

MORE CLARITY ON CARBON TRADING MECHANICS ¹²³⁴⁵

INTRODUCTION

Some much-needed clarity on the mechanics of Indonesia's carbon trading system is now available in the form of a new regulation issued by the Minister of Environment & Forestry.

While Indonesia's carbon trading system is still a "work in progress", the new regulation greatly helps in resolving at least some of the previously outstanding issues as to how the carbon trading system is intended to operate.

The new regulation may be seen as tangible evidence of the Government's commitment to making carbon trading a reality in Indonesia and sooner rather than later.

In this article, the writer will review how the new regulation clarifies the intended mechanics of carbon trading as well as what remains problematic.

BACKGROUND

In late October 2021, Presidential Regulation No. 98 of 2021 re Implementation of Carbon Economic Value to Achieve Updated NDC and NZE in National Development (**PR 98/2021**) was issued.

Among other things, PR 98/2021 outlines the broad parameters of Indonesia's approach to Climate Change Mitigation and Climate Change Adaptation through the implementation of the concept of Carbon Economic Value or **NEK**.

PR 98/2021 makes clear that the implementation of NEK is to be realized through a combination of (i) **Carbon Trading**, (ii) Performance Based Payments, (iii) Charges on Carbon and (iv) other mechanisms reflecting the development of science and technology.

Carbon Trading comprises both (i) Emissions Trading and (ii) GHG Emissions Offset.

PR 98/2021, however, provides only the most basic outline of the intended mechanics of Carbon Trading, with all the detail to follow in a series of ministerial regulations.

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⁵ An earlier version of this article appeared in the December 2022 – January 2023 issue of Coal Asia Magazine.

Readers interested in knowing more about PR 98/2021 are referred to the writer's earlier article "*Carbon Trading – Regulatory Framework Now Available*", December 2021 – January 2022 edition, Coal Asia Magazine, Petromindo.

On 20 October 2022, the Minister of Environment & Forestry (**MoEF**) issued Regulation No. 21 of 2022 re Procedures for Implementing Carbon Economic Value (**MoEF Regulation 21/2022**), being one of the ministerial regulations envisaged by PR 98/2021.

ANALYSIS AND DISCUSSION

1. Overview of MoEF Regulation 21/2022

MoEF Regulation 21/2022 provides much needed detail, that was lacking in PR 98/2021, on the use of Climate Change Mitigation efforts to implement NEK. More particularly, MoEF Regulation 21/2022 deals, at some length, with (i) domestic Carbon Trading and offshore Carbon Trading, (ii) Performance Based Payments, (iii) Charges on Carbon, (iv) the mechanics of implementing other aspects of Indonesia's NDC, (v) measurement, reporting and verification of the implementation of NEK, (vi) organizing the National Registry System for Climate Change Control, (vii) Greenhouse Gas Emission Reduction Certification, (viii) management of funds for Carbon Trading, (ix) participation in the implementation of NEK and (x) monitoring and evaluation of the implementation of NEK.

Each of the topics covered by MoEF Regulation 21/2022 are important and worthy of in-depth study. However, the rest of this article will focus exclusively on the various respects in which MoEF Regulation 21/2022 improves our understanding of how the Government intends that domestic Carbon Trading and offshore Carbon Trading should be carried out.

Although much more detailed than PR 98/2021, MoEF Regulation 21/2022 needs to be read in conjunction with PR 98/2021 in order to properly understand the Government's overall conception of Carbon Trading and how Emissions Trading differs from GHG Emissions Offset.

As is so often the case with Indonesian laws and regulations, the wording of MoEF Regulation 21/2022 (like the wording of PR 98/2021) leaves a great deal to be desired in terms of clarity and precision. Consequently, different interpretations are inevitable in the case of various technical aspects of those provisions of MoEF Regulation 21/2022 concerning Carbon Trading. Owing to MoEF Regulation 21/2022 having only been issued very recently, it has not proved possible for the writer's staff to obtain coherent and consistent explanations, from MoEF officials as to what is the correct interpretation of all the provisions of MoEF Regulation 21/2022 concerning Carbon Trading. Given the importance of MoEF Regulation 21/2022, it must be expected that arriving at the correct interpretation of the Carbon Trading regulatory regime, as now further explained by MoEF Regulation 21/2022, will take time. As a consequence, a number of the points made in this article are necessarily speculative in nature and may have to be reconsidered in due course.

