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Them. The Case of the Indonesian Power Sector

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**Regulatory States in the South:
Can they exist and do we want them?
The Case of the Indonesian Power Sector¹**

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Abstract

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 paper I pose two basic questions in response to the rise of the regulatory state and its increasing diffusion into the Global South. First, can regulatory states exist in the south or, more accurately, can effective regulatory states emerge and hope to function in a manner similar to their counterparts in the Global North and deliver the types of benefits and outcomes they promise? And second, would we in fact want regulatory states in the Global South, by which I mean do they offer the most effective modalities for delivering developmental outcomes and enhanced social well being? By unpacking the concept of the regulatory state and addressing its underlying assumptions and implicit normative values, I suggest that the modalities of governance entailed in the regulatory state model may not in fact 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, Global South

Introduction

In case you missed it, the last 30 years or so has witnessed a near revolution in the form, function, extensity, 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 coordinator and orchestrator of economic and social innovation, are now artifacts 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 direct footprint on the economic life of the nation has been massively downsized. In the space of a single generation, we have witnessed one of the great transformations of the modern era; the death of the positive ‘interventionist’ state and the rise of the ‘regulatory state’ (Majone 1999: 1; Hood *et al* 1999; Levi-Faur 2005).

The contours of this transformation are now well recognized. Beginning in the 1970s state monopolies were deregulated, state owned assets divested through privatization, and marketization strategies implemented to encourage the private provision of public services. The ethos of user pays and cost recovery for service provision has increasingly 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 withdraw 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 stabilization 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 market based 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 thus 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 the ‘Global South.’ As a tool of government and a modality of governance, regulation now constitutes the new order; a set of governance standards and procedures that are both proscribed as preferred instruments to secure development, and a set of metrics by which governments and governance are assessed for their quality and capacities. As the International Finance Corporate 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 horrify risks (International Finance Corporation 2010; 1)

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 realization of net social benefits. As Nicola Philips 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’ (Philips 2006; 23). 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 paper I pose two basic questions in response to the rise of the regulatory state and its increasing diffusion into the Global South. First, can regulatory states exist in the south or, more accurately, can effective regulatory states emerge and hope to function in a manner similar to their counterparts in the Global North and deliver the types of benefits and outcomes they promise? And second, would we in fact want regulatory states in the Global South, by which I mean do they offer the most effective modalities for delivering developmental outcomes and enhanced social well being? These questions are not flippant. They are designed to unpack the underlying assumptions on which the notion of the regulatory state rests; specifically, the institutional apparatus, capacities, and functional requirements necessary for the operation of effective governance by regulation. Far from being a simple exercise of policy diffusion and the adoption or 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 effective functioning of a regulatory state is complex, costly, and rests on the availability of what I call soft institutional capacities — capacities that help structure the complex reflexive relationships between agential actors, formal institutions, procedural authority and norms. Further, I argue that 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. As a consequence, 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 the Global South, might end up weakening state capacity and traditional command and control regulatory functions to the detriment of developmental agendas.

I explore these issues in relation to the largest economy in Southeast Asia, Indonesia, and the operation of the Indonesian power sector. Electricity is an essential ingredient for industrialization 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 (12,000 of which are inhabited), a population of 230 million people, and a nascent political system that has suffered amid political turmoil, violence, and only recently evolved democratic institutions after the fall of Suharto (1998)(Ananta and Riyanto 2006; MacIntyre 2006). Indonesia thus represents a state in the midst of economic and social transition, eager to fulfill its developmental aspirations but still beset by some of the region's worst indicators for human well being, equity of access to electricity, and experiencing difficulty in meeting the Millennium Development Goals.

This paper is organized into three sections. In the first section I attempt to theorize 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 are far from settled. 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 the Global South, assess its likely impact, or the rectitude of its suitability for policy diffusion and adoption? Too little work, I argue, has gone into theorizing 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 second section I turn to address the institutional fabric surrounding the energy sector in Indonesia, addressing the upstream, transmission and distribution elements of the sector, and the institutional mechanisms that govern the sector. In the third section I return to the two basic questions of the paper; whether a regulatory could exist in Indonesia and if in fact it would be desirable.

Critical to my analysis have been the perspectives gathered through fieldwork and interviews conducted with energy sector officials, regulators and private sector participants in the Indonesian energy sector. Where requested, the identity of interview subjects has been protected.

I Theorizing the Regulatory State: Power, Structural Orientations, Capacities — Toward a Typology

The rise of the regulatory state is more often asserted than theorized. 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, globalization, 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. Waves of tomes since the 1970s have thus declared the decline of the state. Susan Strange, for example, proclaims the state in full retreat, its authority and absolute power shrinking. Heads of governments, she notes, “may be the last to recognize that they and their ministers have lost the authority over national societies and economies that they used to have” (Strange 2000: 3). 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, 91-99; see also van Creveld 1999: 336-414).

