For the third time in as many weeks, the electricity supply to the airport was interrupted, terminal lights flickered, flight management and booking systems went down, and air traffic control technicians spent hours bringing air traffic instruments back on-line. Sixty-two flights were delayed, impacting thousands of passengers, and inbound flights were diverted.

Several days earlier, Indonesia's President Susilo Bambang Yudhoyono had pledged to commence a "rolling blackout-free era" to mark the government's new electricity programme. Among the programme's initiatives were plans to tackle capacity shortages, reliability of supply issues, the fiscal burden of electricity subsidies, and to institute a series of programmes to address the lack of electricity access for 19 million households (*Jakarta Globe*, 28 July 2010; also see Kristov, 1995). Central to the new electricity programme was a planned 15% increase to electricity tariffs that would inject much-needed capital into Indonesia's sole state-owned electricity provider, Persero (*Perusahaan Listrik Negara* or PT PLN), allowing it to enhance generating capacity, begin to tackle service quality issues and develop the national grid.

In a matter of several weeks, however, these announcements joined the legion of other reform efforts that have failed. Political pressure saw the proposed tariff increase reduced to 10%, while outcries from consumer and industry groups forced the government to backpedal and subsequently announce a "rethink" of the tariff increase. By September 2010 the government was in full retreat, announcing that it would scrap the planned rate hike (*Jakarta Globe*, 15 July 2010; 15 September 2010).

For the world's fourth most populous nation and Southeast Asia's largest economy, the electricity sector remains an anathema to the country's growth and

Table 1. Typology of the interventionist and regulatory state

Attributes	Quasi-patrimonial state	Interventionist state	Regulatory state	Required capacities and attributes
Functional roles	Reproduction and maintenance of social, political and economic order Servicing socio-political-economic networks Preserving and enhancing existing authority structures Protecting vested interests Controlling dissent	Redistribution Macroeconomic stabilisation (economic growth, employment, inflation and interest rates) Enhancing access to social, economic and political resources	Constructing markets Enhancing market efficiency Facilitating capital mobilisation Providing credible commitments	Institutional technologies for the collection, ordering, and dissemination of information Technical and institutional platforms to overcome information asymmetries Access to information provisions and state-based information mechanisms of disclosure Participatory processes in decision making Consultative and review mechanisms Effective accountability mechanisms Institutional capacity for third parties to enforce/seek redress to enforce government commitments Market-based clearing and settlement systems across various sectors Institutional/market design capacity
Instruments	Patron-client-based access to/distribution of resources Indirect coercion through access/denial of patronage Dispensation of access/denial to state resources/revenue streams	Taxation Borrowing Fiscal expenditures Budget allocations and resource transfers between groups Monetary policy Fiscal policy Industrial policy	Rule-making Compliance and enforcement Administrative review and adjudication Competitive tendering Issuance of contracts Licences Setting standards and codes	Institutional mechanisms to ensure information transparencies Effective, functioning and impartial judiciary Judicial legitimacy and recognised authority Negligible to low levels of judicial corruption Adequate judicial capacity

(*continued*)

Table 1. (*Continued*)

Attributes	Quasi-patrimonial state	Interventionist state	Regulatory state	Required capacities and attributes
	Control and access to markets/business/ governance domains		Defining and controlling procedural mechanisms	Administrative review/tribunals proceduralisation Compliance and audit capacities across various institutional spectrums Functional property rights Enforcement and punitive mechanisms across various institutional spectrums Probity monitoring and enforcement mechanisms
Key actors	Oligarchs Political elites Business/economic elites Nominated mandarins	Political parties Civil servants Corporate groups Trade unions	Regulators Industry/private sector groups Civil society groups Technocrats and experts Administrative tribunals Judiciary/Judges	Adequate and independent resources for regulators and regulatory affairs Platform capacity for stakeholder engagement/review in decision making Sufficient analytical and human capacity to populate regulator Adequate compensation to attract and retain personnel with sufficient analytical and expert knowledge capacity Sufficient capacity and resources to operationalise transparent administrative review processes Operational accountability mechanisms to ensure regulator is held accountable for decisions

(*continued*)

Table 1. (*Continued*)

Attributes	Quasi-patrimonial state	Interventionist state	Regulatory state	Required capacities and attributes
				Disclosure, transparency and freedom of information mechanisms to ensure against regulatory capture by sectional interests Realised legitimacy of the regulator in discharge of regulatory mandate
Conflict arenas	Relationships between oligarchs Elite competition for access to oligarchs Competition/disputes over patronage entitlements Factionalism and disputes between political and social networks	Budgetary allocations Entitlements Budget transfers Ministerial control over resource allocation Inter-ministerial/ ministry competition	Competition for control over rule-making Disputes/inter-agency competition for rule ownership Disputes over domain authority, reach and extensity Disputes over rule interpretation	Review and disputation procedures are in place and operative Enforcement mechanisms for compensation High capacity administrative review Compliance to and respect for administrative proceduralism
Key institutions and governance modalities	Oligarch/elite control of key decision-making institutions/apparatus Nominated senior political mandarins Elite-controlled executive branch	Parliament Civil service/bureaucracy Ministerial departments State-owned enterprises Command and control	Parliamentary committees Independent agencies Commissions Tribunals Public hearings Polycentric decision-making structures	Ability to reallocate power from centralised bureaucracies to independent administrative units Ability to mediate inter-agency resource competition Ability to co-ordinate among polycentric nodes of governance
Policy style	Top-down, elite-dominated, command and control, low levels of accountability or transparency	Discretionary, populist, political	Rule-bound, mandated, legalistic	

