

Legal Update - August 2023

Kepmen LHK No. 716 Tahun 2023



Newly Issued Minister of Environment and Forestry Decree

Emphasizes Obligations for PBPH Holders
Relating to Carbon Trading Participation

Obligations for PBPH Holders Relating to Carbon Trading Participation

1 Key Takeaways

- a. This decree outlines obligations and restrictions for PBPH holders in conducting carbon trading, and should be read in conjunction with other regulations on carbon pricing and carbon trading in the forestry sector.
- b. Emission trading through PTBAE-PU (mandatory emission cap) is only imposed on companies that conduct peatland management. There are differences in carbon trading provisions between PBPH holders managing peatland and those not managing peatland:
 - 1. PBPH holders in peatland management (offsetting) → can purchase non-peatland management SPE-GRK
 - 2. PBPH holders that do not manage peatland (emission offsetting) → conduct climate change mitigation actions, where in the process of preparing the DRAM must be in accordance with the RKUPH and the roadmap for carbon trading in the forestry sector
- c. In addition, this decree also imposes restrictions. However, these provisions need clarifications, raising the issue of whether the government would further regulate them in the future.

2 Overview

The Minister of Environment and Forestry (**MoEF**) has stipulated the obligation of the integration of the climate change agenda in instruments issued and/or under the realm of the Environment and Forestry field through the MoEF Decree No. SK. 716/MENLHK/SETJEN/KUM.1/6/2023 on the Integration of Carbon Economic Value Mechanism in Agreements, Partnerships and Business Licenses in the Environment and Forestry Sector (**MoEF Decree 716/2023**).

Moving forward, Approvals, Partnerships and Business Licenses related to the said field (e.g. environmental approvals, government approvals, conservation partnership, business licenses, and other approvals) must integrate the Carbon Pricing (*Nilai Ekonomi Karbon* - **NEK**) mechanism including its obligations as regulated under the:

- 1. Presidential Regulation No. 98 of 2021 on Carbon Economic Value (PR Reg 98/2021);
- 2. MoEF Regulation No. 21 of 2022 on the Implementation of Carbon Economic Value (MoEF Reg 21/2022);
- 3. MoEF Regulation No. 7 of 2023 on Forestry Sector Carbon Trading Procedures (MoEF Reg 7/2023); and
- 4. principles and approaches in accordance with the MoEF Decree No. 168 of 2022 on FOLU Net Sink 2030 for Climate Change Control.

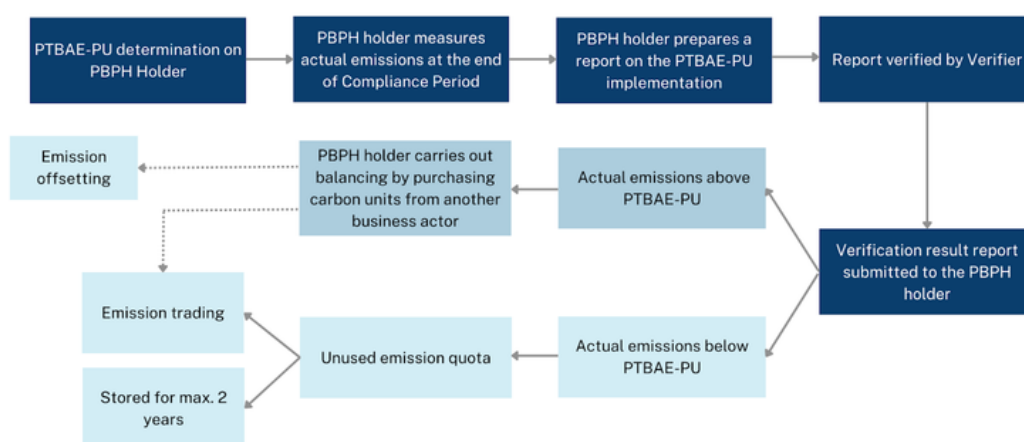
Issued on June 27th 2023, the MoEF Decree 716/2023 also emphasizes the obligations that apply towards Forest Utilization Business License (*Perizinan Berusaha Pemanfaatan Hutan - PBPH*) holders - providing further clarification on requirements that must be fulfilled in conducting their forest utilization business based on the MoEF Regulation No. 8 of 2021 on Forest Management and Preparation of Forest Management Plans, as well as Forest Utilisation in Protection Forests and Production Forests (**MoEF Reg 8/2021**) and carbon trading based on MoEF Reg 7/2023 (read our analysis on the carbon trading mechanism in the Forestry sector [here](#)).