More consequential for many theorists has been the ascent of markets combined with globalization. As markets have become transnational and capital mobility heightened through financial liberalization, the power of the state to tax and control its economic domain has been seen as increasingly imperiled, imposing fiscal constraints on the state or, at worse, ‘hollowing out’ the state and its capacity for governance (see Rhodes 1994: 138-140; Holliday 2000: 167-168). 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 is thus explained as a combination of diminishing state fiscal capacity due to the pressures of globalization, mobile capital, and labor migration — too higher tax regime and mobile, highly qualified labor will migrate (see Razin & Sada 2005). Similarly for Ulrich Beck, the advent of 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 Beck 1999; Jarvis 2007; Strange 2000; 83). For Beck, the absolute 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 globalization of regulatory norms and standards as power is transferred between agential actors. Cobden *et al*, along with other liberal internationalists, see the power of the state being systematically transferred to international organizations and global rule regimes, depriving the state of absolute political and economic sovereignty because of the exigencies of globalization and the transnationalization of an increasing spectrum 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 (Cobden *et al* 2005; see also 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.

¹ One of the few exceptions to the ‘decline of the state’ thesis is the work of Linda Weiss (1999) *The Myth of the Powerless State*. Ithaca: Cornell University Press.

All these approaches share a common conceptual 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 conceptualization of the sources of state power, however, perhaps unfairly characterizing 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) *Stabilization function* in which the state manages employment, inflation and interest rates through a determination of industrial and labor 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 dichotomized between *fiscal authority*; that is the ability of the state to tax, borrow and spend, and between *regulatory authority*; that is 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 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; “the public budget is a soft constraint on rule makers because the real cost of regulatory programs is born not by the regulators but by those who have to comply with the regulation” (Majone 1997: 13). Measuring the extensity, 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 as effectively through rule making and regulation. As the US Office of Management and Budget observe:

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 program-by-program 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 (as quoted in Majone 1997: 13).

These twin sources of state power, however, are not always reconciled. For Susan Strange 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 (Strange 2000: xi):

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 (Strange 2000: xi).

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 United Kingdom 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, pp. 29-31; Levi-Faur 2005, p. 20). Indeed, a casual glance at the composition of the unified civil service in the UK in the late 1980s compared to the mid 1990s might indeed lead one to assume government and the state had shrunk. The ‘Next Steps’ program commenced in 1988, for example, announced a rationalization of the number of civil servants in ministerial departments, preserving only a small ‘core engaged in the function of servicing ministers and managing departments’ (as quoted in Dowding 1995: 72). By 1994 ministerial

departments had staffing levels only about a third of levels at the commencement of the program. Yet the sense in which government shank 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 directly 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. In the last year of its administration, for example, the Brown government issued 2,500 pages of directives to the UK police forces concerning protocols of conduct, governance, and directives about policing, without any changes to the fiscal expenditures on policing (BBC September 15 2010).

For Majone, the regulatory state is thus not necessarily a weaker, less powerful state, but a reconfigured state that uses alternative modalities of governance to effect 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 the Third Way, New Labor and the premiership of Tony Blair, and was constructed around a ‘range of governance programs’ that relied on managerial and institutional arrangements to enhance market operation and efficiency for the broader social good (Jayasuriya 2005: 12).

Toward a Typology of the Regulatory State: Modalities of Governance

These images of the regulatory state produce mutually reinforcing and contradictory theorizations 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 globalization of rule governed behavior 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. So governments are making rules, and perhaps more of them, and exercise power through the issuance of rules and directives. But governments have always made rules, issued decrees and directives,

and exerted power through doing so (Hood & Scott 1996; 323). How does this constitute the emergence of a fundamentally new state entity — the regulatory state? Again, the answer to this question lies across multiple literatures, suggesting a composite set of images. For Majone, one of the major theorists of regulatory governance, its distinctive modalities are situated in increasing levels of administrative decentralization, 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 purchases who, on behalf of their client group, buy services from the supplier offering the best value for money’ (Majone, 1997: 10; Majone 1999: 3-9; Levi-Faur 2010). At base, the regulatory state is thus distinctive because of the reorganization of how the state does business: who provides services, how tendering, 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 specialized 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 decentralized administrative units (Majone 1997: 21; Blankart 1990: pp. 230-236; Legaspi 2006: 139).

For proponents, the agency model offers a series of distinctive advantages over previous modalities of governance. First, it allows specialized agencies to develop domain specific expert knowledge, improving governance capacity especially in domains where technical complexities operate (financial services, for example). Second, it de-politicizes governance, moving decision-making to technical and expert domains, where decisions are more likely to be rendered via evidence-based assessment and determination, balancing social and economic objectives. Third, it provides technical-expert decision makers with autonomy, creating technocratic policy spaces that are not subject to short-termism or political pressures, but able to plan and design policy in support of the longer term sustainability of the sector. Fourth, freed of short-termism or political pressures, the agency model improves the prospects for policy continuity, increasing policy certainty and the efficiency of governance in the sector. Fifth, the agency model enhances the credibility of regulatory commitments, reducing uncertainty by removing the prospects for ‘devastating ministerial interference’ and thus, in turn, helping mobilize private capital into the sector. Finally, agency based modalities of governance are seen to engineer high levels of legitimacy: ‘[F]aith in the power of expertise as an engine of social improvement,’ notes Majone, which ‘neither legislators,

courts nor bureaucratic generalists' possess provides 'an important source of legitimization for regulators' (Majone 1997: 17; Majone 1999: 12; see also Cook and Mosedale 2007: 45-48). 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-politicized agency via which to achieve market operation, efficiency, and thus development. Indeed, for many it represents a modality able to overcome obstacles to reform, reform blockages, and transform 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 thus about the design and construction of new regulatory institutions and regulatory instruments, more fundamentally it is also about the realization of state-market outcomes (International Finance Corporation 2010: 21-22; see also Hira *et al* 2005; United Nations 2006: 128-129). As the IFC observe, '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' (International Finance Corporation 2010: 1). In the eyes of 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 a modality of 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 notes, the focus on regulatory techniques (agency based regulation, stakeholder engagement and transparency practices, etc) ‘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’ (Black 2000: 598). The danger, as Black observes, is that in pursuit of an increasingly ‘proceduralized’ approach to regulation, the literature and practices of regulation become ‘technicized,’ 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’ (Black 2000: 598; see also Levi-Faur 2005: 14; North 1990).