(*continued*)

Table 1. (*Continued*)

Attributes	Quasi-patrimonial state	Interventionist state	Regulatory state	Required capacities and attributes
Political culture	Oligarch/elite-based power personal/family power networks Dominance of oligarchic/ elite political/social/ economic networks Circulation of power positions among elites	Corporatist, hierarchical, centralised, top-down; statist	Pluralist, diffuse, administrative, technical, specialist, domain-specific, market orientated	

Source: Adapted from Majone (1997: 12-15).

potential to realise poverty reductions (Hartono and Resosudarmo, 2008; Jaswal and Das Gupta, 2006; Yoo, 2006). Despite its entry into the G20 Forum, Indonesia continues to be plagued by electricity infrastructure that resembles "Third World standards." While the economy has stabilised after the tumultuous events of the Asian Economic Crisis, the fall of Soeharto, and the transition to democracy, still only 60% of Indonesians enjoy access to electricity, while regional centres and a vast number of rural residents have only intermittent and unreliable electricity services – if at all. Indeed, blackouts are a way of life for most Indonesians, with hotels, commercial buildings, and many government offices, private companies and individual households maintaining their own generators.

With such dismal service, insufficient capacity and network deployment, Indonesia should be ripe for reform and the introduction of regulatory modalities better able to enhance electricity provision. The history of Indonesia's electricity supply industry, however, betrays a series of institutional arrangements and past reform attempts that highlight the highly contested policy space in which the sector operates, and thus the substantial obstacles to reform that persist in the sector and make problematic regulatory modalities of governance.

The Electricity Supply Industry: A Brief History

Electricity is a political commodity and historically tied to the developmental aspirations of newly independent states. Indonesia has been no exception. As the country transitioned to independence in 1945 with the end of the Second World War, the colonial remnants of Dutch and Japanese private electricity generating companies were seized by youth militia and electricity workers through the formation of a "labour employee electricity and gas delegation." Their subsequent meeting with the newly-installed President Soekarno in October 1945 saw these companies handed over to the new Republic of Indonesia, with the Electricity and Gas Bureau under the Department of Public Works and Energy charged with oversight and development of the electricity sector. At the same time, Article 33 of the new constitution placed the government as the primary guardian and owner of the country's energy resources, essentially nationalising energy assets and setting in place state-led control of the sector (see Butt and Lindsey, 2008). These moves were popularly embraced and reflected a nationalist backlash against colonial control of Indonesia's natural resources, combined with Soekarno's political vision to champion national development through state-owned enterprises.

Indonesia's control of the ESI began from a low base, with the installed generating capacity a mere 157.5 MW in 1945. The task before the government was thus an enormous one: national electrification across an archipelago of several thousand islands to support industrialisation and economic growth. However, across the archipelago the sector was mostly non-existent, predominantly located in Java-Madura (reflecting the concentration of population and economic activity around sugar milling there). The capital requirements for the development of an expansive network were considerable, exceeding available domestic resources and a still nascent public administration. In the first decade after independence, development of the ESI was thus hamstrung by domestic capital shortages, poor planning, co-ordination and inefficient administration. More importantly, compared to its regional counterparts in Thailand or the Philippines which took World Bank loans to accelerate national electrification programmes, Indonesia's antipathy to Western interests forced a reliance on various technical assistance and soft loans from the Soviet Union. Indeed, as Kapur and colleagues (1997: 467) observe, even by the mid-1960s, "Indonesia had little more than a nominal connection with the World Bank, which it quit in August 1965, as it did the IMF," thus cutting off potential soft-loan facilities and its ability to boost development of the electricity supply industry (see also Mason and Asher, 1973: 198).[2]

Efforts at developing the electricity sector up until the 1970s were thus done almost entirely with meagre domestic capital provisions, initially co-ordinated by the Electricity and Gas Bureau, and from January 1961,with the formation of the state-owned enterprise Board of General Administration of the State Electricity Company, subsequently separated in 1965 into the Perusahaan Listrik Negara (PLN), the sole monopoly provider of electricity, and the Perusahaan Gas Negara, responsible for natural gas. These historical and institutional legacies are important, since they not only set in place powerful state-owned enterprises (SOEs) but also establish a series of what institutionalists call "path dependencies" that came to dominate the sector. Indeed, state-led industrialisation defined the development ethos of the state until the mid-1980s, bestowing political privileges on SOEs, control over substantial resources and, in the process, constructing powerful constituencies aligned with the political structure of the state, first under Soekarno and then Soeharto. For PLN, this had distinct advantages, making it a strategic entity within Indonesia's developmental agenda and the apparatus of state elites, elevating its political status and bestowing on the organisation extensive levels of autonomy and independence. By 1972, PLN's status was changed to that of a company, providing it with still greater financial and operating autonomy while retaining its monopoly status over the sector.