2. Key Concepts

A tedious but, nevertheless, unavoidable part of understanding MoEF Regulation 21/2022 is developing a working familiarity with the meaning of at least some of the most important

concepts that are utilized in MoEF Regulation 21/2022. Even by normal Indonesian, “jargon heavy”, regulatory standards, MoEF Regulation 21/2022 continues the practice of PR 98/2021 in using a truly extraordinary level of technical jargon.

For the purposes of this article only, the most important definitions used in MoEF Regulation 21/2022 are as follows:

- (a) **Baseline GHG Emissions** – estimates of GHG Emissions in particular Sectors/Sub-Sectors or from particular activities/businesses within a particular period of time and without any Climate Change Mitigation or Climate Change Adaptation;
- (b) **Business Actors** – individuals or business entities (**i.e.**, companies, cooperatives, partnerships etc) carrying on business activities in a particular Sector/Sub-Sector;
- (c) **Carbon Exchange** – stock exchange or trading organizer that has obtained a business license from the Financial Services Authority for the conduct of Carbon Trading and/or the recording of ownership/transfers in the ownership of Carbon Units;
- (d) **Carbon Units** – proof of carbon ownership in the form of SPE-GRK/Other GHG Emission Certificates recorded in the SRN PPI;
- (e) **Carbon Trading** – market-based mechanism to reduce GHG Emissions through either Emissions Trading or GHG Emissions Offset;
- (f) **CDM** – clean development mechanism, being a GHG Emissions reduction mechanism in the framework of cooperation between countries;
- (g) **Climate Change Mitigation** – control efforts to reduce GHG Emissions or increase GHG absorption to reduce the risk of climate change;
- (h) **Climate Change Mitigation Action**– action/activity that can help achieve Climate Change Mitigation;
- (i) **Climate Change Adaptation** – efforts to increase the ability to adapt to climate change;
- (j) **Climate Change Adaptation Action** – action/activity that can help achieve Climate Change Adaptation;
- (k) **Compliance Period** – period of time stipulated by the Relevant Minister for measuring the compliance or otherwise of Business Actors in reducing GHG Emissions in accordance with the applicable GHG Emissions Upper Limit;
- (l) **Cross-Sector Carbon Trading** – Carbon Trading between different Sectors/Sub-Sectors;
- (m) **Direct Trade** – Carbon Trading conducted outside the Carbon Exchange between sellers which have excess Carbon Units and buyers which need Carbon Units;

- (n) **Director General** – director general with responsibility for organizing policy implementation in the field of climate change control;
- (o) **DRAM** – Climate Change Mitigation Action design document;
- (p) **Emissions Trading** – buying and selling of Carbon Units, as evidenced by SPE-GRKs, carried out through the Carbon Exchange or by Direct Trade;
- (q) **GHG** – gases contained in the atmosphere, both natural and anthropogenic, which absorb and re-emit infrared radiation;
- (r) **GHG Emissions** – the release of GHG into the atmosphere in a certain area and during a certain period of time;
- (s) **GHG Emissions Offset** – MoEF approved/recognized deemed fulfilment of all or part of Target GHG Emissions, as evidenced by GHG Emissions Offset Statements, in respect of a particular activity/business and during a particular period of time, on the basis of GHG Emissions reduction efforts carried out in respect of another activity/business whether in the same Sector/Sub-Sector or in a different Sector/Sub-Sector;
- (t) **GHG Emissions Offset Statements** – statements to be provided to MoEF by would-be utilizers of the benefit of the GHG Emissions reduction efforts carried out in respect of different activities/businesses to the activities/businesses of the would-be utilizers and for the purpose of obtaining MoEF approval/recognition of GHG Emissions Offsets;
- (u) **GHG Emissions Upper Limit** – highest permitted GHG Emissions level for a particular Sector/Sub-Sector and in a particular period of time as determined by MoEF;
- (v) **Minister** – MoEF;
- (w) **MRV** – activity of measuring, reporting and verifying, in accordance with established procedures and standards, Climate Change Mitigation activities/performance/results and Climate Change Adaptation activities/performance/results;
- (x) **NDC** – nationally determined contribution of a particular country to achieving NEZ which, in Indonesia’s case, is its 2021 commitment to achieve NZE by 2060 at the latest and with an interim 2030 target of a reduction in Indonesia’s GHG Emissions of between 29% (without international assistance) and 41% (with international assistance);
- (y) **NEK** – carbon economic value, being the value of each unit of GHG Emissions;
- (z) **NEK Implementation Procedures** – overall system of organizing NDC achieving activities which includes (i) NEK governance, (ii) organization of SRN PPI, (iii) implementing MRV, (iv) issuing SPE-GRKs and (v) monitoring, evaluation and reporting;