While Black is correct to suggest that ‘technicized’ discourses can conceal the values that underlie them, it remains the case that constructing regulatory states in the global south of whatever ‘moral form’ rests on a series of technical instrumentalities. These fall into three main areas: (1) design of regulatory instruments, including institutional composition, functional structure and rule deployment; (2) capacity and operational requirements, including resource, technical, administrative and analytical capacities; and (3) institutional technologies for normalizing and proceduralizing the various dimensions of 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, of course, 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, formal institutions, procedural authority and norms that instantiate the new institutional and rule environment (Cook and Mosedale 2007: 45). It is this latter series of institutional-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 maleficence, 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 regulatory eco-environment to construct. These dimensions of regulatory governance thus suggest a much greater series of costs, capacities, and institutional technologies across a wide spectrum of

socio-political sites (the judiciary, administrative review systems, tribunals and appeals processes, enforcement and compliance regimes, consultation and engagement systems, etc.), than might first appear the case. Indeed, while proponents of regulatory modes of governance lauder their cost effectiveness and suggest they impose few fiscal burdens on the state, in reality the acquisition and realization of the soft-institutional technologies necessary to ensure their efficient functioning represent extensive acquisition, set up, implementation, and maintenance costs (see Minogue 2004). I outline these capacities / costs and relate them to a comparative typology of the interventionist and regulatory state in Table 1.

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

II The Indonesian Electricity Sector: Governance Gaps and Regulatory Dilemmas

If you were flying into the Soekarno-Hatta International Airport on August 6, 2010, Indonesia's national airport that links the nation's capital, Jakarta, to the region and the world, you were flying into chaos. For the third time in as many weeks, the electricity supply to the airport was interrupted, the lights flickered, flight management and booking systems went down, and air traffic control technicians were forced to spend hours bringing vital air traffic instruments back on-line. Sixty two flights were delayed, the travel plans of thousands of passengers' interrupted, and inbound flights were diverted.

Several days earlier, Indonesia's President, Susilo Bambang Yudhoyono (SBY), pledged to the nation the commencement of a 'rolling blackout-free era' to mark the government's new electricity program. Among the program's key initiatives were plans to tackle the endemic problem of capacity shortages, reliability of supply issues, reduce the fiscal burden of state provisioned electricity subsidies, and a series of broader programs to address the 19 million households in Indonesia who remain without access to electricity (Jakarta Globe 2010a). Central to the new electricity program was the government's planned 15% increase to electricity tariffs which would inject much needed capital into Indonesia's sole state owned electricity provider, Persero - Perusahaan Listrik Negara (PT PLN), allowing PLN to roll out enhanced 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 come, gone and failed. Political pressure from the House Commission VII on energy saw the proposed tariff increase reduced to 10%, while popular outcries from consumer and industry groups

forced the government to backpedal and subsequently announce a ‘rethink’ of the proposed tariff increase. By September 2010 the government was in full retreat, announcing that it would scrap the planned rate hike for electricity tariffs (Jakarta Globe 2010b; Jakarta Globe 2010c).

Welcome to the topsy-turvy world of power politics in Indonesia. 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 potential to realize absolute reductions in poverty (Yoo 2006; Hartono & Resudarmo 2008; Jaswal & Das Gupta 2006). Despite its entry into the much coveted G20 forum, Indonesia continues to be plagued by electricity infrastructure that best resembles ‘third world standards’ — replete with all the pejorative implications entailed in this phrase. While the Indonesian economy has stabilized after the tumultuous events of the Asian Financial crisis, the fall of Suharto, and the bloody transition to democracy, still only 60% of Indonesians enjoy access to electricity, while regional centers and a vast number of rural residents enjoy only intermittent and unreliable electricity services — if at all. Indeed, blackouts are a way of life for Indonesians, with most hotels, commercial buildings, and many government officers, private companies and individual households maintaining their own diesel generators — a fact that speaks volumes to the poor service quality that dominates the sector.

With such dismal service quality, insufficient levels of 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 vexed nature of the sector, 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 ESI in Indonesia: A Brief History

Electricity is a political commodity and historically intimately 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 small private electricity generating companies were seized by a consortia of 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 Republic of Indonesia, with Soekarno establishing the Electricity and Gas Bureau under the Department of Public Works and Energy, who were charged with oversight and development of the electricity sector

(PLN). At the same time, the new constitution (Article 33) placed the government as the primary guardian and owner of the country's energy resources, essentially nationalizing energy assets and setting in place state-led control of the sector. 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.