The political economy of the ESI under this model, however, was problematic. While PLN had secured financial credits from the Central Bank as a means of funding capacity and network deployment through the 1960s and early 1970s, excessive lending to SOEs had meant precarious debt levels, excessive inflation, and a blow out in the current account deficit. PLN, like other SOEs, had lived off state-directed credit, but did so with little financial accountability. Indeed, PLN found itself caught between a reliance on soft-loan provisions and Central Bank transfers, public service orders concerning mandated provision of service to poor communities, and government-imposed caps on tariffs, creating financial tensions between revenues, escalating production costs, and ever-increasing demands for further investment and capacity. More importantly, as PLN entered the 1970s, soaring energy prices created excessive opportunity costs for Indonesia's state-owned oil and gas company PT Pertamina, whose long-term service contracts with PLN provided oil and gas inputs at discounted prices. PLN was thus forced to diversify its fuel mix, moving more to coal-fired power plants and a vertical integration into the coal and coal transportation sectors, all at considerable cost (see Dubash, 2002: 76; Kapur et al., 1997: 467-90).While Indonesia benefited from oil and gas exports amid increased energy prices in 1973-4 and 1979, and was able to use financial transfers to compensate various SOEs, this model was unsustainable.

The World Bank, Reform Agendas and Independent Power Producers

By the early 1970s Indonesia's relationship with the World Bank had been transformed, driven by the Bank President Robert McNamara, who had established the Bank's first resident mission in Jakarta during his inaugural visit in June 1968 (Kapur et al., 1997: 469). Henceforth, Indonesia's relationship with the Bank would be one of the most decisive in shaping subsequent reform of the ESI, and, in no small measure, leave a legacy of reform experimentation, failure, and dire financial catastrophe that continues to cast a long shadow over the sector. While the Bank championed reform of the sector, especially in terms of private participation and cautious liberalisation, PLN's status cocooned it from any serious pressure to reform. Much of this was explained by the peculiar governance structures that had evolved in the sector and the increasingly dominant role of the state in all facets of the economy. Reform or liberalisation as ends in themselves were antithetical to the interests of Soeharto, political and business elites, as well the SOEs themselves. As Robison and Rosser (2000: 175) note, by 1980 the state controlled 60% of the equity in domestic investment, underwrote the SOEs through transfers that increased from Rp.41 billion in 1973 to Rp.592 billion by 1983 and, in doing so, created "a system bound together by a powerful military and security apparatus and a set of organic ideologies that legitimised the *de facto* possession of the apparatus of the state by its corps of officials." Reform of the electricity or other state-controlled sectors was thus a measure that few political elites countenanced.

More immediately, the systems of governance that had evolved in the sector made the co-ordination of possible reform efforts problematic. Prior to 1978, for example, multiple ministries from geology, mining, and industry had been charged with oversight of the energy sector, but essentially all operated in the shadows of PLN, whose in-house knowledge, analytical and planning capabilities were far superior to the ministries. National forecasting of energy needs and capacity requirements, network and grid deployment, tariff structures, and financial management of the sector operated almost entirely within PLN, with agencies like Indonesia's National Development Planning Agency or BAPPENAS and allied ministries shunted to the side lines. Reform of the sector through engagement with the ministries was impossible, forcing the World Bank to open direct links with PLN but whose own interests limited Bank engagement to low-level technical programmes focused on capacity building in planning, systems efficiency and financial management (interview, PLN official, Jakarta, 4 March 2009; see also Purra, 2011).

In the first half of the 1980s, a global recession and a collapse in world oil prices precipitated massive declines in state revenues and the onset of an economic downturn, diminishing an already narrow tax base and causing Indonesia's budget deficit to balloon. More importantly, for SOEs like PLN the state's capacity to transfer resources or underwrite investment was compromised, breaking the cycle of soft state-directed credit that had served as the engine for PLN's investment in generating and transmission capacity (Robison and Rosser, 2000: 176; see also Iqbal and Rashid, 2002: 1-5). PLN like many of its counterparts thus found themselves in a precarious and unsustainable financial position, with persistent demands for further capacity roll-out but without the capital to support further investment or the discretion to raise and set tariffs. The downturn of the 1980s thus provided the catalyst for reform, paving the way for World Bank intervention.

Reform came through two avenues. First, World Bank loans provided the capital necessary to sustain generation and transmission capacity. During the 1980s, Indonesia became the Bank's largest borrower in the electricity sector, with the Bank financing 18 projects by 1989, all designed to expand capacity using coal and hydropower and integrate the grid system (Dubash, 2002: 76). [3] Second, the introduction of a new Electricity Law in 1985 (Law Number 15) paved the way for private participation, allowing independent power producers (IPPs) to establish in the sector. The World Bank also pushed ahead with various studies recommending the reform of PLN itself. An influential 1989 report, for example, provided a comprehensive overview of the sector and PLN, addressing regulatory problems, operational issues, financial management, accountability, various technical and human resource capacity issues, and recommending an overhaul of the regulatory system, greater private sector participation, and foreshadowed the unbundling of PLN, its decentralisation and nominating it as a potential candidate for future privatisation (World Bank, 1989). Most poignantly, the report spoke to the cumbersome system of governance within the sector, highlighting the tangled lines of authority that were dysfunctional and had the perverse effect of rendering greater autonomy for PLN. Thus, as the report noted, BAPPENAS, the Ministries of Finance, Mines and Energy (formed in 1978), an external Supervisory Board and several inter-agency standing committees all imposed excessive layers of regulatory and reporting oversight on PLN. While in part reflecting the importance of electricity to national development and thus the desire for multiple stakeholders to engage the sector, in the process this desire created vexed governance systems that limited innovation and reform. Because of this regulatory dysfunction, PLN could continue to operate effectively free from serious reform attempts or external meddling. The Bank report criticised PLN, noting that

> it can also be argued that it is precisely the fact that PLN is not an efficient and mature utility that necessitates the degree of supervision and guidance to which it is subjected. Indeed, PLN can be just as cumbersome and inefficient in areas free from direct supervision, such as ... maintenance and operations and its billing procedures. (World Bank, 1989: 9.)

