

**Agency-Level Use of the Country Safeguard System
for Indonesia’s State Electricity Company *Perusahaan Listrik Negara* (PLN)
Summary of Consultations with Civil Society Organizations**

11 December 2017, Le Méridien Hotel, Jakarta

A. BACKGROUND

1. Upon the request of Indonesia’s Ministry of National Development Planning (BAPPENAS), the Asian Development Bank (ADB) in December 2013 approved a technical assistance (TA) project to formally consider the use of Indonesia’s Country Safeguard System (CSS) for environment and involuntary resettlement (IR) in ADB-financed projects.¹
2. The TA supported a detailed Country Safeguards Review (CSR), a Background Review, which assessed the equivalence of Indonesia’s CSS with the objectives, scope and triggers and policy principles of ADB’s *Safeguard Policy Statement 2009 (SPS)*; and, as a sample performed an overview assessment of the acceptability of four sectors: energy, transport/road, urban planning, and water resources.²
3. The Background Review of the country systems found that the state electricity company (*Perusahaan Listrik Negara*, PLN) showed good implementation capacity in relation to environment and land acquisition/involuntary resettlement. Based on the initial findings, BAPPENAS requested ADB to carry out a detailed equivalence and acceptability assessment for PLN at the agency level—the Country Safeguards Systems Assessment-CSS assessment.
4. In order to solicit comments and feedback from stakeholders on the CSS assessment, ADB conducted a consultation session with CSOs on 11 December 2017 in Jakarta.³ Among other participants, it was attended by representatives from Wahana Lingkungan Hidup (WALHI), Greenpeace, World Wildlife Fund (WWF) Indonesia, Debt Watch Indonesia, ELSAM, Women Resource Institute (WRI), LBH Apik, Kemitraan, Indonesia Institute for Energy Economics, as well as relevant government stakeholders, and representatives from the universities. This document notes summarized key points raised during that consultation.

B. CONSULTATION PROCEEDINGS

5. In the opening remarks, ADB and BAPPENAS representatives thanked the participants for their attendance at the event and for inputs provided in the consultation. They noted that the assessment is carried out in good cooperation between the Ministry of Environment and Forestry, and the Ministry of Agrarian Affairs and the National Land Use Plan (KATR/BPN), PLN, several CSOs and ADB.

¹ ADB. Technical Assistance to the Republic of Indonesia for Aligning Asian Development Bank and Country Systems for Improved Project Performance (TA 8548-INO, Approved in 2013). <https://www.adb.org/projects/47287-001/main>.

² “Equivalence” requires that the country’s laws and legal frameworks have provisions to achieve the same objectives and principles as ADB’s SPS; “Acceptability” measures the country’s implementation practice, track record, and capacity.

³ The consultation on 11 December 2017 was part of a series of CSS consultations with stakeholders (including representatives from the government, state-owned agencies, development partners, and CSOs), that started in November 2017.

6. ADB underscored the importance of strategic use of CSS by meeting the requirements of SPS and complying with Indonesia's environmental and involuntary resettlement legislation.

7. ADB explained that the benefits of using CSS include, among others, the strengthening of environmental standards and involuntary resettlement of PLN itself in accordance with best international practice. Reduced transaction cost for PLN, as only one set of safeguards assessments will be required, which would meet both the safeguard requirements of Indonesia and ADB.

8. Based on these studies, while the Government's policy and legal requirements relating to the Environment and involuntary resettlement (IR) are substantially aligned with those of ADB SPS, there are gaps, which need to be addressed to fully meet ADB SPS requirements. On the implementation side, PLN's technical and institutional capacity gaps to implement the Indonesian regulatory requirements and ADB SPS will be fully addressed through specific gap-filling actions. These actions to close the gaps will be settled within the agreed time frame as agreed by ADB and PLN, before project financing begins. ADB is required to regularly monitor the implementation of this CSS-related action plan.

Discussions, key points and responses

i. Action plan to close the gaps

9. Some of the participants questioned the nature of actions in the action plan, required to fill the gaps.

10. ADB's response:

- Specific activities of gaps closing on the equivalence and acceptability assessment results are detailed in the action plan. Those activities will be legally binding to PLN to meet SPS requirements.

ii. Gender-related concerns

11. Some participants noted that from the environmental review, some statements on gender need to be further explained to avoid overlapping statements. They noted that the gender issue is approached sporadically in AMDAL, e.g. if triggered then it is mitigated and vice-versa. They suggested for AMDAL improvement, the approach should be shifted to gender mainstreaming.

12. Some participants noticed women participation in consultation is not enough, and women who attended frequently remain silent due to cultural pressures. They suggested qualitative assessment and further facilitation should be made or complement to strengthen project designs for gender participation.