Like many of its contemporaries in the region, Indonesia's control of the ESI began from a particularly low base, with the entire installed generating capacity standing at 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 industrialization and economic growth. The sector, however, was mostly non-existent, predominantly located in Java-Madura (reflecting the concentration of population and economic activity around sugar milling and refinement in these islands) with the greater part of the country not electrified. The capital requirements for the development of such an expansive network were thus considerable, exceeding available domestic resources and a still nascent system of public administration. In the first decade after interdependence, development of the ESI was thus hamstrung by domestic capital shortages, poor planning, coordination and inefficient administration of the sector. More importantly, Indonesia's political relations with the Soviet Union who had supported Indonesian independence and sponsored the country's membership to the United Nations in 1950, had knock on effects in terms of international financing options. Compared to its regional counterparts in Thailand or the Philippines who utilized World Bank loan facilities to kick-start national electrification programs, Indonesia's antipathy to Western interests forced a reliance on various technical assistance and soft loan provisions from the Soviet Union, otherwise constraining development of the sector. Indeed, as Kapur *et al* observes, 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,' cutting off potential soft-loan facilities and its ability to boost development of the electricity supply industry (Kapur *et al* 1997: 467; see also Mason and Asher 1973: 198).²

Indonesia's efforts at developing the electricity sector up until the 1970s were thus done almost entirely off the back of meager domestic capital provisions, initially coordinated via the Electricity and Gas Bureau, and from January 1961 with the formation of the state owned enterprise BPU-PLN (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 (PGN), responsible for natural gas. These historical-institutional legacies are important, since they not only set in place powerful state owned enterprises (SOEs) but a series of path dependencies that came

to dominate the sector. Indeed, state-led industrialization policies defined the development ethos of the Indonesian state until the mid-1980s, bestowing political privileges on SOEs, natural monopolies, control over substantial resources and, in the process, constructing powerful constituencies aligned with the political structure of the Indonesian state — first under Soekarno and then Suharto. 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 organization 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 Indonesian central bank as a means of funding capacity and network deployment through the 1960s and early 1970s, excessive lending to SOEs had created precarious debt levels, excessive inflation (at one point as high as 635%), and had led to a blow out in the current account deficit. PLN like other SOEs had lived off soft, state directed credit, but 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 deployment. More importantly, as PLN entered the 1970s, the global energy crisis and soaring energy prices created excessive opportunity costs for PT Pertamina (Indonesia’s state owned oil and gas company), 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 aggressively to coal fired power plants and reengineering its business through vertical integration into the coal and coal transportation sectors – all at considerable cost (see Kapur et al 1997: 467-490; Dubash 2002: 76). While Indonesia benefited off the back of its oil and gas exports amid increased energy prices (1973-4, 1979) and was able to use financial transfers to compensate various SOEs, such a model was not sustainable, particularly amid rising fears of a global recession, falling oil prices and tighter credit environments.

The World Bank, Reform Agendas and the Introduction of Independent Power Producers

By the early 1970s Indonesia’s relationship with the World Bank had been transformed, driven by the Bank’s president, Robert MacNamara, 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 to this day. While the Bank championed reform of the sector, especially in terms of private participation and cautious liberalization, 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 Indonesian state in all facets of the economy. Reform or liberalization as ends in themselves were antithetical to the interests of Suharto, political and business elites, as well the SOEs themselves. As Richard Robison and Andrew Rosser note, by 1980 the Indonesian state controlled 60% of the equity in all domestic investment, underwrote the SOEs through progressive 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 legitimized the *de facto* possession of the apparatus of the state by its corps of officials' (Robison & Rosser 2000: 175). 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 coordination of possible reform efforts problematic. Prior to 1978, for example, multiple ministries from geology, mining, and industry had been charged with oversight over the energy sector, but essentially all operated in the shadows of PLN, whose in-house knowledge, analytical and planning capabilities stood in stark contrast to the poor levels of capacity operating in 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 BAPPENAS (Indonesia's National Development Planning Agency) or allied ministries shunned to the sidelines. Reform of the sector through engagement with the ministries was thus a non-starter, forcing the World Bank to open direct links with PLN but whose own interests limited World Bank engagement to low level technical programs focused on capacity development in planning, systems efficiency and financial management (interview, March 4 2009; see also Purra 2011).

By the early to mid 1980s a global recession and a collapse in world oil prices precipitated massive declines in state revenues and the on-set of a recession, diminishing an already narrow tax base and causing Indonesia's budget deficit to blow-out. More importantly, for SOEs like PLN the state's capacity to transfer resources or underwrite investment was now 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 & 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 to meet the needs of millions of Indonesians who remained without access to electricity, but without the capital to support further investment or the financial discretion to raise and set

tariffs. The financial crisis of the 1980s thus provided the catalyst for reform, paving the way for World Bank intervention.