- (aa) **NZE** - net zero GHG Emissions;
- (bb) **Other GHG Emissions Certificates** – certificates/statements evidencing GHG Emissions reduction activities/performance/results that are issued other than pursuant to the Indonesian scheme for the issuance, by MoEF, of SPE-GRKs and are recorded in the SRN PPI in the form of a registry number and/or code;
- (cc) **PTBAE** - technical approval of GHG Emissions Upper Limit for a particular Sector/Sub-Sector;
- (dd) **PTBAE-PU** - PTBAE for Business Actors and/or determination of GHG Emissions quotas covering a particular Compliance Period for each Business Actor in a particular Sector/Sub-Sector;
- (ee) **Relevant Minister** – Government minister responsible for coordinating the administration of a particular Sector or the person in charge of NEK implementation in a particular Sub-Sector;
- (ff) **Sector** – NDC industry sector having a field of activity that produces GHG Emissions;
- (gg) **SPE-GRKs** – GHG Emissions Reduction Certificates, being certificates issued by MoEF providing proof of GHG Emissions reduction activities/performance/results that have gone through MRV and are recorded in the SRN PPI in the form of a registry number and/or code;
- (hh) **SRN PPI** – web-based national registry system for managing data, information and resources on/for Climate Change Adaptation, Climate Change Mitigation and NEK in Indonesia;
- (ii) **Sub-Sector** - sub-Sector having a field of activity that produces GHG Emissions;
- (jj) **Target GHG Emissions** – target levels of reduced GHG Emissions, applicable to activities/businesses in particular Sectors/Sub-Sectors and within a particular period of time, as a result of Climate Change Mitigation or Climate Change Adaptation;
- (kk) **Validation** – systematic and documented process conducted by independent third party (**i.e.**, a **Validator**) to ensure that the design of Climate Change Mitigation/Climate Change Adaptation activity implementation meets the specified requirements; and
- (ll) **Verification** – an activity conducted by independent third party (**i.e.**, a **Verifier**) to ensure the accuracy and quality assurance of data and resources submitted for inclusion in the SRN PPI by the person in charge of a particular Climate Change Mitigation/Climate Change Adaptation activity.

3. **Carbon Trading in General**

3.1 **Domestic and Overseas Carbon Trading:** Carbon Trading comprises (i) domestic Carbon Trading and (ii) overseas Carbon Trading.

Both domestic Carbon Trading and overseas Carbon Trading must be (i) carried out in accordance with the relevant Carbon Trading “road map”, (ii) provide for the creation of GHG Emissions reduction reserves or buffers and (iii) in the case of Cross-Sector Carbon Trading, involve the utilization of SPE-GRKs.

Overseas Carbon Trading must also only be carried out after (i) the Relevant Minister has established and submitted to the Minister a plan and a strategy for achieving Indonesia’s NDC in the relevant Sector/Sub-Sector, (ii) Indonesia has achieved its NDC in connection with the particular Sector/Sub-Sector proposed for overseas Carbon Trading and (iii) authorization has been granted by the Minister (Article 4 of MoEF Regulation 21/2022).

Domestic Carbon Trading and overseas Carbon Trading may be carried out through the mechanism of (i) Emissions Trading and (ii) GHG Emissions Offset which, in each case, may be conducted via the Carbon Exchange and/or by Direct Trade (Article 5 of MoEF Regulation 21/2022).

- 3.2 **Road Maps:** Carbon Trading “road maps”, prepared by the Relevant Minister, may cover either particular Sectors or particular Sub-Sectors.

