

Legal Update - July 2023

*Minister of Environment and Forestry Regulation No. 7 of 2023 on
the Procedures for Carbon Trading in the Forestry Sector*

New Regulation Reveals Carbon Trading Mechanism in the Forestry Sector

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Overview

The Forestry sector became the second sector to adopt the “carbon trading rulebook” after the power plant sub-sector (energy sector) was released last year. Mandated by the Presidential Regulation on carbon pricing (*Nilai Ekonomi Karbon - NEK*), the Minister of Environment and Forestry promulgated the Regulation No. 7 of 2023 on the Procedures for Carbon Trading in the Forestry Sector (**MOEF Reg 7/2023**).

It was a long-awaited regulation since the Ministry of Environment and Forestry halted carbon trading in the Forestry sector. Through this regulation, business players as well as local communities, including *adat* communities, in the Forestry sector will be able to participate in the emission trading system or offset - creating an inclusive forestry carbon trading ecosystem. This new regulation will also progressively support the recent development of carbon exchange that will also be implemented this year.

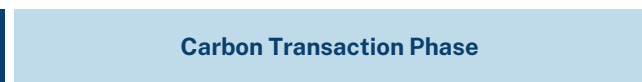
Carbon Trading Regulation to Complement the Forestry Regulation System

The Forestry regulation framework changed with new implementing regulations derived from the Omnibus law¹. Government Regulation No. 23 of 2021 on the Organization of Forestry outlined these changes, addressing forest area use, forest utilization, and social forestry management. Forest utilization activities, including carbon sequestration and/or storage, are recognized in the Forestry regulations. However, carbon trading provisions are not included. Developers undertaking a carbon project must comply with PR 98/2021 and MOEF 21/2022², in addition to the Forestry regulations. See the simplified illustration below for the relationship between Forestry regulations, NEK and Carbon Trading regulations in particular to Forest Utilization business and Social Forestry for carbon sequestration activities.

Forestry Regulations:

MOEF Reg 8/2021 and Reg 9/2021 based on PP 23/2021

Scope: PBPH, SF Approval, RKU, RKT, etc



NEK Regulations:

MOEF Reg 21/2022 based on PR 98/2021

Scope: Methodology, DRAM, SRN PPI, SPE GRK, etc

Carbon Trading Regulations:

MOEF Reg 7/2023 based on PR 98/2021

Scope: PTBAE, PTBAE PU, Buffer, Max Portion for International Trading



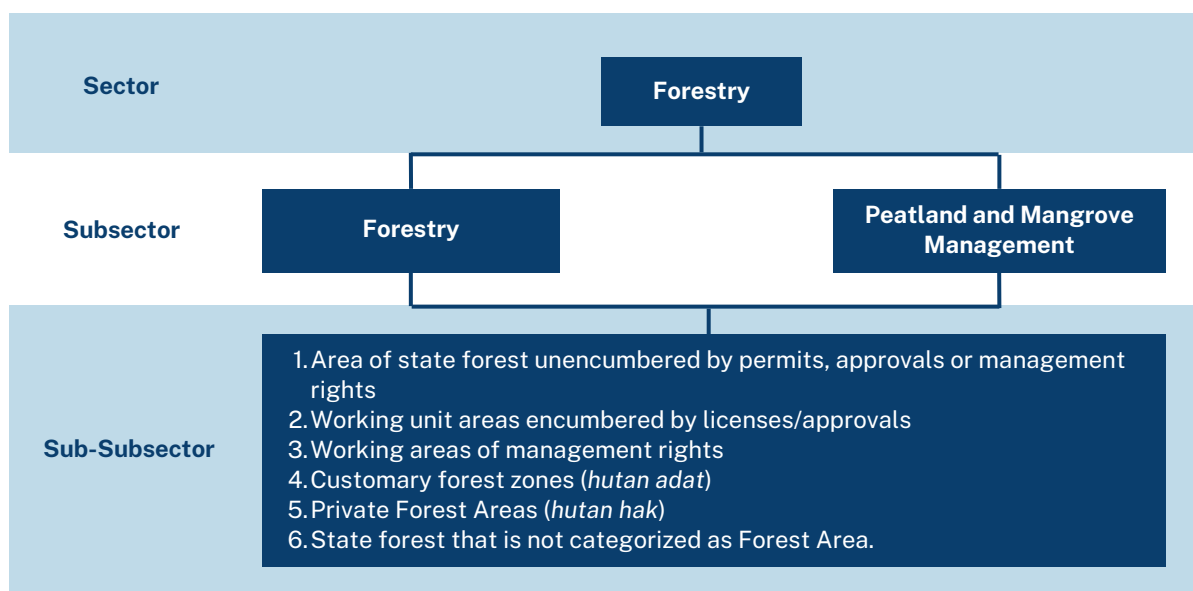
¹ Government Regulation in Lieu of Law on Job Creation