Reform in the ESI came through two avenues. First, World Bank loans provided the capital necessary to sustain generation and transmission capacity. During the 1980s, for example, Indonesia became the Bank's largest borrower in the electricity sector, with the Bank financing a total of 18 projects by 1989 – 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 Bank also pushed ahead with various studies suggesting 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 overhaul of the regulatory system, greater private sector participation, and foreshadowed the unbundling of PLN, its decentralization and nominating it as a potential candidate for future privatization (World Bank 1989). Most poignantly, the report spoke to the cumbersome system of governance within the sector, highlighting the crisscrossing lines of fractured authority that because of their dysfunctionality had the perverse effect of rendering PLN with greater autonomy. 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, in part reflecting the importance of electricity to national development and thus the desire for multiple stakeholders to engage the sector, but in the process creating vexed governance systems that essentially stalled the capacity for innovation and reform. PLN could thus continue to operate in an environment which, because of its dysfunctionality, rendered it free from serious reform attempts or external meddling. Indeed, the report went so far to chide 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 new Electricity Law, for example, private sector participation only became possible in 1992 with the promulgation of the supporting regulations with Presidential Degree No. 37. This announcement was followed by Decree No. 23/1994, marking the corporatization of PLN (Seymour and Sari ND: 5; see also Sari ND: 5-6).⁴ Collectively, these regulations made possible the most significant period of in change in

the history of the sector, but in the process setting in train a series of events that would bring the sector to bankruptcy and threaten the financial viability of PLN. As Seymour and Sari observe, ‘an unfortunate feature of the decree [No.37] was that it opened the door to unsolicited proposals for the private production of electricity’ (Seymour and Sari ND: 4; see also Dubash 2002: 79). While then President Suharto had agreed in April 1990 to the development of the first private power plant in Indonesia under a build-own-and-operate scheme at a site in Paiton, the flurry of private sector projects that followed would have serious consequences for the sector. The Paiton I project, in particular, set a poor standard, and was financed and negotiated on a ‘take or pay’ contract basis, guaranteeing the operator favorable returns but in the process forcing PLN as the off-taker to utilize their capacity in preference to other, cheaper utilities that had been constructed with World Bank loans. This began a process of downloading long-term contracted financial burdens on to PLN, increasing production costs but otherwise leaving un-reformed tariff structures. The Paiton I utility, for example, would sell electricity to PLN at a contracted rate of USD8.5 cents per kWh, Paiton II at USD6.6 cents per kWh, while PLN was forced to on-sell electricity at tariffs denominated in Indonesian Rupiah of the equivalent of between USD2.5-3.5 cents per kWh – exposing PLN not only to cost-revenue liabilities but substantial currency risks (Sari ND: 6; Robison and Rosser 2000: 187). More alarmingly, the take or pay power purchase agreements (PPAs) were contracted typically for 30 year periods, dollar-pegged, and committed PLN to long-term purchase agreements regardless of capacity requirements. By 1997, the rush to secure lucrative agreements saw 25 further PPAs signed with IPPs, creating over-capacity and an excessive large reserve margin, around 51% of existing installed capacity – at the time one of the highest in the world (Sari ND: 7).⁵

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 noted at the time, negotiating lucrative IPPs was easy: ‘you simply hooked up with a Suharto relative or friend, and in a typical arrangement, offered to ‘lend’ them 15 percent equity, repayable only when the electricity started to flow’ (as quoted in Wu and Sulistiyanto 2006). While IPPs and PPAs had appeared attractive as instruments able to enhance capacity with little financial burden on the state, their introduction via a governance environment that was impaired created conditions that severely distorted the sector. PLN, for example, had warned repeatedly that the rush to sign so many PPAs was creating excess capacity and longer term financial obligations which it could not meet given the prevailing tariff structures, but equally PLN had little latitude to resist signing PPAs. As the former director of PLN noted, ‘the power companies dictated terms to us because they had Indonesia’s first family behind them. Resisting was like suicide’ (as quoted 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, March, 2009). Without the institutional capacity to undertake full due diligence, and in an environment where PPAs were negotiated non-transparently, without public tendering or bidding processes, the contours of the financial obligations that PLN was exposing itself to only began to emerge gradually. 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. These warnings became progressively stronger, and by November 1994, the World Bank issued a letter to the Indonesian government estimating PPA liabilities would amount to USD8 billion over the next ten years from excess capacity and excessive costs (Dubash 2002: 79). By 1997, just prior to the outbreak of the Asian Financial Crisis, independent analysis suggested that PLN's total liability over the 30 year lifecycle of the PPAs amounted to a staggering USD\$130 billion dollars (as quoted in Purra 2011).

The Asian Financial Crisis and Reformasi: 1997-2010

By August, 1997, as the Asian Financial Crisis deepened, Indonesia was forced to abandon the Rupiah's trading band, allowing the currency to float freely having exhausted central bank reserves to prop up the currency. By October 1997, the currency was in virtual free fall, having lost 80% of its value over the preceding months, and forcing the Indonesian government to seek emergency support from the IMF who, on October 31, announced a bail-out package that would eventually total USD46 billion (Sari ND: 7). Massive economic destabilization, capital flight, factory closures, bank insolvencies, rapid inflation — soaring to some 400% — along with 27 million people being plunged below the poverty line, created both an economic and political crisis for the country, as protestors took to the streets and demanded retribution for the chaos that had befallen them (Purra, 2011; Sari ND: 6; Seymour & Sari ND: 7; see also Robison and Rosser 2000:171-191).⁶

For PLN the Asian Financial Crisis was calamitous. The collapse of the currency, the high leverage rates utilized to construct the IPPs, and the longer term financial obligations which PLN had been exposed to through currency risks associated with PPA contracts negotiated in US dollars, were unsustainable. PLN was bankrupt and unable to service its financial obligations, 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, for example, all made specific reference to the power sector, requiring the government to commit to power sector restructuring, including the establishment of legal and regulatory frameworks for the creation of a

competitive electricity market, restructuring of PLN, unbundling of the sector to allow for rationalization and competition, instigation of a cost recovery tariff regime, elimination of electricity subsidies, as well as governance reforms to improve transparency and accountability in the sector. In essence, the LOI committed the government to the introduction of a new electricity law by December 1999 and a fundamental overhaul of the sector (Sari ND: 7; Dubash 2002: 83; Robinson and Rosser 2000; see also Seymour and Sari ND: 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 (October 31, 1997), Suharto reinstated 15 large infrastructure projects, most of dubious economic value, including the construction of five IPP projects on Java where electricity was already in oversupply. As Robinson and Rosser note, ‘business groups associated with the Suharto family were prominent among the beneficiaries of this policy reversal’ (Robinson and Rosser 2000: 179). 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 via which PPAs had been negotiated, set in place political legacies that would essentially make future governance of the sector a highly vexed affair.