The purpose of Carbon Trading “road maps” is to (i) facilitate due diligence in respect of Carbon Trading and (ii) as a reference for the Director General in connection with GHG Emissions Offsetting (Article 6 of MoEF Regulation 21/2022).

- 3.3 **GHG Emissions Reduction Reserves:** In order to ensure the achievement of Indonesia’s NDC, the following percentages of Carbon Units, otherwise available for Carbon Trading in any year prior to 2030, are to be set aside as a GHG Emissions reduction reserve or buffer:

- (a) 0 – 5% of SPE-GRK for domestic GHG Emissions Offset;
- (b) $\geq 10\% \leq 20\%$ of SPE-GRK for overseas GHG Emissions Offset; and
- (c) $\geq 20\%$ for overseas GHG Emissions Offset outside the scope of Indonesia’s NDC.

Part or all of the SPE-GRKs, set aside as a GHG Emissions reduction reserve or buffer, may be subsequently released, via the SRN-PPI, for the purposes of Carbon Trading once Indonesia’s NDC target for a particular Sector/Sub-Sector has been achieved for two consecutive years (Article 7 of MoEF Regulation 21/2022).

- 3.4 **Sectoral/Sub-sectoral Carbon Trading Procedures:** The Relevant Minister, in coordination with the Minister, is responsible for determining the Carbon Trading procedures to be followed in respect of a particular Sector/Sub-Sector (Article 8 of MoEF Regulation 21/2022).

4. **Emissions Trading**

- 4.1 **Applicability:** Emissions Trading may be used in situations where there are:

- (a) activities/businesses (i) in respect of which GHG Upper Emissions Limits have been determined for their Sectors/Sub-Sectors and (ii) having carried out Climate Change

Mitigation, these activities/businesses have GHG Emissions below the specified GHG Emissions Upper Limits for their Sectors/Sub-Sectors during a Compliance Period (**Potential ET Sellers**); and

- (b) activities/businesses (i) in respect of which GHG Upper Emissions Limits have been determined for their Sectors/Sub-Sectors but (ii) notwithstanding the carrying out of Climate Change Mitigation, these activities/businesses have GHG Emissions above the specified GHG Emissions Upper Limits for their Sectors/Sub-Sectors during a Compliance Period (**Potential ET Buyers**) (Articles 50(2) and 51(1) of PR 98/2021 and Article 9 of MoEF Regulation 21/2022).

Potential ET Sellers, which have an excess/surplus of SPE-GRKs, may offer their excess/surplus SPE-GRKs for sale to Potential ET Buyers and (ii) Potential ET Buyers, which have a deficit/shortfall of SPE-GRKs, may acquire the additional SPE-GRKs they need from Potential ET Sellers.

4.2 **Determination of GHG Emissions Upper Limits:** For the purposes of Emissions Trading, the applicable GHG Emissions Upper Limits must be determined by the Relevant Minister pursuant to PTBAE and based on the relevant Carbon Trading “road map” (Article 9 of MoEF Regulation 21/2022).

4.3 **PTBAE-PU:** Once PTBAE has been obtained for a particular Sector/Sub-Sector, it becomes the basis for determining the GHG Emissions Upper Limit applicable to Business Actors in that Sector/Sub-Sector.

PTBAE-PU may be obtained by way of either (i) Business Actor applications or (ii) direct determination by the Relevant Minister.

In the case of Business Actor applications, PTBAE-PU is to be determined by the Relevant Minister:

- (a) after considering the results of a review of the information and business plans submitted by a particular Business Actor as part of its PTBAE-PU application;
- (b) where (i) there is only one relevant Business Actor in a particular Sector/Sub-Sector, setting PTBAE-PU with a value equal to the GHG Emissions Upper Limit for the relevant Sector/Sub-Sector or (ii) there is more than one relevant Business Actor in a particular Sector/Sub-Sector, setting PTBAE-PU as a quota with a value that is smaller than the GHG Emissions Upper Limit for the relevant Sector/Sub-Sector; and
- (c) making sure that the aggregate value of the quotas, allocated to all relevant Business Actors in a particular Sector/Sub-Sector, does not exceed the GHG Emissions Upper Limit for the relevant Sector/Sub-Sector.