² Presidential Regulation 98 of 2021 on the Implementation of Carbon Pricing to Achieve the Nationally Determined Contribution Target and Control Over Greenhouse Gas Emissions in the National Development (PR 98/2021) and Minister of Environment and Forestry Regulation No. 21 of 2022 on the Procedures for Carbon Pricing Implementation (MOEF Reg 21/2022).

*Abbreviations: *Perizinan Berusaha Pemanfaatan Hutan* (PBPH), *Persetujuan Pengelolaan Perhuntingan Sosial* (SF Approval), *Rencana Kerja Usaha Pemanfaatan Usaha* (RKU), *Rencana Kerja Tahunan Pemanfaatan Hutan* (RKT), *Dokumen Rencana Aksi Mitigasi* (DRAM), *Sistem Registri Nasional Pengendalian Perubahan Iklim* (SRN PPI), *Sertifikat Penurunan Emisi Gas Rumah Kaca* (SPE-GRK), *Persetujuan Teknis Batas Emisi* (PTBAE), *Persetujuan Teknis Batas Emisi Pelaku Usaha* (PTBAE-PU)

Subsector, Sub Sub Sectors, and Mitigation Actions

Referring to MOEF 21/2022, the implementation of carbon pricing, including carbon trading, is conducted within Sectors and Subsectors. In particular to the Forestry sector, Carbon Trading should be performed within the Forestry subsector and Management of Peatland and Mangrove subsector, which include the following Sub-subsectors:



Essentially, climate change mitigation actions in the Forestry sector may be in the form of: (i) emissions reduction; and/or (ii) carbon sequestration and/or storage. Article 3 MOEF 7/2023 specifies a total of 22 (twenty-two) types of activity that may be conducted, amongst others:

- a. reducing emissions from deforestation and forest degradation on mineral, peat, and mangrove land;
- b. sustainable forest management;
- c. rotation and non-rotation rehabilitation;
- d. social forestry;
- e. assistance on customary forest; and
- f. afforestation in ex-mining areas.

As stipulated in MOEF Reg 21/2022, such climate change mitigation actions may only be conducted using methodologies acknowledged by the UNFCCC, MOEF, and/or the Indonesian National Standardisation Agency. Presently, according to the National Registry System for Climate Change Control (SRN PPI) website, there are 4 (four) types of methodologies acknowledged for calculating emission reduction and/or carbon sequestration in the Forestry and Other Land Used (FOLU) Sector. Such methodologies have been reviewed by a methodology panel team and formally issued through a Directorate General of Climate Change Control (DG PPI) decree letter to be utilized to calculate: (i) reduced deforestation; (ii) reduced forest degradation; (iii) emission reductions from preventing fires on peatlands; and (iv) peat decomposition emissions from preventing deforestation and forest degradation. Hence, it can be expected that more methodologies will be formally adopted by the MOEF to accommodate all types of climate change mitigation actions as mentioned previously.

Carbon Trading Requirements Vary Depending on the Conditions of the Site

Implementation of carbon trading in the Forestry sector, whether emission trading or emissions offset, depends on the location and status of each site or area. The table below sets out the Carbon Trading requirements for each site.

Site		Carbon Trading Eligibility		Actors	Prior Approval
		Emission Trading	Emission Offset		
(i) Permanent production Forest Area; (ii) Convertible production Forest Area; (iii) utilization block of protected Forest Area	encumbered by (i) forest utilization business permit (PBPH); (ii) SF Approval; or (iii) management rights	X	✓	holder of (i) PBPH (ii) Social Forestry Management Approval (iii) management rights	
	un-encumbered by (i) PBPH; (ii) SF Approval; or (iii) management rights	X	✓		after obtaining PBPH, Social Forestry Management Approval, or management rights
Other protected Forest Area blocks		X	✓		approval from the MOEF.
Peatland and mangrove areas	in the Forest Area				after obtaining PBPH, Social Forestry Management Approval, or management rights
	outside the Forest Area	✓	✓		after obtaining the approval of the governor, regent/mayor, or relevant minister/head of agency
Conservation Forest Area		X	✓	Business Actor	after obtaining approval from: the regent/mayor, for botanical forest parks located within the regency/city; governor, for botanical forest parks located across districts; or Minister (MOEF), for conservation areas other than botanical forest parks above.