Amid these realities, reform of the sector ebbed and flowed between financial crises, sector disorganization, popular political backlash, leadership changes, and the emergence of democracy. The dire economic circumstances of millions of Indonesians made attempts at tariff reform near impossible, with the government first rejecting PLN’s request to increase tariffs by 150% in 1998-1999, but then the Habibie government acquiescing to PLN’s introduction of higher tariffs on the wealthiest consumers (Purra 2011). Indeed, PLN itself became the target of popular protests when in February 2000 it was reported that as part of an ABD reform package PLN had agreed to a 55% tariff increase, described in the popular press 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 of electricity for Indonesia’s 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, but 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 set in play on-going dynamics: a need to increase revenues to reflect cost of production, service its debt obligations and resolve outstanding liabilities

regarding IPPs and the PPAs, as well as expand its network, while constrained by mandated public service obligations (PSOs) and otherwise forced to guarantee service provision regardless of the financial implications for PLN. While corporatized and forced to operate in a manner that ensured its financial viability, the post-crisis era thus emerged as one that essentially downloaded continuing financial burdens on to PLN but without the ability to orchestrate tariff reform that would make the sector financially viable.⁷

There was, however, broad if slow progress on the question of sector restructuring and the implementation of the recommended reforms agreed as part of the IMF bailout package. Protracted and extensive 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 reform agenda and foreshadowed the emergence of a competitive electricity market, wholesale spot market, the development of an Electricity Market Supervisory Body (EMSB) 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 Electricity Law and the reforms it foreshadowed were not without controversy, however. PLN, in particular, opposed the reforms, keen to protect its monopoly status and dominance in the sector. PLN unions also opposed the law, fearing rationalization, loss of benefits and jobs (see also PLN Employees 2009). Importantly, as one of the largest public sector employees 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 (see Statistics Indonesia). So too, vested interests in the sector, especially those with existing financial arrangements with PLN (coal, coal transportation, and small IPP constituencies), feared the reforms would usurp existing commercial arrangements and jeopardize future ones, while consumers feared tariff rises and the impact on the affordability of electricity. 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 subsequent privatization of PLN assets, or how transparent and socially responsible might be commercially negotiated IPPs and PPA agreements (interview, September 2008). Collectively, these concerns galvanized opposition to the 2002 Electricity Law which was subsequently challenged in the Indonesian Constitutional Court and annulled in December 2004 — on the grounds that it violated article 33 of the Constitution. As Rakhmat *et al* 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' (Rakhmat 2005). While the annulment did not challenge the right of private sector participation it clearly expressed concerns about the prospects of further foreign participation and signaled the willingness of the court to ring-fence the sector. More importantly, it sent strong signals about the prospects for commercialization, and the limits to which tariff reform might be possible.

The immediate consequences on the sector were devastating, highlighting the political risk for investors from judicial intervention in commercial practices and the apparent ease of political constituencies to mobilize judicial opposition. Investors, especially foreign investors, were essentially warned off with the sector becoming a 'no-go zone' (interview March, 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 past, this situation only became more acute, with the revenue gap growing to a staggering USD\$6-8 billion annually, forcing the Indonesian government to cross-subsidize PLN and allocate 6-8% of Indonesia's entire annual budget outlays to electricity subsidies (see Statistics Indonesia). By 2005, the sector was thus stagnating, with insufficient investment to meet rising electricity demand, artificially low tariffs draining national resources, and PLN forced to operate in a financial environment that was unsustainable. Declining reserve capacity, rolling brownouts, and poor service quality thus forced the government to respond by announcing in 2006 a program 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 other parts of Indonesia) and rolled out between 2006-2010, and then a second phase consisting of a 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 rolled out by 2015 (Purra 2011). As Purra observes, however, as of 2010 the first phase is only 60% on target and the second phase unlikely to be implemented since the anticipated USD\$17.3 billion required to fund the projects has yet to be secured (Purra 2011).

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 maneuverings as the sector struggles under the burden of policy and reform inertia.

III Regulatory Modes of Governance & the ESI in Indonesia: Prospects, Suitability, and Potential Pitfalls of Policy Transfer

Governance of the ESI in Indonesia has been a messy and tumultuous saga that has hit at the very heart of government and mobilized mass protests and on-going 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 synonymous with the national experience: emblematic of the machinations of the transition from authoritarianism where the sector was used to line the pockets of Suharto, 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. The Indonesian electricity sector is thus a uniquely politicized space in the national mindset, and its story intimately associated with the political transition the country has experienced. As a space for policy transfer, however, the sector is 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.