This environment explains the slowness of the reform efforts. Despite the passing of the 1985 Electricity Law, for example, private sector participation only became possible in 1992 with the promulgation of the supporting Presidential Decree No. 37. This was followed by Decree No. 23/1994, marking the corporatisation of PLN (Seymour and Sari, n.d.: 5; Sari, n.d.: 5-6).[4] Collectively, these regulations made possible the most significant period of change in the history of the sector, but in the process set in motion events that brought the sector to bankruptcy and threatened the financial viability of PLN. As Seymour and Sari (n.d.: 4) observe, "an unfortunate feature of the decree [No.37] was that it opened the door to unsolicited proposals for the private production of electricity" (see also Dubash, 2002: 79). While President Soeharto had agreed in April 1990 to the development of the first private power plant in Indonesia under a build-own-and-operate scheme, the flurry of private sector projects that followed had serious consequences. The first project, Paiton I, set a poor standard, and was financed and negotiated on a "take or pay" contract so that the operator was guaranteed favourable returns as PLN was forced to utilise their capacity in preference to other, cheaper utilities that had been constructed with World Bank loans. This began a process of loading long-term contracted financial burdens on to PLN, increasing production costs but leaving tariff structures unreformed. Paiton I, for example, would sell electricity to PLN at a contracted rate of 8.5 US cents per kilowatt-hour (kWh) and Paiton II at 6.6 cents per kWh, while PLN was forced to on-sell electricity at tariffs denominated in local currency the equivalent of between 2.5 and 3.5 cents per kWh – exposing PLN to cost-revenue liabilities and substantial currency risks (Robison and Rosser 2000: 187; Sari, n.d.: 6; Wells, 2007: 354-6). More alarmingly, these "take or pay" power purchase agreements (PPAs) were typically for 30-year periods, dollar-pegged, and committed PLN to long-term purchase regardless of capacity requirements. By 1997, the rush to secure lucrative agreements saw 25 further PPAs signed with IPPs, creating over-capacity and an excessively large reserve margin of about 51% of existing installed capacity, at the time one of the highest in the world (Sari, n.d.: 7).

The rapid transition in the sector with the signing of 27 PPAs with IPPs between 1990 and 1997 reflected a confluence of poor governance processes, sector inefficiencies and outright corruption. As the *Asian Wall Street Journal* noted at the time, negotiating lucrative IPPs was easy: "you simply hooked up with a Soeharto relative or friend, and in a typical arrangement, offered to 'lend' them 15 percent equity, repayable only when the electricity started to flow" (cited in Wu and Sulistiyanto, 2006). While IPPs and PPAs had appeared attractive as instruments able to enhance capacity with little financial burden for the state, their introduction via an impaired governance environment created conditions that distorted the sector. PLN, for example, had warned repeatedly that the rush to sign PPAs was creating excess capacity and longer-term financial obligations that it could not meet with prevailing tariff structures, but equally PLN had little latitude to resist signing PPAs. As a former director noted, "the power companies dictated terms to us because they had Indonesia's first family behind them. Resisting was like suicide" (cited in Wu and Sulistiyanto, 2006). Indeed, as one former senior insider at PLN observed, at the time "we really did not understand the financial implications of what we were signing. We were engineers, and this seemed like a way to get power plants built without any cost to us" (interview, Jakarta 4 March, 2009). Without the institutional capacity to undertake due diligence, and in an environment where PPAs were negotiated non-transparently, without public tendering or bidding processes, the contours of the financial obligations for PLN emerged. The World Bank, for example, expressed concerns as early as 1993, suggesting that excess capacity might result were IPPs not calibrated with forecasted capacity demand. By November 1994, the Bank issued a letter to the Indonesian government estimating PPA liabilities from excess capacity and excessive costs would amount to US$8 billion over the following ten years (Dubash, 2002: 79). By 1997, just prior to the outbreak of the Asian Crisis, independent analysis suggested that PLN's total liability over the 30-year lifecycle of the PPAs amounted to a staggering US$130 billion dollars (cited in Purra, 2011).