Site	Carbon Trading		Actors	Prior Approval
	Emission Trading	Emission Offset		
Customary forest	X	✓	adat community	
Private forest	X	✓	private forest community owner	
State forest outside the Forest Area	X	✓		after obtaining a location determination and/or approval from the governor or minister in accordance with their authority.

Moreover, some additional requirements may also apply depending on the subject of a climate change mitigation action as stipulated in Article 8 MOEF Reg 7/2023. For instance, holders of forest utilization business permit (*Perizinan Berusaha Pemanfaatan Hutan - PBPH*), management rights, and private forests, must have a sustainable forest management certificate, forest product legality certificate, or forest product declaration in accordance with the provisions of laws and regulations.

Additionally, in Article 6 of MOEF Reg 7/2023, those who have approval to manage Social Forestry can participate in carbon trading. Article 8 MOEF Reg 7/2023 also sets out another requirement for the implementation of carbon trading in the Social Forestry is for Social Forestry Business Groups (*Kelompok Usaha Perhutanan Sosial - KUPS*)³ to at least obtain the Silver classification in the social forestry implementation in accordance with laws and regulations.

The classification of KUPS in Social Forestry is further regulated under Minister of Environment and Forestry Regulation No. 9 of 2021 on Social Forestry Management (MOEF Reg 9/2021). In order for a Social Forestry to be classified as Silver, it must: (i) have established a KUPS; (ii) have identified the potential business; (iii) have prepared a Social Forestry Management Plan; and (iv) have a business unit.

Moreover, customary law (adat) communities, Social Forestry Management Approval holders, and private forest holders who conduct business and/or GHG emission offsets activities, must have assistance or partners who have relevant experience/expertise regarding carbon measurement, planning and implementation projects or accessing carbon markets.

³ KUPS is a business group formed by Social Forestry Group (KPS)* that will and/or has conducted business established in accordance with the provisions of laws and regulations (Article 1 (42) MOEF Reg 9/2021).

*KPS: a group of forest farmers and/or community groups and/or cooperatives holding Social Forestry management approvals as well as customary law communities including farmer groups and/or community groups managing community forests.

Emission Trading and GHG Emissions Offset in the Forestry Sector

As outlined previously, peatland and mangroves area are the only category set for conducting the emission trading. The regulation indicates that the emission trading will be applicable particularly towards the management of peatland⁴. This means MOEF will establish an emission cap and/or emission quota for peatland management in the Peat and Mangrove Management subsector (*Petunjuk Teknis Batas Atas Emisi - PTBAE*), as well as for each business within the subsector (*PTBAE Pelaku Usaha - PTBAE-PU*). If a PTBAE-covered company has remaining GHG emission cap and/or unused emission quotas (that has been verified by a third-party verifier), it may engage in emission trading and sell them, both domestically or internationally. Though, it is also possible for the company to keep such unused quota for up to 2 (two) years, otherwise it will not be able to be traded⁵. However, if a company is unable to reduce its emissions below its PTBAE-PU, it may purchase carbon credits from another company who has unused PTBAE-PU or sell verified emission reduction certificates (*Sertifikat Pengurangan Emisi Gas Rumah Kaca - SPE-GRK*).

As for other types of businesses in the Forestry sector, they are able to conduct carbon trading through GHG Emissions Offset. MOEF will establish GHG emission baseline and emission reduction target for the Forestry sector. The GHG offset mechanism is applicable for businesses and/or activities that: (i) do not have GHG emission cap; (ii) have emission surplus (its emissions reduction achievement result is below the target and GHG emission baseline); or (iii) have emission deficit (its emission reduction achievement is above the target and GHG emission baseline). Business actors who wish to conduct Emission Offset must prepare a Mitigation Action Plan Document (*Dokumen Rencana Aksi Mitigasi - DRAM*) in accordance with the provisions as set out in MOEF Reg 21/2022. The plan and implementation itself must be validated and verified by third parties in order for the business actor to be issued SPE GRK for its emissions reduction achievements.

In addition, business actors in conducting offset must prepare their climate change mitigation action plans in the forest utilization business planning document. Administrative sanctions will apply if this requirement is not fulfilled.

In regards to emission reduction reserves (buffer) in the carbon trading as regulated under MOEF Reg 21/22, it only stipulates buffer for carbon offset, while MOEF Reg 7/2023 further regulates buffer not only for carbon offset, but also including buffer for emission trading that has SPE-GRK. The amount of provision for buffers will be stipulated in the Forestry sector carbon trading roadmap.