13. ADB's response:

- The weak rating on gender is related to how PLN has implemented gender aspects in their project. In terms of the legal framework, it is perceived as partially equivalent, as the government has a set of regulations related to gender mainstreaming. PLN, which is under the coordination of both the Energy and Mineral Resources Ministry and State-owned Enterprises Ministry, should have applied this gender mainstreaming. The Law no. 2/2012 perceives all person are equal and no special attention is given to gender. This is perceived in the assessment as partially equivalent. Implementation practice is weak; therefore, it should be strengthened.

- In terms of monitoring, there are monitoring requirements stated in The Law No. 2/2012, however there is no provision to monitor land acquisition impacts. Monitoring so far is just focused on land acquisition progress such as location determination, compensation delivering, and complaints settled. Yet, impacts are not monitored.
- Input for gender mainstreaming will be reflected in the action plan, including indicators for measuring it. So far, there is no gender mainstreaming indicator in the energy sector.
- The gender issue is not a minor gap; therefore, it should be addressed accordingly. PLN should demonstrate from their projects that gender is included in participation/consultation and assessment at institutional level.

iii. Upscaling compliance

14. Several participants noticed the requirement of local regulations to comply with national regulations, and believed it is not enough. They suggested to scale up local compliance to international standards.

15. ADB's response:

- ADB agreed that compliance not only for local regulations to comply with national standards, but also for local and national regulations to comply with national and international standards and best practice.

iv. Disclosure

16. Some participants remarked that the CSS assessment and report should have been be distributed far ahead before the consultation.

17. ADB's response:

- ADB noted the feedback. The assessment and key findings are available in documents which was disclosed on ADB website.

v. Weak legal framework

18. Some participants noted that ADB should not use weak legal framework in this assessment, such as Law No. 2/2012 on Land Acquisition for Public Interest Development. They raised a concern that discretion (in accelerating the implementation of projects of national strategic importance) violates ADB safeguard. Based on President's Regulation No. 56/2017, a displaced person who does meet the requirement for eligible parties will not get compensation for their land. This is a disadvantage if ADB applies this regulation.

19. ADB's response:

- ADB assured that it does not lower its standards from ADB SPS. Compared to previous laws, the Law no. 2/2012 is better as it gives more attention to entitled parties. In terms of consultation, without agreement from entitled party, location determination will not be issued. The law is mandated to give compensation with fair and just principles by requiring valuation of affected assets to independent appraisers. Scope for compensation has expanded not only for asset lost, but also for other type of economic loses, including job losses and profession loses.

20. National Land Agency's (BPN) response:

- The Law No. 2/2012 is the most comprehensive law compared to the previous regulations. For example, the new law stipulates that valuation of affected assets and other losses is the responsibility of an independent appraiser, and this is not the case with the previous laws.
- The Law also clearly defines the responsible agencies for land acquisition process. BPN deals with the implementation and delivering of land acquisition results, while the local government handles the preparation until issue of location determination. The agency needing the land task is to prepare land acquisition planning document at the planning stage. BPN stated that the law no. 2/2012 and its implementing regulations has strong legal requirement.

vi. Specific impact measurements, documents' quality and implementation issues

21. Some participants highlighted the need to identify specific impacts from PLN's hydropower plants. PLN should assess the downstream and upstream impacts caused by the dams. AMDAL practices should include those specific PLN project impacts as well as project with high environmental impacts.

22. Some participants raised concerns on the quality of AMDAL's documents, noting that these documents may not reflect the real conditions in the field. They also noted that AMDAL failed to fully follow what it should be and often adopts a checklist or partial approach in assessing impacts.

23. Some participants raised concerns regarding ADB's failure in some projects in the past to comply with its own safeguards policy. They also highlighted cases when ADB supported financial intermediary institutions such as the case with the Indonesia Infrastructure Finance (IIF), which they believed did not apply prior informed consent from affected people on certain projects.

24. ADB's response:

- The implementation of CSS will not be an automatic process. There will be an Memorandum of Understanding (MoU) between PLN and ADB. The process will also be gradual to allow for PLN's capacity development, before it is deemed ready to implement the CSS. If ADB see no positive results from the process, CSS may not be applied.
- ADB has a comprehensive system on safeguards. We are working with the country like Indonesia to ensure this system is rigorously implemented.
- The CSS will not be applied for projects with complex safeguard issues. ADB will still be involved in monitoring the implementation's progress. ADB will also support the agency with technical capacity development to ensure that the agency's safeguards follow international good practice.

vii. Issues related to vulnerable groups

25. Some participants disagreed as to why vulnerable groups' consultation and gender aspects in consultation were only considered to be minor gaps, and solved by proposing implementation of, and compliance with technical guidelines or a PLN Board of Directors'. They believed this issue should be addressed through amendment to national laws.