3 Obligation of PBPH Holders to Prepare Mitigation Action Plan in Their Business Activity Plan

In principle, holders of Approvals, Partnerships, and Business Licenses in the Environment and Forestry field, including PBPH holders, are mandated to prepare a Mitigation Action Plan Document (Dokumen Rancangan Aksi Mitigasi - **DRAM**), implement mitigation actions, register the mitigation actions into the National Registry System of Climate Change Control (*Sistem Registri Nasional Pengendalian Perubahan Iklim - SRN PPI*), and calculate its emission reductions in accordance with the Measurable, Reportable, Verifiable (MRV) principle in based on the national requirements and methods.¹

This means that PBPH holders must measure and report their greenhouse gas (GHG) emissions, as well as the mitigation actions conducted in its working area and/or activities. Although the MoEF Decree does not strictly differentiate between the obligations or requirements for PBPH holders in conducting emission trading and emission offset, it can be understood that this decree must be read in conjunction with the provisions of emission trading and emission offset as set out in the presidential and ministerial regulations on carbon pricing and carbon trading in the Forestry sector.

The emission trading scheme based on such regulations can be interpreted as illustrated below. In terms of emissions trading, if the PBPH holder is subject to an emission cap or *Petunjuk Teknis Batas Atas Emisi Pelaku Usaha (PTBAE-PU)*², they are required to compensate for their emission through emission trading³. However, the current regulatory landscape also allows the option to compensate for their emission through offset.



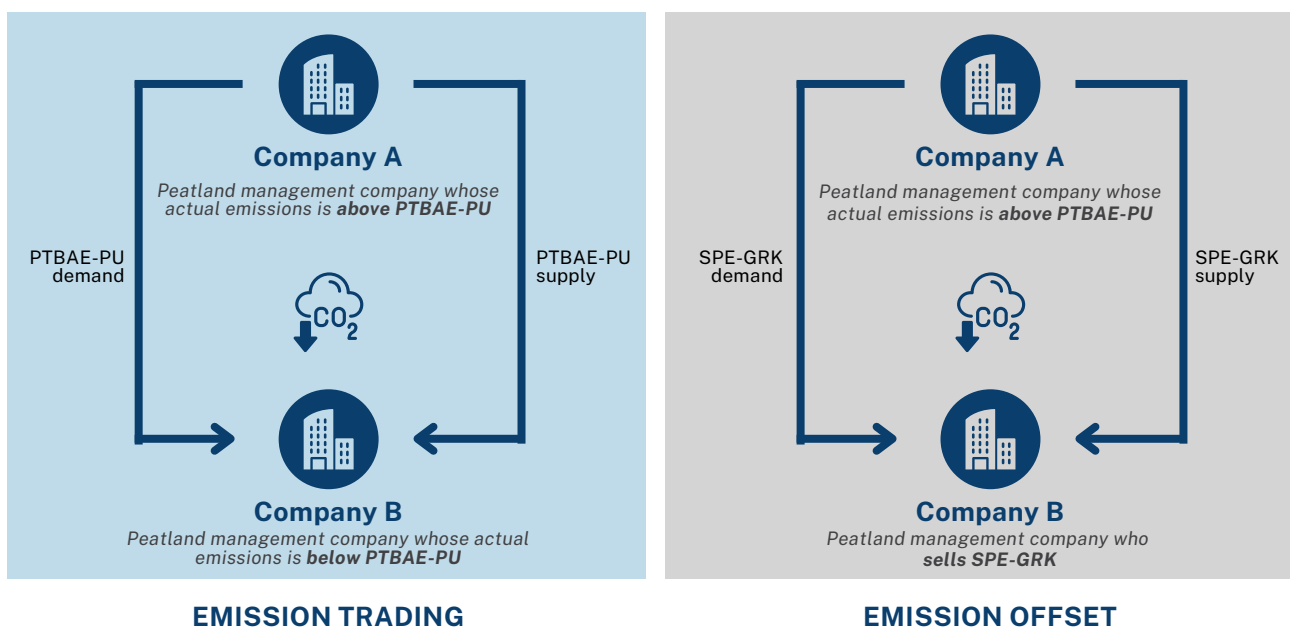
¹ Decision 10 of MoEF Decree 716/2023.