The Asian Crisis and Reformasi: 1997-2010

By August 1997, the Asian Crisis had deepened. Indonesia was forced to abandon the Rupiah's trading band, floating the currency after exhausting Central Bank reserves to prop up the currency. By October 1997, the currency had lost 80% of its value, forcing the government to seek emergency support from the IMF. On 31 October the IMF and Indonesian government announced a bailout package that would eventually total US$46 billion (Sari, n.d.: 7). Massive economic destabilisation, capital flight, factory closures, bank insolvencies, inflation soaring to some 400%, along with 27 million people being plunged below the poverty line, created an economic and political crisis for the country, as protestors took to the streets and demanded retribution for the economic chaos that had befallen the country (Purra, 2011; Robison and Rosser, 2000: 171-91; Sari, n.d.: 6; Seymour and Sari, n.d.: 7).[5]

For PLN the Asian Crisis was calamitous. The collapse of the currency, the high leverage rates utilised to construct the IPPs, and its longer-term financial obligations were unsustainable. PLN was unable to service its financial obligations and bankrupt, forcing it to default on its agreements with IPPs. Indeed, so extensive was the crisis in the power sector that this became a prominent feature in the negotiated bailout packages with the IMF, Asian Development Bank (ADB), and the Japanese government. The IMF's Letter of Intent (LOI) and supplements announced in March 1999, all made specific reference to the power sector, requiring the government to commit to sector restructuring, including the establishment of legal and regulatory frameworks for a competitive electricity market, restructuring of PLN, rationalisation and competition, a cost recovery tariff regime, elimination of subsidies, as well as improved transparency and accountability. In addition to this fundamental overhaul of the sector, the LOI committed the government to the introduction of a new electricity law by December 1999 (Dubash, 2002: 83; Robinson and Rosser, 2000; Sari, n.d.: 7; see also Seymour and Sari, n.d.: 7-10).

At the same time, however, the political ramifications of the crisis set in place dynamics that made the sector an increasingly contested space, where reform or the introduction of effective governance modalities would be highly problematic. At the height of the crisis, for example, and amid the first bailout package provided by the IMF (31 October, 1997), Soeharto reinstated 15 large infrastructure projects, including the construction of five IPP projects on Java where electricity was already in oversupply. As Robison and Rosser (2000: 179) note, "business groups associated with the Suharto family were prominent among the beneficiaries of this policy reversal." If there was a sector emblematic of the cronyism and corruption that so debilitated Indonesia, it was the power sector. In the political consciousness of Indonesians, PLN, the involvement of foreign IPPs, and the manner in which PPAs had been negotiated, set in place political legacies that would make future governance of the sector a highly vexed affair.

Amid these realities, reform of the sector ebbed and flowed between financial crises, sector disorganisation, popular political backlash, leadership changes, and the emergence of democracy. The dire economic circumstances of millions of Indonesians made attempts at tariff reform nearly impossible, with the government first rejecting PLN's request to increase tariffs by 150% in 1998-99, but then the Habibie government acquiesced to PLN's introduction of higher tariffs on the wealthiest consumers (Purra, 2011). PLN became the target of popular protests when in February 2000 it was reported that as part of an ADB reform package PLN had agreed to a 55% tariff increase, described in the media as "biased against the people," with the PLN President Kuntoro targeted by demonstrators and accused of taking bribes (Dubash, 2002: 87). Tariffs, tariff reform, and affordability for tens of millions of poor became a political football, with PLN attempting to climb out from under its dire financial situation by proposing a series of tariff reform measures and the implementation of a full cost recovery tariff regime by 2005. However, the Habibie, Megawati and then Yudhoyono administrations using tariffs and equity of access issues as a political wedge to gain popular support and avowing to reject tariff increases. For PLN this meant a need to: increase revenues to reflect cost of production; service its debt obligations and resolve outstanding liabilities regarding IPPs and the PPAs; expand its network while constrained by mandated public service obligations; and guarantee service provision regardless of the financial implications. While corporatised and forced to operate in a manner that ensured its financial viability, the post-crisis era essentially loaded PLN with continuing financial burdens without the ability to orchestrate tariff reform.[6]

There was, however, broad progress on the question of sector restructuring and the implementation of the recommended reforms agreed as part of the IMF bailout package. Protracted negotiations under intensive public scrutiny, and supported with the involvement of the World Bank and ADB, resulted in the passing of a comprehensive Electricity Law in September 2002 – some three years late. The Law was extensive in its agenda and foreshadowed the emergence of a competitive electricity market, wholesale spot market, the development of an Electricity Market Supervisory Body responsible for market competition and setting retail, transmission and distribution tariffs, and the unbundling of PLN, with full market competition in the generation sector with PLN retaining its monopoly over transmission and distribution.

The 2002 Law and the reforms it foreshadowed were not without controversy. PLN, in particular, opposed the reforms, keen to protect its monopoly status and dominance in the sector. PLN unions also opposed the law, fearing rationalisation, loss of benefits and jobs (see Ja Iris, 2009). Importantly, as one of the largest public sector employers in the country with nearly 50,000 technical and administrative staff, PLN's union had considerable political clout, lobbying government and elected officials to challenge the law. So too, vested interests in the sector, especially those with existing financial arrangements with PLN in coal, coal transportation, and small IPP constituencies, feared the reforms would usurp existing commercial arrangements and jeopardise future ones, while consumers feared tariff rises. More widely, given the history of collusion and corruption in the sector, consumer and activist groups held concerns about the likely rectitude and probity of any privatisation of PLN assets and how transparent and socially responsible commercially negotiated IPPs and PPA agreements would be (interview, Jakarta 22 September, 2009). Collectively, these concerns galvanised opposition to the 2002 Electricity Law which was subsequently challenged in the Constitutional Court and annulled in December 2004 on the grounds that it violated Article 33 of the Constitution. As Rakhmat and colleagues (2005) note of the annulment, the Court's reasoning affirmed electricity as essential to the lives of the populace and that it should remain under the control of the government. Further, that it was "contrary to the nation's Constitution to open the door to full competition in the electricity business" (also see Butt and Lindsey, 2008: 244-9). While the annulment did not challenge private sector participation, it expressed concerns about further foreign participation and signalled the willingness of the Court to ring-fence the sector. More importantly, it sent strong signals about the prospects for commercialisation and the limits of tariff reform.