The Determination of Highest Amount of Carbon for International Carbon Trading

MOEF Reg 7/2023 also introduces a new provision that is not regulated in other implementing regulations in which it sets out the highest amount of carbon that is tradable overseas. In order to improve the performance of business actors, the Minister of Environment and Forestry in which the duty is carried out by the Director General of Sustainable Forest Management after coordinating with the relevant middle high leadership officials, determines the portion or highest amount that can be traded overseas for the excess of the achievement of the NDC target.

⁴ Article 10 (c) MOEF Reg 7/2023.

⁵ Article 12 (6) MOEF Reg 21/2022.

Further, Article 15 MOEF Reg 7/2023 determines the highest amount that can be carried out Carbon Trading with the provisions:

- a. the annual average of the achievement of targets for reducing GHG emissions and storing and/or sequestering forest carbon by business actors within a certain period shows above the NDC target of sub-sectors;
- b. business actors who do not achieve the target of reducing emissions or storing and/or sequestering forest carbon, within the period referred to in letter a; and
- c. a certain period of time is determined based on the target period of the NDC.

It also further sets out that International carbon trading highest amount/quotas for each business actor are carried out considering:

- a. it is obtained from the difference in the performance achievements of Business Actors against the NDC target of sub-sectors;
- b. it is awarded to business actors who achieve emission reduction or storage targets and/or sequestration of forest carbon; and/or
- c. it is distributed proportionately.

Examining the Readiness of Regulations or Policies to Accommodate Carbon Trading Infrastructure in the Forestry Sectors

Aspects	PIC	Regulatory Readiness
Emission Trading		
Carbon Trading Roadmap for the Forestry Sector	MOEF	Under Development
Buffer	MOEF	Under Development
PTBAE and PTBAE-PU Establishment for Peatland Management	MOEF	Not Ready
Peatland Management Quota	MOEF	Not Ready
Actual Emission Measurement	Business Actors; SRN PPI	Ready
PTBAE-PU Reporting	SRN PPI	Ready
PTBAE-PU Report Verification	Third-party verifiers	Ready
SPE-GRK (Surplus PTBAE-PU)	SRN PPI	Ready
Emission Trading	SRN PPI; Carbon Exchange	Under Development

Aspects	PIC	Regulatory Readiness
GHG Emission Offset		
Carbon Trading Roadmap for the Forestry Sector	MOEF	Under Development
Buffer Allocation	MOEF	Under Development
GHG Emission Baseline Establishment	MOEF	Under Development
Emission Reduction Target Establishment	MOEF	Under Development
DRAM Preparation	Business Actor; SRN PPI	Ready
DRAM Validation and Validation Report	third-party validators	Ready
Climate Change Mitigation Action Reporting	Business Actor	Ready
Climate Change Mitigation Action Report Verification and Verification Report	third-party verifiers	Ready
Measurement, Reporting and Verification (MRV) Team Assessment	MOEF	Ready
SPE-GRK Issuance	SRN PPI	Ready

Note:

The justification to determine the status of readiness is based on the availability of regulations to regulate such items or activities. Please reach out to us for further details.

The information provided herein is based solely on publicly available sources and is intended to reflect the perspective of the general public. It is important to note that this information may not encompass all viewpoints or consider undergoing process within government agencies. The data presented in this context is subject to limitations and should not be considered exhaustive, definitive, or authoritative.

Non-Tax State Revenue Imposition towards Carbon Trading

As regulated under the Article 17 MOEF Reg 7/2023, carbon levy is imposed towards the utilization of forest in the form of carbon sequestration and/or storage. This levy applies in the form of non-tax state revenue (*Penerimaan Negara Bukan Pajak - PNBP*), particularly towards both emission trading and offset transactions. According to Government Regulation No. 12 of 2014 on Types and Tariffs on Types of Non-Tax State Revenue Applicable to the Ministry of Forestry, the fee for transaction of carbon sequestration and/or storage from forest areas is 10% of the carbon sales value (in Rupiah).

Closing

As Indonesia's NDC has put Forestry as one of the main sectors that becomes the focus of Indonesia's climate mitigation and adaptation actions, the issuance of MOEF Reg 7/2023 is giving all of us an enlightenment to further witness the advancement of carbon pricing developments in Indonesia. All stakeholders including businesses, communities, civil society organizations, have looked forward to the implementation and the infrastructure readiness especially regarding the carbon trading system in Indonesia. The momentum has to be kept and ensured by the Indonesian government as a way to safeguard the progress of achieving Indonesia's NDC target.

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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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