² Currently, PTBAE-PU only applies towards companies conducting peatland management.

³ Decision 11 point 10 MoEF Decree 716/2023.

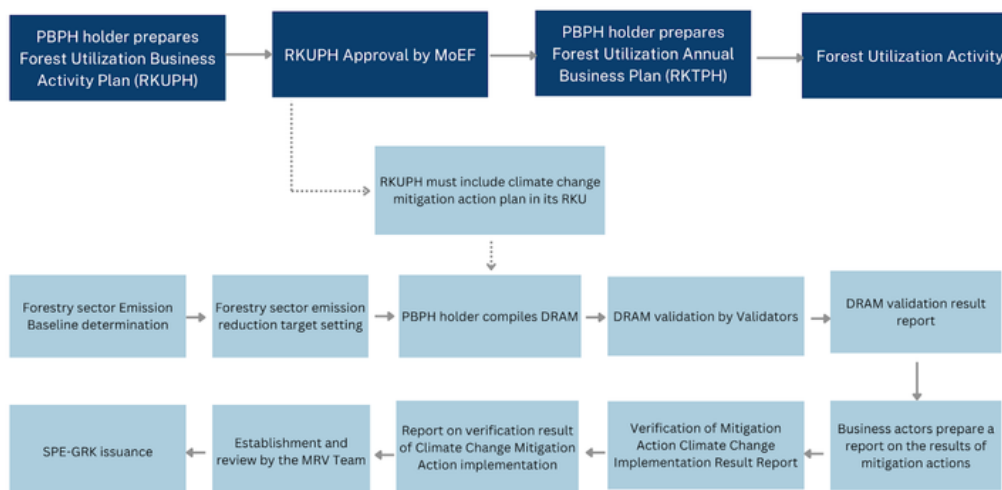
In conducting emission trading, the existing regulations do not clearly state whether PTBAE-PU must be converted to GHG Emissions Reduction Certificate (Sertifikat Penurunan Emisi Gas Rumah Kaca - SPE-GRK) before transacted. However, MoEF Reg 21/2022 stipulates that, in the context of emissions trading, business actors that have actual emissions below PTBAE-PU may sell their unused quota domestically between business actors within the same sub-sectors or sub-subsectors. They may also apply for SPE-GRK issuance in the case that their actual emissions are below PTBAE-PU. By owning SPE-GRK, such business actor can conduct carbon trading, including emissions trading, domestically, abroad, or across sectors.

Those who have their actual emissions above PTBAE-PU, aside from purchasing credits from other business actors who have remaining or unused PTBAE-PU, they may also conduct offsetting. Through offsetting, PBPH holders in peatland management may purchase SPE-GRK that were issued from verified climate change mitigation activities conducted by non PTBAE-PU covered PBPH holders or non-peatland management PBPH holders.



In emission offsetting, PBPH holders who do not fall into the category of managing peatland must conduct climate change mitigation actions of which the generated carbon can be verified and issued SPE-GRK. Such PBPH holders then may sell their SPE-GRK to other business actors who need to compensate for their emissions.

