



## ARMA Update 25 May 2023

### **ESG and Climate Change Update: Can foreign buyers purchase carbon credits in Indonesia's carbon markets?**

The Ministry of Environment and Forestry (“**MOEF**”) recently issued documents to further elaborate various questions arising from the issuance of the Presidential Regulation No. 98 of 2021 concerning the Implementation of Carbon Economic Value for Achieving Nationally Determined Contribution (“**NDC**”) Targets and Control of Greenhouse Gas (“**GHG**”) Emissions in National Development (“**PR 98/2021**”) which we have highlighted in this [ARMA Update](#), and the MOEF Regulation No. 21 of 2022 regarding the Guidelines of Carbon Economic Value Implementation (“**MOEF 21/2022**”) was issued as the implementing regulation of PR 98/2021 which we have highlighted in this [ARMA Update](#).

This ARMA Update will cover the key points and takeaways of the MOEF Letter No. S.95/MENLHK/SETJEN/SET.1/2/2023 dated 2 March 2023 addressed to the Indonesian President (“**S.95 Letter**”), the MOEF Position Paper (*Kertas Posisi*) dated 5 May 2023 regarding Indonesia: International Carbon Trading Not Prohibited but Arranged Systematically (“**Position Paper**”), and the MOEF Circular Letter No. SE.5/MENLHK/SETJEN/PPI.3/5/2023 regarding Climate Action and Carbon Cooperation Governance dated 10 May 2023 (“**CL 5/2023**”).

#### **Key Takeaways from the S.95 Letter**

- **Indonesia's Carbon Trading for Domestic and Foreign Affairs**  
Prior to the issuance of PR 98/2021, carbon projects are not required to be recorded, as well as not being imposed of taxes/non-state tax revenue. However, PR 98/2021 shall apply to carbon trading activities carried out before PR 98/2021.<sup>1</sup> Further, the MOEF 21/2022 has also regulated the technical arrangements for carbon governance.<sup>2</sup> Thus, PR 98/2021 and MOEF 21/2022 have technically regulated carbon trading activities which meet the requirements and can start their operation, both domestically and abroad, and it is emphasized that foreign carbon trading transactions with the existing regulations may be carried out.
- **Corresponding Adjustment**  
The basis for corresponding adjustments is stipulated in the Paris Agreement that states parties engaging voluntarily in cooperative approaches that involve internationally transferred mitigation outcomes towards NDCs shall apply robust accounting to avoid double counting. Further, the use of internationally transferred mitigation outcomes to achieve NDCs shall be voluntary and authorized by the participating parties.

---

<sup>1</sup> Article 85 and 86 of the PR 98/2021

<sup>2</sup> Article 68 to 72 of the MOEF Reg 21/2022



The governance of foreign carbon trading with Corresponding Adjustments is regulated in MOEF 21/2022, to prevent potential double counting. The government authorizes the transfer of carbon units abroad,<sup>3</sup> and the Corresponding Adjustment is made during the first transfer in the International Registry System under the United Nations Framework Convention on Climate Change (“UNFCCC”) and is also recorded in the National Registry System for Climate Change Control (*Sistem Registri Nasional Pengendalian Perubahan Iklim* or “SRN-PPI”) for suitability of recording in both.<sup>4</sup> The transfer of SPE-GRK abroad is carried out during the recording of the Corresponding Adjustment.<sup>5</sup> In its implementation, if the carbon trading cooperation does not result in the transfer of ownership rights GHG Emission Reduction Certificate (*Sertifikat Pengurangan Emisi Efek Rumah Kaca* or “SPE-GRK”), the corresponding adjustment is declared zero per cent (0%). The implementation of authority and corresponding adjustment has become instruments of government control. All carbon trading activities are required to register with the SRN-PPI and are required to obtain an SPE-GRK through government authorities.

- **Carbon Levies**

Carbon levies include the Carbon Tax which is a mandate of the Ministry of Finance (“MOF”) in the form of a support base for Strengthening Climate Change Control through the Carbon Pricing mechanism. Carbon levies are in the form of levies in the fields of central and regional taxation, customs, and excise, as well as other state levies in accordance with the prevailing laws and regulations based on carbon content, potential carbon emissions, total carbon emissions, and/or Climate Change Mitigation Action performance.