In the case of direct determination, PTBAE-PU is to be determined by the Relevant Minister:

- (a) as the actual GHG Emissions quota allowed for one Business Actor for one Compliance Period; and

- (b) making sure that the aggregate value of the quotas, allocated to all relevant Business Actors in a particular Sector/Sub-Sector for one Compliance Period, does not exceed the GHG Emissions Upper Limit for the relevant Sector/Sub-Sector (Article 10 of MoEF Regulation 21/2022).

4.4 **Trading of PTBAE-PU:** PTBAE-PUs, as determined by the Relevant Minister, are available for trading, by Potential ET Sellers, at the beginning of the relevant Compliance Period through domestic Emissions Trading with other Business Actors having PTBAE-PUs (Article 11 of MoEF Regulation 21/2022).

4.5 **Implementation of PTBAE-PU:** At the end of a Compliance Period, each Business Actor must:

- (a) measure its actual GHG Emissions for the relevant Compliance Period using a set methodology;
- (b) prepare a PTBAE implementation report setting out (i) the actual GHG Emissions for the relevant Compliance Period and (ii) the remaining amount, if any, of the applicable GHG Emissions Upper Limit; and
- (c) arrange for Verification of the PTBAE implementation report.

The appointed Verifier must provide the Business Actor with a Verification result report setting out, at a minimum, the extent to which the Business Actor's actual GHG Emissions for the relevant Compliance Period are above or below PTBAE-PU.

To the extent the applicable GHG Emissions Upper Limit has not been equalled or exceeded during the relevant Compliance Period, the remaining/unused value of the GHG Emissions Upper Limit may be (i) utilized by Business Actors (**i.e.**, Potential ET Sellers) for Emissions Trading or (ii) allocated to storage for a maximum of two years after the end of the relevant Compliance Period. At the end of two years, any remaining value of the GHG Emissions Upper Limit, that is still in storage, may no longer be used for Emissions Trading.

For the purpose of facilitating Carbon Trading of the remaining/unused value of the GHG Emissions Upper Limit, Business Actors (**i.e.**, Potential ET Sellers) may apply for the issuance of SPE-GRKs in respect of the remaining/unused value of the GHG Emissions Upper Limit.

To the extent the applicable GHG Emissions Upper Limit has been exceeded during the relevant Compliance Period, Business Actors (**i.e.**, Potential ET Buyers) must carry out "offsetting" by purchasing Carbon Units from other Business Actors (**i.e.**, Potential ET Sellers).

Potential ET Sellers, with SPE-GRKs, may conduct Emissions Trading (i) domestically, (ii) overseas or (iii) cross Sector/Sub-Sector (Articles 11 to 13 of MoEF Regulation 21/2022).

5. **GHG Emissions Offset**

5.1 **Applicability:** GHG Emissions Offset may be used in the situation where there are:

- (a) activities/businesses with GHG Emissions surpluses; that is, activities/businesses which (i) do not have specified GHG Emissions Upper Limits for their Sectors/Sub-Sectors, (ii) have carried out Climate Change Mitigation, (iii) have GHG Emissions reduction performance/results that are below both the Target GHG Emissions and the Baseline GHG Emissions for their Sectors/Sub-Sectors during a Compliance Period and (iv) can evidence their above Target GHG Emissions with SPE-GRKs/Other GHG Emissions Certificates (**Potential Offset Providers**); and
- (b) other activities/businesses with GHG Emissions deficits; that is, activities/businesses which (i) do not have specified GHG Emissions Upper Limits for their Sectors/Sub-Sectors and (ii) have carried out Climate Change Mitigation but (iii) their GHG Emissions reduction performance/results are either (X) below both the Target GHG Emissions and the Baseline GHG Emissions for their Sectors/Sub-Sectors during a Compliance Period or (Y) above the Target GHG Emissions but below the Baseline GHG Emissions for their Sectors/Sub-Sectors during a Compliance Period (**Potential Offset Utilizers**) (Articles 52(2) and Article 53(2) of PR 98/2021 and Article 14(1) of MoEF Regulation 21/2022).

The Minister or relevant governor, in accordance with their respective authority, will determine the Target GHG Emissions and the Baseline GHG Emissions for activities/businesses that do not have applicable GHG Emissions Upper Limits (Article 14(2) of MoEF Regulation 21/2022).