The emission offset scheme for non-peatland management PBPH holders is illustrated as follows.



The PBPH holder must include climate change mitigation actions in the preparation of its ten-year business plan, namely the Forest Utilization Business Activity Plan (*Rencana Kerja Usaha Pemanfaatan Hutan - RKUPH*). After RKUPH is prepared and approved by the MoEF, it is then used as the basis for the preparation of Annual Business Plan (*Rencana Kerja Tahunan*) as well as Mitigation Action Document Plan (*Dokumen Rencana Aksi Mitigasi - DRAM*). In addition to being aligned with the RKUPH, DRAM must also take into account the roadmap for carbon trading in the forestry sector. Further, the implementation of the planned climate change mitigation action must be verified by an independent verifier. The report of such verification will be reviewed by MoEF MRV team. Lastly, SPE-GRK will be issued and the PBPH holder may conduct carbon trading.

4 Restrictions on Carbon Transactions Made by PBPH Holders

a. PBPH Transfer Prohibition

MoEF Decree 716/2023 stipulates additional obligations in the form of restrictions for PBPH holders in conducting carbon trading. PBPH holders are prohibited to enter into any Memorandum of Understanding (MoU) with proponent or buyer partner that results in the transfer of PBPH in the form of an agreement in a notarial deed.

Basically, as stipulated in the MoEF Reg 8/2021, PBPH can be transferred which must follow certain application processes and requirements with approval from the MoEF. The alienation of PBPH can occur because:

1. Transfer of PBPH from a PBPH holder to another PBPH holder or by a non-PBPH holder through sale and purchase
2. Merger of PBPH
3. Consolidation of PBPH
4. Separation of PBPH

However, since there is a further provision on the prohibition of PBPH alienation in this decree, it can be understood that there is an exception in terms of PBPH alienation, i.e. PBPH cannot be transferred in the case of carbon trading.

This restriction is also stipulated in the decree which states the prohibition of transfer of Approval, Partnership and Business License in the Environment and Forestry field through notarial deed⁴. This may be assumed to be one of the initiatives to avoid underutilized forest use. The decree further underlines the imposition of legal sanctions towards the violation of such provision in the form of revocation of approval, partnership, and business license, as well as other forms of sanctions.

Furthermore, regarding the same decision, the decree does not define what is meant by "proponent". It is questionable whether the government will determine the scope of what constitutes a "proponent" in the future.

b. Contract Term Limitation

This decree also raises a question about the extent to which the Indonesian government will regulate transactional relationships between business actors related to carbon trading, namely another provision in the MoEF Decree 716/2023 limits carbon transaction contracts to a maximum period of 5 (five) years. This provision may open doors for carbon transactions to be evaluated

⁴ Decision 12 point 6 MoEF Decree 716/2023.

every 5 (five) years. Additionally, there is potential for contract renewal, although it is questionable whether the contract can be extended after 5 (five) years. In addition, this provision is most likely a clear instruction from the MoEF to optimize forest utilization.

Yet nonetheless, the rationale behind this decision remains ambiguous, leaving questions about the factors considered. Nevertheless, transcending the mere achievement of NDCs, it becomes imperative for the government to meticulously safeguard the holistic sustainability of the entire carbon pricing mechanism.

5 Conclusion

The enactment of the MoEF Decree 716/2023 provides further clarity on carbon trading by PBPH holders. PBPH holders need to read this decree, including the obligations and restrictions, in conjunction with other carbon pricing and carbon trading regulations in the forestry sector. Additionally, PBPH holders need to pay attention and look forward to further regulations that may be enacted by the government, in order to achieve NDC and optimal forest governance.

⁵ Decision 12 point 8 MoEF Decree 716/2023.

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About CarbonEthics

CarbonEthics is an organization that aims to restore the climate balance through natural climate solutions with pioneers in blue carbon conservation.

When you conserve with **CarbonEthics**, you are creating positive environmental change and advancing social impact by directly enhancing the livelihoods of our local community partners.

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