The immediate consequences were devastating, highlighting the political risk for investors from judicial intervention in commercial practices and the apparent ease of political constituencies to mobilise judicial opposition. Investors, especially foreign investors, were essentially warned off with the sector becoming a "no-go zone" (interview, Jakarta, March 5, 2009). While for PLN the status quo was preserved, so too was its financial predicament. In reverting to the 1985 Electricity Law, PLN continued to suffer under the weight of substantial financial burdens, including renegotiated contracts with IPPs, but in the absence of meaningful tariff reform PLN's cost of production far exceeded revenues. As the decade passed, this situation became more acute, with the revenue gap growing to a staggering US$6-8 billion annually, forcing the government to subsidise PLN and allocate 6-8% of Indonesia's entire annual budget outlays to electricity subsidies (see Statistics Indonesia, n.d.). By 2005, the sector was stagnating, with insufficient investment to meet rising electricity demand, artificially low tariffs draining national resources, and PLN forced to operate in an unsustainable financial environment. Declining reserve capacity, rolling brownouts, and poor service quality forced the government to respond by announcing in 2006 a programme to extend national generating capacity with the addition of a 10,000 MW system to be operated by PLN (consisting of 35 coal-fired power plants, 10 in Java, and 25 spread across Indonesia) and rolled out between 2006 and 2010, and then a second phase consisting of a further 10,000 MW system (comprised of gas, geothermal, coal, and hydropower plants) to be operated predominantly by PLN but with 40% of the additional capacity to be provided by new IPPs, and implemented by 2015 (Purra, 2011). As Purra (2011) observes, however, as of 2010 the first phase is only 60% on target and the second phase is unlikely to be implemented since the anticipated US$17.3 billion required to fund the projects has yet to be secured.

The last decade has thus been one of little substantive change to the sector, with Indonesia continuing to suffer from rolling brownouts, persistent policy failures to reform tariff structures, and the ebbs and flows of political manoeuvrings as the sector struggles under the burden of policy and reform inertia.

Regulatory Modes of Governance and the Electricity Supply Industry

Governance of the ESI has been a messy and tumultuous saga that has hit at the very heart of government and mobilised mass protests and ongoing political interest. In few countries in the world would the technical business of the electricity sector so occupy the mass media or the populace, let alone exercise such a central place in the political life of the nation. In Indonesia, however, the power politics of electricity have been emblematic of the machinations associated with the transition from authoritarianism where the sector was used to line the pockets of Soeharto, his family and cronies, to democracy where the sector has acted as a litmus for popular opposition to corruption, the projection of class-based entitlement and equity of access to energy resources, and as a national barometer by which the state is measured in terms of its ability to deploy national resources and manage economic development. As a space for policy transfer, the sector is also fraught with pitfalls: sectional interests, institutional instability, contested legitimacy, and situated amid a series of political constituencies who use the sector to prosecute political agendas. Inserting regulatory modes of governance into such a space thus suggests more probability for failure, unintended outcomes, sectoral harm or risk, than it does for success. Four basic considerations support this conclusion:

Persistent weakness and instability of institutional and governance arrangements. Governance of the ESI has always been an unstable affair. The monopoly status of PLN, the Constitutional requirements that energy resources be overseen by the state, and public service obligations amid processes of commercialisation have made the electricity sector a contested governance space. Multiple institutional actors, agencies, and a plethora of bureaucracies thus compete within the sector, blurring lines of authority, responsibility, and contributing to rule confusion and inter-organisation competition. PLN, BAPPENAS, Ministry of Finance, Ministry of Public Works, Ministry of State Owned Enterprises, National Energy Policy Council (NEPC), the President, Commission VII, as well as committees within the People's Consultative Assembly all concern themselves with various facets of oversight, approvals, and governance of the electricity sector.[7] Mapping the governance space of the electricity sector is thus a complex affair, even for Indonesians who themselves are often confused by lines of responsibility, authority, and where power and decision making rests. During numerous interviews with public officials and private operators, for example, responses about governance mechanisms, administrative and oversight procedures, licensing, tariff review processes, or the roles and responsibilities of key agencies produced, quite literally, a combination of laughter, confusion, consternation, or debate among interview subjects about who was responsible for what and how things worked. Even Commissioners in the newly formed NEPC, for example, supposedly the penultimate national co-ordinating agency and chaired by the President, had difficulty in mapping the sector, the roles, responsibilities and lines of jurisdictional authority among institutional and agency actors (interview, Jakarta, March 4, 2009).