On the other hand, Non-Tax State Revenue (*Penerimaan Negara Bukan Pajak* or “PNBP”) is carried out in the context for carbon trading, both regarding GHG emission reduction and carbon sequestration storage, imposed based on carbon trading transactions carried out from both the cooperation mechanism and through carbon exchanges. PNBP payment procedures shall be done through the PNBP information system (SIPNBP) and distributed to the Indonesian Environment Fund (*Badan Pengelola Dana Lingkungan Hidup* or “BPDLH”). Thus, it is currently being recommended that the Government Regulation No. 12 of 2014 regarding the Forms and Tariffs of PNBP (“GR 12/2014”) in the MOEF sector be revised to include carbon transactions and SPE-GRK issuance services.

- **Carbon Exchange (*Bursa Karbon*)**

In accordance with Law No. 4 of 2023 regarding the Development and Strengthening of the Financial Sector, the Carbon Exchange can only be operated by market operators who have obtained a business license from the Financial Services Authority (*Otoritas Jasa Keuangan* or “OJK”). Currently, the Head of OJK Regulation is being prepared regarding the implementation and Rule Base of the Carbon Exchange in Indonesia as an implementation of PR 98/2021. The implementation of the carbon exchange in Indonesia is prepared to be

---

<sup>3</sup> Article 25 (1) MOEF Reg 21/2022

<sup>4</sup> Article 19 (c) MOEF Reg 21/2022

<sup>5</sup> Article 45 paragraph (2) point b MOEF Reg 21/2022



fully connected with SRN-PPI and effective. Such regulation is expected to be enacted in July of this year. Technically, the Carbon Exchange will be regulated by OJK, MOF and MOEF and other related ministries and institutions for the technical regulation, requirements, work principles, transparency, etc.

### **Key Takeaways from the Position Paper**

- **Emphasis of Indonesia's Issued Carbon Regulation**

The position paper emphasizes the general rules that has been stipulated in the PR 98/2021, which is: (i) to register GHG emission reduction mitigation activities/actions into the SRN-PPI; GHG emission reductions must be calculated in accordance with Measurable, Reportable, Verifiable (“MRV”) principles; (iii) if GHG emission reduction is to be traded, it must be converted into an SPE-GRK through a certification process, and the SPE-GRK becomes a medium of exchange with monetary value; and (iv) there must be authorisation for international carbon trading, to avoid carbon contracts directly with forests.

- **International Carbon Trading**

The MOEF acknowledges that so far, there has been unauthorised and unrecorded carbon trading and provides references to criticize the pros and cons of the Voluntary Carbon Market (VCM), including criticism to the carbon credits generated from VCM lack quality and transparency, that the international arrangements of Article 6.4 have no specific mandate for VCM. There needs to be a standardized certainty in generating quality carbon credits with quality and environmental integrity, and transparency and the national regulations can be the basis for generating standardised carbon credits to achieve NDC targets, decarbonisation, and voluntary goals such as labelling, green financing and meeting market needs.

International carbon trading must obtain authorisation from the government. For simplification purposes and as an incentive, authorisation can be done more simply and can be done with technically limited exceptions. The requirements for such exemptions will be further regulated through a MOEF regulation. These exceptions, for example, can be applied to national strategic projects, Just Transition pioneer projects such as for energy, field pioneer projects on renewable energy or green industrial areas, forestry-based energy projects, strategic cooperation projects, etc. We note that S.95 Letter and Position Letter are silent on whether the upcoming regulation regarding authorization for international carbon trading also applies to VCM.

### **Key Takeaways from the CL 5/2023**

The efforts toward climate change control and achievement of the emission reduction target for Indonesia's NDC will need the commitment and active participation of the regional government. Based on the MOEF's monitoring, there is high interest in conducting cooperations between regional governments and foreign parties, whether it be foreign governments or private foreign



entities. Thus, in the planning, implementation, and monitoring of carbon pricing activity by regional governments, it is necessary to emphasize the following points:

- The management of regional cooperation with foreign countries is carried out in accordance with the applicable laws and regulations;
- The legality in relation to the licensing system is important to be taken into consideration (especially permits related to forestry and land aspects);
- If the regional government intends to carry out cooperation with various parties related to carbon, it is necessary to report in advance to the central government through the relevant Ministry and especially the MOEF regarding land-based or forestry activities;
- Non-compliance with the legal aspects of the forest/land areas and disregard for government provisions may indicate violations of laws and regulations and will result in legal sanctions, as well as affect the achievement of the government's commitment to the NDC. At present, investigations, preliminary audits, and environmental audits are being carried out and will continue for any indications of violations against national laws and regulations;
- Regional governments who have carried out activities prior to the publication of laws and regulations and this CL 5/2023 should report at the first opportunity regarding its cooperation activities to the MOEF;
- Regional governments implementing cooperation on carbon are required to register activities and results of the GHG emissions reductions and/or carbon absorption into the SRN-PPI;
- Technical consultations can be carried out by the regional government to the MOEF, and a Provincial Level Working Team is prepared to actualize credible carbon governance;
- Governors are encouraged to provide reference guidelines as stipulated in the CL 5/2023 to its Regents/Mayors in their respective Provinces.

### **Further Action from the S.95 Letter and Position Paper**

The S.95 Letter and Position Paper outlines several matters that will be implemented in the future, as further technical measures for carbon trading abroad were set out, which include:

- 1) Immediate regulations in regard to the detailed technical aspect of foreign carbon trading concerning procedures and ease of doing business that is in harmony with the national interests and in accordance with international rules/UNFCCC;
- 2) Immediate preparation of the current forestry sector Carbon Trading Roadmap (currently in final determination at the Ministry of Law and Human Rights);
- 3) The process of determining the carbon levies until the middle of this year. The NDC Sector Carbon Trading Roadmap Guidance is to be further consulted to the Indonesian House of Representatives by the MOF to further determine the carbon levies. In 2023, technical and detailed arrangements on the Carbon Tax is planned to be in place;
- 4) The development of the Carbon Exchange is planned to be launched in conjunction with the completion of SRN-PPI and the NFP-UNFCCC Indonesia Carbon House in June 2023.



- Development and Improvement of the main facilitation of the SRN-PPI, planned for June 2023;
- 5) The preparation of the Indonesian Carbon Trading Standard Operating Procedure (SOP) is integrated into the Indonesian Carbon Trading Exchange (***SRN-Carbon Registry-Carbon stock Exchange***) for international or domestic carbon trading), which will become the rule of the game of the entire process in SRN-PPI. This is also a guidance for implementing climate change mitigation and adaptation actions as well as being a guidance for carbon trading;
  - 6) Development of the Indonesian Climate Change Control and Carbon Trading Hub, which provides information service centres, guidance, policy implementation as well as meeting places for Indonesia's NDC sectors. The Hub will be the place of operationalisation of the SRN-PPI, which is the centre of carbon credit mapping in relations to Indonesia's NDC target as well as the ratio of carbon credits that can be traded both in cooperation mechanisms and through the Indonesian carbon exchange. The Hub is projected to be launched in May 2023;
  - 7) Regulation regarding the mitigation action work distribution in the form of payments, with the principle of distribution to the government, regional government, private sector, community, and partners/NGOs;
  - 8) Regulation regarding activity mandates to BPDH from international, bilateral and multi-lateral participation, as well as plans for re-distribution/allocation of funding and activities to national/regional stakeholders for programs/activities;
  - 9) Regulation regarding the Development of the NDC Sector in the industrial processes and product use (“**IPPU**”), transportation, agriculture, waste, as well as marine and fisheries sectors towards the compilation of the 2<sup>nd</sup> NDC before 2025, as well as carbon trading maps for the IPPU, waste, agriculture, as well as marine and fisheries sectors.
  - 10) Development and update of the SPE-GRK in the main streaming Carbon Registry, which is projected to be completed in July 2023;
  - 11) The proposed revision of GR 12/2014 to include carbon PNBP elements;
  - 12) Development and improvement of the main facilitation of the SRN-PPI, until May 2023 as the main facility for inventory of GHG emission data from every action on Climate change mitigation and adaptation in Indonesia, as a facility for interconnection of the SRN-PPI with the International Registry system mandated by the Session Decision at the UNFCCC, which is projected to be completed in June 2023.

\*\*\*

Please get in touch with Rudi Bachtiar ([rudi.bachtiar@arma-law.com](mailto:rudi.bachtiar@arma-law.com)) and Salsabila Hana Safira ([salsabila.safira@arma-law.com](mailto:salsabila.safira@arma-law.com)) for further information.

**Disclaimer:**

*This ARMA Update is the property of ARMA Law and is intended to provide general information and should not be treated as legal advice, nor shall it be relied upon by any party for any circumstance. ARMA Law has no intention to provide specific legal advice with regard to this ARMA Update.*