26. Some participants asserted that the case studies mentioned do not cover the cases in PLN's project areas like Indramayu, Batang, Jenepono, or Maros, where PLN allegedly failed to accommodate the concerns of affected people during the project implementation.

27. Some participants noted that involuntary resettlement would always be "without consent from the affected people," and thus believed it violates basic human rights. It found no indication of FPIC principles or consent, therefore safeguards principles failed to meet the requirement that the displaced persons must provide their consent.

28. A participant rejected all project with high environmental risk such as big dams and coal plants, as those projects will always negatively impact communities in significant ways.

29. Some participants raised their concern that the indigenous people are taken out from the assessment.

30. ADB's response:

- ADB supported the rights of community to have better life and good environment and this is not just a checklist. The project should benefit communities. This is in-line with ADBs safeguards policy principle, to avoid impact, minimized and if both cannot be avoided, compensate accordingly and improve standard of living of displaced persons.
- In terms of CSS use, ADB's support aims to help the country to use CSS to increase awareness and ownership of the country's own safeguards, to follow international good practice, and to avoid duplication.
- On the indigenous people (IP), BAPPENAS from the early stage requested to delay assessment on IP as the country regulatory frameworks for IP are not yet clear, and the definition of IP is still too diverse. It does not mean it will not be assessed. However, in the process of assessment on IR, there are IPs components related to land acquisition. The assessment is addressing the concerns related to IP with regard to land acquisition but not as a stand-alone IPs assessment.

31. PLN's response:

- In resettlement cases, PLN will move its project's location if entitled parties do not agree or reject the project.
- PLN (as agent of development) in practice may face with social and environmental issues and problems and have to contextualize whether it has a compliance issue or beyond compliance. PLN has also committed to involve beyond compliance issue. For example, PLN will provide community development program or other social and environmental program through CSR or PKBL budget if necessary to address beyond compliance issues.

viii. Weak legal framework

32. Some participants questioned whether ADB plans to keep supporting PLN projects in which the number of days to obtain environmental permits is significantly less, i.e., 60 days in accordance to the new government regulation, as opposed to 120 days in previous regulation.

33. ADB's response:

- So far the projects assessed do not use or include the projects listed in the acceleration program. ADB will further analyze the situation.
- ADB will not interfere in the govt procedures to obtain clearances and permits. ADB's requirements is to ensure that the environmental permit should be obtained prior to the construction phase. If the process is longer or shorter than the previous timeframe, it is up to the national system to decide. On its part, ADB will request disclosure of the obtained permits.

ix. GRM and accountability

34. Some participants questioned the accountability of the projects to be implemented by PLN as it has not been addressed in the assessment, which limits its elaboration on grievance redress mechanism (GRM) of PLN. For the CSS use, the participants believed it should have expanded to accountability of the agency beyond the project grievance system. They further suggested to explore more on this accountability of PLN.

35. ADB's response:

- The use of CSS will not undermine the roles and functions of ADB Accountability Mechanisms to the project. If complaints raised reach ADB, the office of the special facilitator and the compliance review panel's roles will still apply. ADB's independent evaluation will also be applied. The mechanism is the same in all respects. In the assessment for equivalence and acceptability have highlighted where there are gaps, which need to be filled.

Closing

36. The meeting concluded with a discussion on the next steps in the process. ADB thanked all participants for their valuable inputs and reiterated that it would take all comments into consideration. Considering the complexity of the topic and the time needed to thoroughly understand it, ABD offered to have another discussion in early January 2018, and the offer was accepted by the participants.

= END OF THE SUMMARY =

Abbreviations: ADB = Asian Development Bank; AMDAL = Indonesia's Environmental Impact Analysis (EIA); ATR/BTN = Ministry of Agrarian and Spatial Plan/National Land Agency; BAPPENAS = National Development Planning Ministry and National Development Planning Agency; CSO = civil society organization; CSS = Country Safeguard System; CSR = Country Safeguard Review; IPP = Independent Power Producer; IR = involuntary resettlement; MOEF = Ministry of Environment and Forestry; PCP = ADB Public Communications Policy 2011; PLN = *Perusahaan Listrik Negara*, Indonesia's state electricity company; SPS = ADB Safeguard Policy Statement 2009; UKL-UPL = Indonesia's Environmental Management and Monitoring Plan.

If you wish to have a follow-up dialogue with ADB on this subject, please contact the project's team at: SERDIndonesiaCSR@adb.org.