The effect of such confusion and blurred lines of authority makes for a series of enduring problems in the sector. Multiple and overlapping jurisdictions make the sector opaque, limiting the possibility for formal administrative proceduralisation to emerge and thus for transparency and accountability systems to establish and operate effectively. More obviously, the dysfunctional polycentric nodes of governance that operate have served both to empower PLN but also to shape its management culture and impact its operating procedures. The prevalence of weak institutions in the sector, for example, has allowed PLN to operate in a governance vacuum. While the Ministry of Energy and Mineral Resources operates as the official organ of oversight, planning, and budgeting in the sector, in reality it suffers from limited capacity. It is not the seat of analytical and energy sector knowledge, nor does it have access to the types of financial and operating data that might allow it to engage with PLN and impact or modify its operating procedures. Tellingly, in an interview with Minister of Energy and Mineral Resources Yusgiantoro Purnomo and his senior energy advisor, for example, the information resources at hand were sparse. The sense in which the minister or ministry was engaged with PLN, or had access to PLN information was a moot point, with the clear implication that PLN operated in a realm unto itself. Equally, the sense in which NEPC, or Commission VII co-ordinated with the Ministry of Energy and Mineral Resources to oversee PLN also seemed to be a point of consternation for the minister, again reflecting fractured procedures, and contested oversight, roles, and responsibilities (see Purra, 2011).

For PLN, the response to such a fractured governance environment has been to internalise its operations – essentially adopting a secretive, non-disclosure-based operating model as a means of navigating the morass of overlapping bureaucratic jurisdictions. As one World Bank official noted, PLN's response has been to evolve a "black box operating mentality" but, in the process, contributing to a culture of non-transparency and poor systems of accountability that adds further to the governance dilemmas of the sector (interview, Jakarta, 18 November, 2009).

Contested legitimacy. The diffuse, polycentric nodes of governance have also served to construct a legacy of contested legitimacy. In particular, the collusion between elites and the kickbacks secured in exchange for lucrative IPP and PPA contracts, coupled with the involvement of PLN and various arms of government, has led to popular perceptions of endemic patrimonial politics, in which vested interests and collusion are assumed to operate at the expense of the national interest (Wells, 2007: 352-4). These historical legacies continue to impact the sector, creating widespread perceptions that all sector activities occur under such conditions. More obviously, the persistence of poor levels of transparency and accountability within the sector continue to fan the flames of suspicion, providing fertile ground for media speculation. Not surprisingly, the sector is thus subject to what might be described as hyper-levels of scrutiny and political sensitivity, where the emergence of a robust free media coinciding with democratisation has witnessed a powerful challenge on all facets of the ESI. In interviews with various senior officials in PLN and Commissioners at NEPC, for example, questions about the apparent inertia in the sector, especially concerning the planned roll out of the two 10,000 MW projects mentioned above, were often diagnosed as a problem of officials and public sector organisations not wanting to enter into contracts for fear of incurring allegations of corruption (interview, Jakarta, 17 November, 2009; interview Editor, Globe Asia, Jakarta, 23 March, 2010). Widely held public perceptions about poor levels of probity thus serve to deprive various organisations in the sector of the legitimacy required to operate effectively and for reform to be realised.

More acutely, however, the sector suffers from a legitimacy crisis. In part because the sector is so over-populated with agencies, sectional interests, and contested rule and authority ownership, no single institution or agency has emerged with the legitimate authority to assume a leadership role. While PLN dominates by the fact of its monopoly position, its interests are not necessarily perceived as aligned with the national interest or the well-being of ordinary Indonesians; indeed, for many, PLN *is* the problem that needs to be addressed before reform of the sector can commence. The sector thus suffers from a governance crisis where, without embedded institutions able to command legitimacy and orchestrate effective co-ordination of the sector, the sector is exposed to the high politics of governance by executive decree; but again in a porous institutional environment that shows little capacity to implement executive decrees.

Such issues represent large hurdles to overcome if, for example, regulatory modes of governance are to be established and effective in the sector. Could an independent regulator feasibly be expected to establish its independence and probity in such an environment and de-politicise what remains a highly politicised policy space? The most recent events in the sector as related earlier in this paper, and which involved the insertion of President Yudhoyono into the latest efforts to reform the sector and change tariff structures, suggests that not even Presidential authority can carry the day. Despite the political posturing by the President and Commission VII, the protests by industry and consumer groups were essentially mounted with arguments that higher tariffs would feed into elite interests, benefiting the IPPs, the independent coal mine operators, while further impoverishing Indonesians (see *Jakarta Globe*, 15 July 2010; 15 September 2010; interview, Editor, Globe Asia, Jakarta, 23 March, 2010). The proposed rate hikes, it was argued, were not legitimate but another example of rent-seeking.