First, the persistent weakness and instability of institutional and governance arrangements. Governance of the Indonesian ESI has always been an unstable set of affairs. The monopoly status of PLN, the Constitutional requirements that energy resources be overseen by the government, and the operation of public service obligations amid tacit processes of commercialization, 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-organization competition. PLN, BAPPENAS, the Ministry of Finance, the Ministry of Public Works, the Ministry of State Owned Enterprises, the National Energy Policy Council (NEPC), the President, Commission VII (responsible for to drafting of bills and laws related to energy) within the People's Representative Council (DPR), 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.⁸ 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 in the

sector, for example, responses about the governance mechanisms within the ESI, administrative and oversight procedures, licensing, tariff review processes, or the roles and responsibilities of various 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 National Energy Policy Council, for example, supposedly the penultimate national coordinating 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 March 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 proceduralization to emerge and thus for transparency and accountability systems to establish and operate effectively. More obviously, the dysfunctional polycentric nodes of governance that operate throughout the sector, 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 (MEMR) operates as the official organ of oversight, planning, and budgeting in the sector, in reality it suffers from limited capacity, 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 Yusgiantoro Purnomo, the Minister of Energy and Mineral Resources and his senior most 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 of the DPR coordinated or operated in unison with the MEMR 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 also Purra 2011).

For PLN, the response to such a fractured and vexed governance environment has been to internalize 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 which adds further to the governance dilemmas of the sector (interview, November 2008).

Second, the contested nature of legitimacy in the sector. The diffuse, polycentric nodes of governance that operate in the sector and which historically have made the sector opaque, dysfunctional, and corrupt, has also served to construct a legacy of contested legitimacy. In particular, the collusion between elites and the kick backs 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. 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 democratization in Indonesia, has witnessed a powerful fourth-estate challenge 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 2 X 10,000 MW projects to address capacity shortages, were often diagnosed as a problem of officials and public sector organizations not wanting to enter into contracts for fear of incurring allegations of corruption (interview November 2009; interview Globe Asia, March 2010). Widely held public perceptions about poor levels of probity thus serve to deprive various organizations in the sector of the legitimacy required to operate effectively and for reform to be realized.

More acutely, however, the sector suffers from a legitimacy crisis. In part because the sector is so overpopulated with multiple agencies, competing sectional interests, and contested rule and authority ownership, no single institution or agency has emerged with the legitimate authority to assume a leadership role or command the sector. While PLN dominates by virtue of the fact that it is the monopoly industry operator, its interests are not necessarily perceived as aligned with the national interest or the well being of ordinary Indonesians in terms of equity of access issues and network development — indeed, for many, PLN *is* the problem that needs to be addressed before meaningful reform of the sector can commence. The sector thus suffers from a governance crisis where, absent embedded institutions able to command legitimacy and orchestrate effective coordination 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 establish and be effective in the sector. Could an independent regulator feasibly be expected to establish its independence and probity in such an environment and de-politicize what remains a highly politicized policy space? The most recent events in the sector as related earlier in this paper, and which involved the insertion of President Susilo Bambang 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 over the proposed tariff increases were essentially mounted off the back of arguments that the higher tariffs would feed into elite interests, benefiting the IPPs, the independent coal mine operators, while further impoverishing Indonesians (see Jakarta Globe 2010b; Jakarta Globe 2010c; interview, Globe Asia, March 2010). The proposed rate hikes, it was argued, were not legitimate but another example of rent seeking behavior.

Third, the predominance of patrimonialism. Indonesia remains a patrimonial state with nascent and fragile institutions. Much of its most recent history, especially under the ‘new order’ of Suharto, rested on patron-client relationships, where a series of elite families were able to collude and enjoy state sectioned monopolies (Robinson and Rosser 2000). The energy sector, in particular, evolved under such arrangements, and at the height of Suharto’s regime, was plundered as a result of it. It would be wrong, however, to conclude that such patrimonial relations disappeared with the fall of Suharto. Powerful economic interests persist, as do the elite family-business connections which still dominate the political-economy of Indonesia. The chair of the powerful 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 suggested that in Indonesia how else could you be involved in making laws and proposing bills without being involved in the sector, knowing the people, their businesses, and their business needs? (interview March, 2009). In a sense he is right, since in Indonesia 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 elsewhere would be judged inappropriate. While democratization and a newly mobilized fourth-estate 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 Indonesia’s

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.

Fourth, nascent forms of participation, administrative proceduralization 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. More importantly, they require systems of participation and engagement that serve both to communicate goals, values and sector processes, but also to involve stakeholders in the construction and embedding of such 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 which historically have served it so poorly. At base, Indonesia is thus trying to build institutions but 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 policy transfer of regulatory modalities of governance highly problematic. Institutional capacity remains low, corruption an endemic problem (albeit being addressed), judicial probity and independence still formative, and newly emerged democratic state 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.

Amid these challenges, enhancing the capacity of centralized bureaucracies and increasing the effectiveness of basic governance systems would seem the first and most judicious means for achieving enhanced social and economic outcomes. This speaks to the issue of sequencing and at what stage of the developmental trajectory reform, specific governance modalities and institutional technologies should be introduced. More importantly, it speaks to the calibration of institutional technologies to what Douglas North long ago identified as the ‘institutional endowment’ (North 1990; see also Besant-Jones 2006; Cook 2007). Without the appropriate institutional capacities in place, constructing regulatory states in the Global South might be akin to trying to build skyscrapers but on foundations plied with mud and sand. Despite the benefits regulatory governance modalities promise, it remains the case that the technologies to

support their operation are both complex and costly, and in many cases simply not available in developing countries. Far from a new panacea for reform, regulatory modes of governance transplanted into the Global South may well end up reinforcing the poor governance outcomes they are designed to overcome.