5.2 **Trading of GHG Emissions Surpluses:** Business Actors with GHG Emissions surpluses (**i.e.**, Potential Offset Providers) may sell their GHG Emissions surpluses to other Business Actors with GHG Emissions deficits (**i.e.**, Potential Offset Utilizers) while Potential Offset Utilizers may buy GHG Emissions surpluses from Potential Offset Providers to offset their GHG Emissions deficits (Article 14(3) of MoEF Regulation 21/2022).

5.3 **DRAM:** Business Actors with GHG Emissions surpluses (**i.e.**, Potential Offset Providers), interested in selling their GHG Emissions surpluses, are obliged to:

- (a) prepare DRAM;
- (b) arrange for Validation of DRAM by a Validator which will include the Validation results in a report to the relevant Potential Offset Provider; and
- (c) record DRAM and the DRAM Validation results in SRN-PPI (Article 15 of MoEF Regulation 21/2022).

5.4 **Implementation of Climate Change Mitigation:** Business Actors with GHG Emissions surpluses (**i.e.**, Potential Offset Providers), interested in selling their GHG Emissions surpluses, are obliged to:

- (a) report the results of their Climate Change Mitigation Actions in each Compliance Period;
- (b) arrange for the Validation of their Climate Change Mitigation Action report by a Validator which will include the Validation results in a report to the relevant Potential Offset Provider; and

- (c) record their Climate Change Mitigation Actions and the Climate Change Mitigation Action Validation results in SRN-PPI (Article 16 of MoEF Regulation 21/2022).

5.5 **MRV and Issuance of SPE-GRK:** A final review of the SNI-PPI record of the implementation results of DRAM and Climate Change Mitigation Action, as well as of the Verification and Validation of these results, is to be carried out by an MRV team formed by the Director General.

SPE-GRKs will be issued to Business Actors with GHG Emissions surpluses (i.e., Potential Offset Providers) based on the results of the MRV team review (Article 17 of MoEF Regulation 21/2022).

6. Overseas Carbon Trading through Cooperation

6.1 **Possibility of Overseas Carbon Trading:** In theory, part of the benefits of GHG Emissions reduction, as a result of domestic Climate Change Mitigation Action implementation, may be transferred overseas, pursuant to a cooperation agreement between Indonesia and another country after taking into account (i) the desirability of assisting developing countries achieve their own NDC targets, (ii) the costs of GHG Emissions reduction in the relevant Sector/Sub-Sector and (iii) where the relevant developing country's GHG Emissions reduction performance is below its GHG Emissions reduction target.

7. Overseas Carbon Trading will only be allowed if it (i) does not interfere with the achievement of Indonesia's NDC, (ii) is recorded in SRN PPI and (iii) satisfies a number of other requirements that are very restrictive.

All the applicable requirements for overseas Carbon Trading must be stipulated by the Minister in an “*overseas Carbon Trading protocol*” (Article 18 of MoEF Regulation 21/2022).

7.1 **Ministerial Approval and Authorization:** The actual overseas transfer of any of the benefits of GHG Emissions reduction, as a result of domestic Climate Change Mitigation Action implementation, requires specific Ministerial approval and authorization as well as compliance with a long list of technical obligations including initial and annual reports on the results of overseas cooperation (Articles 19 and 20 of MoEF Regulation 21/2022).

7.2 **Establishment of National Authority:** The Minister is to establish a “*designated national authority*” with responsibility for (i) conducting a review of proposed foreign country cooperation, (ii) reviewing reports of the results of foreign country cooperation and (iii) providing recommendations to the Minister re the approval or otherwise of proposed foreign cooperation (Article 21 of MoEF Regulation 21/2022).

8. Cross-Sector Carbon Trading

8.1 **General:** Both overseas Cross Sector Trading and domestic Cross Sector Trading are allowed in principle.

