

## Got a generator? Here's what you need to know

In most parts of Indonesia, just about every business owns a generator to keep electricity running in the event of a blackout. In fact, as evidenced by the widespread blackout in Java island in August this year, many of us relied heavily on generators for electricity, water, food and more.

It used to be the case that only generators above 200 kVA required a permit. Anything below must only be registered as evidenced by a registration certificate.

Now, the Minister of Energy and Mineral Resources has issued a regulation<sup>1</sup> to revise the licensing requirements for the use of generators.

### New Licensing Requirement

As a starting point, the Indonesian Electricity Law<sup>2</sup> and its implementing regulation<sup>3</sup> has always required an operational permit (*izin operasi*) for generators above 200 kVA if such generators are used for private purposes, which include utilisation as a main, reserve, emergency, or temporary power source.

Pursuant to the new regulation, users must only obtain an operational permit if they operate a generator above 500 kVA. This permit can be obtained from the Ministry of Energy and Mineral Resources (for multiple provinces) or the local government (for one province) via the Online Single Submission portal. Meanwhile, users of generators below 500 kVA are only required to submit a one-time report to the Minister of Energy and Mineral Resources or the local government.

Similarly, the law has always required the user of any power installation, including a generator, to obtain a commissioning certificate (*sertifikat laik operasi*). Previously, a commissioning certificate was a prerequisite for an operational permit. Now, a commissioning certificate is to be obtained from a third party certification institution after obtaining the operational permit.

Generator equals to or below 500 kVA is deemed to have automatically obtained a commissioning certificate if such generator has passed the manufacturer's test results or obtained a product certificate or the equivalent product safety standard documentation.

### Existing Licenses

Any operational permit and registration certificate issued prior to 6 September 2019 will remain valid until their respective expiry date, provided that there is no change to the use and capacity of the generator.

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<sup>1</sup> Minister of Energy and Mineral Resources Regulation No. 12 of 2019 on Capacity of Electricity Generator for Private Interest Based on Operational Permit.

<sup>2</sup> Law No. 30 of 2009 on Electricity.

<sup>3</sup> Government Regulation No. 14 of 2012 on Electricity Supply Business Activities, as amended by Government Regulation No. 23 of 2014.

While the new regulation does not specify provisions related to existing commissioning certificates, we believe that they would also enjoy similar treatment and will remain valid until their expiry date.

### Sanctions

Despite the change in the licensing scheme, the same criminal charges remain relevant for users operating a generator without an operational permit, namely maximum imprisonment of five years and maximum fine of IDR 4 billion. Meanwhile, failure to obtain a commissioning certificate may subject the user to maximum imprisonment of five years and maximum fine of IDR 500 million.

Businesses must note that these sanctions can be applied against the entity, as well as the individuals in such entity. While most cases of corporate liability are imposed against the directors, the government may also penalise factory managers and other key management.

In reality, the Constitutional Court has determined that the requirement to obtain a commissioning certificate is purely administrative, and as such, individuals cannot be imprisoned for operating a generator without obtaining such certificate. However, to this day, no judicial review has been requested with regard to imprisonment for individuals operating a generator without obtaining an operational permit, and as such, imprisonment may still apply for failure to obtain an operational permit.

### Conclusion

The theme of the regulations recently enacted by the government seems to be the ease of doing business in Indonesia. Raising of the capacity of generator subject to licensing will certainly be welcomed by companies with lower capacity generator.

But if the objective is to promote doing business in Indonesia, it is imperative that the government conducts a thorough socialisation for businesses to ensure widespread awareness. In the past, many businesses do not even know that they were obliged to secure an operational permit and commissioning certificate for their generator. This, coupled with patchy enforcement across Indonesia, may cause businesses to be unduly harmed due to their lack of knowledge. As the entire licensing burden is imposed on businesses, the government needs to ensure that businesses are informed and protected.