Table 1
Typology of the Interventionist and Regulatory State

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

	<p>revenue streams</p> <p>Control & access to markets / business / governance domains</p>	Industrial policy	<p>Licenses</p> <p>Setting standards & codes</p> <p>Defining & controlling procedural mechanisms</p>	<p>Administrative review / tribunals proceduralization</p> <p>Compliance and audit capacities across various institutional spectrums</p> <p>Functional property rights</p> <p>Enforcement & punitive mechanisms across various institutional spectrums</p> <p>Probity monitoring and enforcement mechanisms</p>
Key Actors	<p>Oligarchs</p> <p>Political elites</p> <p>Business / economic elites</p> <p>Nominated mandarins</p>	<p>Political parties</p> <p>Civil servants</p> <p>Corporate groups</p> <p>Trade unions</p>	<p>Regulators</p> <p>Industry / private sector groups</p> <p>Civil society groups</p> <p>Technocrats & experts</p> <p>Administrative tribunals</p> <p>Judiciary / Judges</p>	<p>Adequate and independent resources for regulators and regulatory affairs</p> <p>Platform capacity for stakeholder engagement / review in decision making</p> <p>Sufficient analytical and human capacity to populate regulator</p> <p>Adequate compensation to attract and retain personnel with sufficient analytical and expert knowledge capacity</p> <p>Sufficient capacity and resources to operationalize transparent administrative review processes</p> <p>Operational accountability mechanisms to ensure regulator is held accountable for decisions</p> <p>Disclosure, transparency and freedom of information mechanisms to ensure against regulatory capture by sectional interests</p> <p>Realized legitimacy of the regulator in discharge of regulatory mandate</p>
Conflict Arenas	Relationships between oligarchs	<p>Budgetary allocations</p> <p>Entitlements</p>	Competition for control over rule making	Review and disputation procedures are in place and operative

	<p>Elite competition for access to oligarchs</p> <p>Competition / disputes over patronage entitlements</p> <p>Factionalism & disputes between political & social networks</p>	<p>Budget transfers</p> <p>Ministerial control over resource allocation</p> <p>Inter-ministerial / ministry competition</p>	<p>Disputes / inter-agency competition for rule ownership</p> <p>Disputes over domain authority, reach and extensity</p> <p>Disputes over rule interpretation</p>	<p>Enforcement mechanisms for compensation</p> <p>High capacity administrative review</p> <p>Compliance to and respect for administrative proceduralism</p>
Key Institutions & governance modalities	<p>Oligarch / elite control of key decision making institutions / apparatus</p> <p>Nominated senior political mandarins</p> <p>Elite controlled executive branch</p>	<p>Parliament</p> <p>Civil service / bureaucracy</p> <p>Ministerial departments</p> <p>State owned enterprises</p> <p>Command & control</p>	<p>Parliamentary committees</p> <p>Independent agencies</p> <p>Commissions</p> <p>Tribunals</p> <p>Public hearings</p> <p>Polycentric decision making structures</p>	<p>Ability to reallocate power from centralized bureaucracies to independent administrative units</p> <p>Ability to mediate inter-agency resource competition</p> <p>Ability to coordinate among polycentric nodes of governance</p>
Policy style	<p>Top down, elite dominated, command & control, low levels of accountability or transparency</p>	<p>Discretionary, populist, political</p>	<p>Rule bound, mandated, legalistic</p>	
Political Culture	<p>Oligarch / elite based power</p> <p>personal / family power networks</p> <p>Dominance of oligarchic / elite political / social / economic networks</p> <p>Circulation of power positions among elites</p>	<p>Corporatist, hierarchical, centralized, top-down; statist</p>	<p>Pluralist, diffuse, administrative, technical, specialist, domain specific, market orientated</p>	

Political Accountability	Nominal accountability Intra-elite informal accountability through patron- client networked based consent	Direct / representative democracy	Indirect / agency based	
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Source: Adapted from Majone 1997: 12-15.

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² Despite being the fourth most populous and poorest nation in the world in the 1960s, Indonesia enjoyed no loans from the World Bank (Mason and Asher 1973: 198). Indonesia rejoined the World Bank and IMF in 1967 subsequently to become one of the largest recipients of World Bank loans.

³ By 2001, the Asian Development Bank (ADB) also emerged as a prime lender, funding 28 projects to a total of USD3 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 independent power producers and the private provision of 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 considerably higher after subsidies and soft loan provisions were factored in (see Sari ND: 5).

⁵ A total of 27 PPAs with IPPs were signed by 1997 (see Xun and Sulistiyanto 2006: 117).

⁶ Sari 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 (Sari ND: 6).

⁷ Tariffs were, in fact, increased nominally in 2001 and 2002 primarily through the partial withdraw of government subsidies (Dubash 2002: 87).

⁸ Within the People's Representative Council (DPR) there are eleven commissions responsible for the formulation of bills and laws for submission to the plenary session of the DPR (also 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.