- 8.2 **Overseas:** Notwithstanding 7.1 above, however, overseas Cross Sector Trading may only be carried out in respect of a Sector/Sub-Sector that has achieved/exceeded its GHG Emissions Reduction Target or its Climate Change Mitigation Action plan as set out in the relevant DRAM.
- 8.3 **Domestic:** For domestic Carbon Trading, the Relevant Minister will stipulate Cross Sector Trading annual quotas to be determined having regard to (i) prioritization of Climate Change Mitigation in the relevant Sector/Sub-Sector, (ii) the “abatement cost” – cost of GHG Emissions Reduction in the relevant Sector/Sub-Sector, (iii) available methodology for establishing/measuring actual GHG Emissions Reduction performance in the relevant Sector/Sub-Sector, (iv) results of monitoring, evaluation and reporting of NEK Implementation Procedures each year and (v) comparison of actual GHG Emissions Reduction performance in a particular year with the NDC Target for that year (Article 23 of MoEF Regulation 21/2022).

9. **Approval & Authorization of Overseas Carbon Trading**

- 9.1 **Approval:** Application for Ministerial approval, of overseas Carbon Trading, may be made by either the Relevant Minister or the relevant Business Actor. Attached to the application must be (i) a proposal for overseas Carbon Trading and (ii) a copy of the draft Carbon Trading cooperation agreement to be entered into with the foreign country/foreign party.

The Minister is meant to review and approve/not approve, following consultation with the Relevant Minister, the application for overseas Carbon Trading within not more than 14 business/working days of receiving the application in good order (Article 24 of MoEF Regulation 21/2022).

- 9.2 **Authorization:** The actual transfer of Carbon Units overseas requires separate authorization from the Minister which must be applied for by way of submitting copies of the SPE-GRKs or Other GHG Emissions Certificates covering the Carbon Units sought to be transferred overseas.

The Minister is meant to review and approve/not approve the application for authorization of overseas Carbon Unit transfer within not more than 14 business/working days of receiving the application in good order (Article 25 of MoEF Regulation 21/2022).

- 9.3 **Forms:** The form of the approval and the form of the subsequent authorization, if any, granted by the Minister, in respect of approval of overseas Carbon Trading and authorization of actual transfer of Carbon Units, are set out in Appendix I to MoEF Regulation 21/2022 (Article 26 of MoEF Regulation 21/2022).

10. **Development of Carbon Trading Infrastructure**

For Carbon Trading, via the Carbon Exchange, to become a reality the following things must happen:

- (a) development of the required Carbon Trading infrastructure in the form of designation of the relevant Carbon Exchange in Indonesia which may or may not be connected to international Carbon Exchanges;

- (b) determination and regulation of how state revenue (**i.e.**, taxes and other charges) in respect of Carbon Trading will be levied, paid and utilized; and
- (c) formulation/promulgation of the administrative procedures/rules that will apply in respect of recording and documenting the implementation of Carbon Trading via the Carbon Exchange (Article 27 of MoEF Regulation 21/2022).

SUMMARY & CONCLUSIONS

PR 98/2021 represented a tentative first step in establishing a comprehensive regulatory basis for Carbon Trading in Indonesia.

With the issuance of MoEF Regulation 21/2022, we now have **some** of the much-needed detail as to how the Government sees Carbon Trading working in practice.

The requirements for overseas Carbon Trading to become a reality for Indonesian Business Actors, however, look difficult to fulfil in the near term. At the same time and even when overseas Carbon Trading does become technically possible, the requirements for **both** Ministerial approval of overseas cooperation agreements **and** Ministerial authorization of individual Carbon Unit overseas transfers seem quite unwieldy. The practical difficulties of obtaining Ministerial approval/Ministerial authorization may discourage many Business Actors from seriously considering overseas Carbon Trading. While there are 14-day timelines for the Minister making a decision on individual approval/authorization applications, there is **no** default approval mechanism provided for in the event that the Minister does not keep to the 14 day timeline. This may well mean that, in practice, the actual time it takes to obtain a Ministerial decision will be much longer than 14 days and, indeed, open-ended.

It is also clear that the Government is determined to ensure that overseas Carbon Trading can never occur at the expense of Indonesia realizing its NDC.

Considerably more detail, on the intended mechanics of Carbon Trading, is still needed before it will be appropriate to say that the Indonesian approach to Carbon Trading is now clearly established and understood. MoEF Regulation 21/2022, arguably, represents the end of the beginning of the learning process for Business Actors and their professional advisers in developing a proper understanding of the intended mechanics of Carbon Trading. The beginning of the end of this process of understanding, however, still remains a significant way off.

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