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## Contacts



**Yogi Sudrajat Marsono**  
Partner

D +62 21 2555 7812  
F +62 21 2555 7899  
[yogi.marsono@ahp.id](mailto:yogi.marsono@ahp.id)



**Heru Pamungkas**  
Senior Associate

D +62 31 5116 4550  
F +62 21 2555 7899  
[heru.pamungkas@ahp.id](mailto:heru.pamungkas@ahp.id)



**Andin Aditya Rahman**  
Associate

D +62 31 5116 4550  
F +62 21 2555 7899  
[andin.rahman@ahp.id](mailto:andin.rahman@ahp.id)

## Our Regional Contacts

RAJAH & TANN | *Singapore*

**Rajah & Tann Singapore LLP**

T +65 6535 3600  
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

**Christopher & Lee Ong**

T +60 3 2273 1919  
F +60 3 2273 8310  
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

**R&T Sok & Heng Law Office**

T +855 23 963 112 / 113  
F +855 23 963 116  
kh.rajahtannasia.com

RAJAH & TANN NK LEGAL | *Myanmar*

**Rajah & Tann NK Legal Myanmar Company Limited**

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346  
F +95 1 9345 348  
mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP  
Shanghai Representative Office**

T +86 21 6120 8818  
F +86 21 6120 8820  
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

**Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)**

T +632 8894 0377 to 79 / +632 8894 4931 to 32  
F +632 8552 1977 to 78  
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

**Assegaf Hamzah & Partners**

**Jakarta Office**

T +62 21 2555 7800  
F +62 21 2555 7899

**Surabaya Office**

T +62 31 5116 4550  
F +62 31 5116 4560  
www.ahp.co.id

RAJAH & TANN | *Thailand*

**R&T Asia (Thailand) Limited**

T +66 2 656 1991  
F +66 2 656 0833  
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

**Rajah & Tann LCT Lawyers**

**Ho Chi Minh City Office**

T +84 28 3821 2382 / +84 28 3821 2673  
F +84 28 3520 8206

RAJAH & TANN | *Lao PDR*

**Rajah & Tann (Laos) Co., Ltd.**

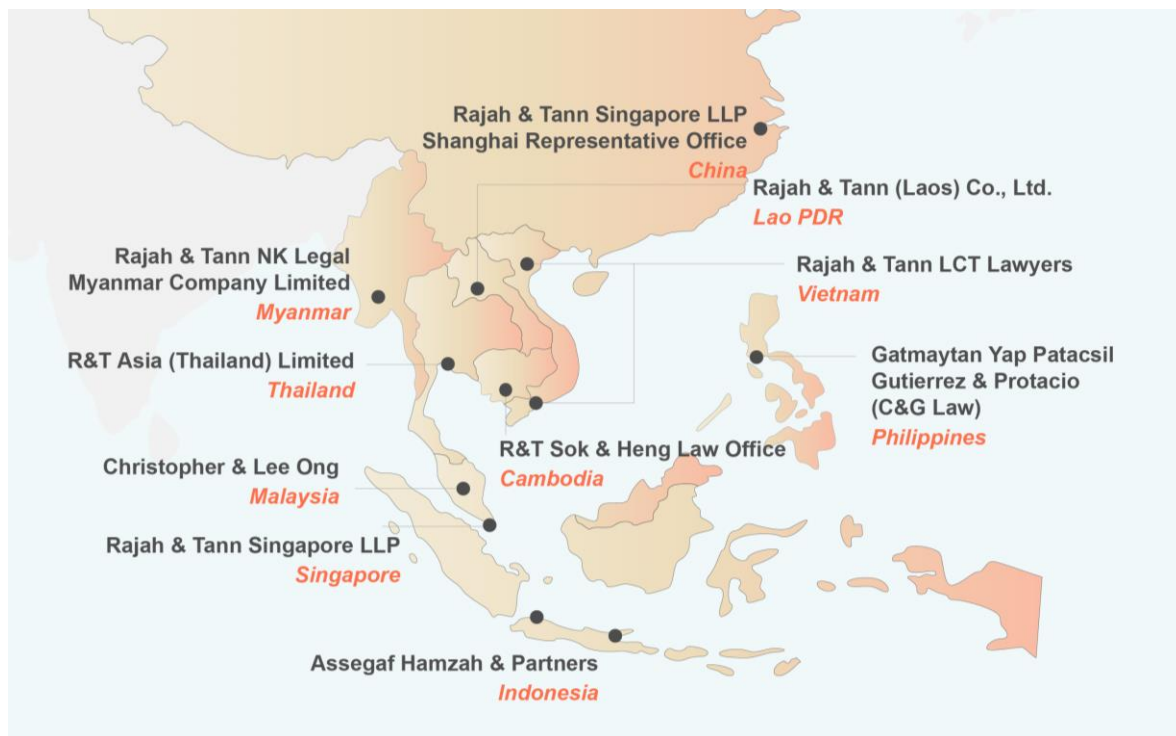
T +856 21 454 239  
F +856 21 285 261  
la.rajahtannasia.com

**Hanoi Office**

T +84 24 3267 6127  
F +84 24 3267 6128  
www.rajahtannlct.com

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