The predominance of patrimonialism. Indonesia remains a patrimonial state with nascent and fragile institutions. Much of its most recent history, especially under Soeharto's New Order, rested on patron-client relationships, where a series of elite families were able to collude and enjoy state-sectioned monopolies (Robison and Rosser, 2000). The energy sector also evolved under such arrangements and, at the height of Soeharto's regime, was plundered as a result of it. It would be wrong, however, to conclude that patrimonialism disappeared with the fall of Soeharto. Powerful economic interests persist, as do the elite family-business connections that still dominate the political-economy of Indonesia (Robison and Hadiz, 2004). The chair of Commission VII, Airlangga Hartarto, for example, has family interests in the coal sector and with IPPs, and is a director or board member on several holding companies engaged in dealings with PLN. When interviewed and asked if this raised conflict of interest concerns, he was bemused, and asked how one could be involved in making laws and proposing bills without being involved in the sector, knowing the people, their businesses, and their business needs (interview, Jakarta, 5 March, 2009). In a sense he is right, since such relationships are the modality by which business is conducted, contracts often awarded, access to the state determined, and state-business relations mediated. It is, in every sense, the norm. The connections that mark relationships between Commission VII, the electricity industry, and key economic constituencies in the coal and coal transportation business, as well as Indonesian operators of IPPs, thus makes for social networks that in many other places might be judged inappropriate. While democratisation and a newly mobilised media represent important steps to reforming systems of patrimonial politics, inserting regulatory modalities of governance amid still dominant patrimonial relations does not suppose that reform will be easily or instantly achieved. For all its progress and the great level of optimism generated by political reforms, its business networks remain predominantly family-based and the state dependent on these as a source of capital and an engine of growth.

Nascent forms of participation, administrative proceduralisation and institutional instantiation. The absence of formal administrative proceduralism is typical of nascent institutions and newly emerged democracies. Administrative systems are complex institutional technologies and require time to evolve and develop capacity. They require systems of participation and engagement that serve both to communicate goals, values and sector processes and involve stakeholders in the construction and embedding of participatory institutional technologies as a means of gaining compliance, instantiating institutions, and evolving institutional authority and legitimacy in the sector. Indonesia is at the very beginning of this process, and much of this focused on a kind of political catharsis and forensic analysis of the patron-client networks that operate in the sector and that historically have served it so poorly. At base, Indonesia is trying to build institutions in an environment wrought with powerful interests and the economic and political hangover of an all-powerful patrimonial state.

These realities make the prospects for successful transfer of regulatory modalities of governance problematic. Institutional capacity remains low, corruption is endemic (albeit being addressed), judicial probity and independence still formative, and newly emerged democratic processes still fluid. In such an environment even relatively simple governance technologies implied by "command and control" systems find little basis for effective policy formulation, implementation, and execution. Legal reform of property rights, for example, or the provision of basic infrastructure in the transportation, water or sanitation sectors, mimic the problems of the electricity sector, with standards of governance operating at relatively low levels. Like any other developing state, Indonesia is confronted with basic capacity problems.

Conclusion

This paper has attempted to highlight the challenges of inserting regulatory forms of governance into Indonesia's power sector; specifically, that the prospects for constructing such modalities of governance are problematic and perhaps even undesirable. Indonesia continues to be beset by basic developmental constraints and its developmental ethos is defined by images of state-led development with state ownership of key state assets and enterprises. Not only are regulatory systems of governance antithetical to Indonesia's historical approach to development, but challenge the networks of interests and power relations. More fundamentally, regulatory systems of governance require specific institutional technologies, assume specific capacities and institutional endowments, and presume the efficient operation of administrative practices and procedures, many of which are only partially present or inoperative in the power sector. While such observations do not preclude the emergence of regulatory systems of governance they do suggest an immediate and ongoing need to enhance the capacity of central bureaucracies, increase the effectiveness of basic governance systems, and the need for efficiency gains in the co-ordination, planning, implementation and execution of government programmes. Effective state and institutional capacities are requisite functionalities necessary for regulatory systems of governance to emerge. It is the latter point that is the most essential in developing country contexts and highlights the need to calibrate institutional technologies to what Douglas North (1990) long ago identified as the "institutional endowment." The technologies to support the operation of regulatory forms of governance are both complex and costly and, in many cases, simply not available in developing countries. Far from a panacea for reform, regulatory modes of governance transplanted into the developing countries may well do little more than reinforce the poor governance outcomes they are designed to overcome.

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Notes

[1] One of the few exceptions to the "decline of the state" thesis is the work of Linda Weiss (1999).

[2] Indonesia took no loans from the World Bank until it rejoined the World Bank and IMF in 1967 and subsequently to become one of the largest recipients of World Bank loans.

[3] By 2001, the Asian Development Bank also emerged as a prime lender of power sector projects, funding 28 projects to a total of US$3 billion (Dubash, 2002: 84).

[4] Some of the reforms were opposed by PLN. The head of PLN's research division, for example, argued that the introduction of IPPs and the private electricity generation would cost 50% more than PLN's production costs due to interest rates and equity return requirements. Subsequent studies, however, concluded that PLN's production costs were artificially low due to subsidies and soft loans (see Sari, n.d.: 5).

[5] Sari (n.d.: 6) suggests that some 50 million people "became poor overnight," increasing the number of people below the poverty line by 40%, and essentially condemning some 80 million people to privations and extreme hardship.

[6] Tariffs were, in fact, increased nominally in 2001 and 2002 primarily through the partial withdraw of government subsidies (Dubash, 2002: 87).

[7] Within the People's Representative Council there are 11 commissions responsible for the formulation of bills and laws for submission to the plenary session of the Council (often referred to as the House of Representatives). One of the Commissions, Commission VII, has responsibility for Energy, natural mineral resources, research and technology, the environment, and acts essentially as the nation's supreme law-making body in relation to the energy sector.

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