

Client Alert

30 May 2023

**For further information
please contact:**



Kana Itabashi
Partner
+81 3 6271 9464
kana.itabashi@bakermckenzie.com



Norman Bissett
Foreign Legal Consultant, Jakarta
+62 21 2960 8678
norman.bissett@bakermckenzie.com



Hideo Ohta
Senior Counsel
+81 3 6271 9735
hideo.ohta@bakermckenzie.com

Indonesia Introduces CCS/CCUS Regulation

In line with decarbonization trends, Indonesia has set a goal of reducing its greenhouse gas emissions by 31.89% by 2030 (43.2% with international support). It has also stated that it will achieve carbon neutrality by 2060 while remaining highly dependent on natural resources — especially fossil fuels, such as oil and natural gas. Under these circumstances, Indonesia has recently launched and is attempting to introduce various policies to decarbonize its economy. In addition, the country has been working on and promoting CCUS, a technology that can be used to both increase oil and gas production and reduce CO₂ emissions.

On March 3 this year, the Indonesian Ministry of Energy and Mineral Resources (MEMR) enacted the Regulation on the Implementation of CCS and CCUS in Upstream Oil and Gas Business Activities (MEMR2/2023) ("**Regulation**").

The Regulation covers a wide range of matters, including planning of CCS and CCUS projects, implementation, monitoring, CO₂ measurement, reporting and verification ("**MRV**"), financing and monetization and closure of CCS and CCUS projects. "**Contractor**" is defined under the Regulation as a business entity or permanent establishment that has entered into a cooperation contract (i.e., a production sharing contract or "**PSC**") with the Special Working Unit for Upstream Oil and Gas Business Activities ("**SKK Migas**") or the Aceh Oil and Gas Management Agency ("**BPMA**") for the purpose of exploration or development in certain upstream oil and gas areas within Indonesia ("**Work Area**").

The Regulation requires that carbon emissions be captured from upstream oil and gas business activities via CCS or CCUS. In addition, CO₂ from the atmosphere can be used for CCS or CCUS activities and carbon derived from other industrial activities can be used for CCUS activities.

During a project's planning stages, the Regulation requires a Contractor to submit an implementation plan assessing the feasibility of a proposed CCS or CCUS project to the Minister through SKK Migas or BPMA. This plan is required to include information on geology, geophysics, reservoirs, transport, storage, injection and operations for CCUS projects, in addition to information on economic efficiency, engineering, safety and the environment, project evaluation and risk mitigation, monitoring, measurement, reporting and verification (MRV). The Regulation also regulates the costs, funding, monetization, incentives and insurance, etc. related to the implementation of CCS or CCUS.

The Regulation permits Contractors to submit plans to inject and store CO₂ emissions in other Contractors' Work Areas and to inject and store CO₂ emissions generated by third parties — expected to pave the way for multi-user CCS hubs. However, the rights and obligations of third parties have yet to be established under detailed rules and guidelines (Pedoman Tata Kerja or "**PTK**"). A Contractor can carry out CCS or CCUS in a Work Area only after an implementation plan has been approved.



Ikumi Maruta
Associate
+81 3 6271 9693
ikumi.maruta@bakermckenzie.com



Misa Suzuki
Associate
+81 3 6271 9473
misa.suzaki@bakermckenzie.com

The Contractor is responsible for monitoring CCS and CCUS projects in accordance with an approved monitoring plan to ensure worker safety, installation and equipment safety and environmental and/or public safety. The monitoring plan should identify risks from CO₂ leakage and groundwater contamination, risks in buffer zone layers, impermeable zone layers, reservoirs and other risks caused by CO₂ emissions. The results of the monitoring will be submitted to the Directorate General of Oil and Gas ("**DGOG**") every six months in a monitoring results report.

The Contractor is further required to conduct certain MRV activities at least once a year — including assessing the amount of stored CO₂ — and submit a report on the results of its MRV activities by March of each year. The Regulation provides that the Contractor can also utilize the carbon economic value (commonly known as carbon pricing) derived from CCS or CCUS activity. It remains unclear whether "utilize" means that the Contractor will have the rights to carbon credits, but presumably this is the intention.

The Regulation states that a CCS or CCUS facility will be closed when:

- it reaches its maximum injection capacity;
- no CO₂ remains to be injected;
- the PSC expires and is not extended;
- an unsafe condition arises; or
- in the event of force majeure.

In the event of such a closure, the Contractor must submit a closure plan to the MEMR and obtain approval prior to conducting CCS or CCUS closure activities. The closure plan must include information on the reservoir, equipment, installation, facilities, closed wells, total CO₂ injection reductions, cost estimates, timeframe for closure and mitigation plans for environmental and other impacts resulting from the closure. The DGOG (or third-party verifier) is required to verify the completion of the CCS or CCUS closure activities.

The Regulation also requires a Contractor to conduct ongoing monitoring for a period of 10 years following the completion of the CCS or CCUS closure activities. Adequate funds for this monitoring and any necessary remedial measures taken during the monitoring period will be retained in a joint account under the name of the Contractor and SKK Migas or BPMA (as applicable).

A number of issues remain in need further clarification, including the following:

1. Can a third party outside the PSC regime conduct CCS/CCUS activity?

The Regulation only suggests that CCS/CCUS activity is to be conducted by a Contractor and is silent on whether it can be contracted out to a third party.

2. Can a PSC Contractor contract with another PSC Contractor to store carbon? If so, will this be subject to procurement requirements under PTK 007?

The Regulation provides that the Contractor producing the carbon emissions may propose CCS/CCUS activities in another Contractor's Work Area. The CCS/CCUS project will be included as part of the field development plan of the Contractor that produced the carbon emissions. Both the Regulation and PTK 007 are silent on whether this cooperation will be subject to PSC procurement requirements.



3. Who gets the carbon credits?

Ownership of carbon credits derived from CCS/CCUS projects remains unclear. As mentioned above, the Regulation does not expressly provide that the Contractor is entitled to the carbon credits derived from the project or stipulate a share of the carbon credits it is entitled to. We assume that other sector-specific carbon trading regulations will be issued to regulate carbon trading in the oil and gas sector.

4. Can the Contractor import the carbon emissions?

The Regulation provides that a Contractor may enter into contracts with third parties that produce carbon emissions to enable those third parties to inject and store their carbon in the Contractor's Work Area using the CCS/CCUS facility operated by the Contractor. However, it is unclear whether "third parties" includes parties located outside Indonesia.

5. What will the liability regime be for CCS/CCUS activities?

CCS/CCUS activity potentially creates long-term liabilities. The rights, obligations and liability of the Contractor in relation to the CCS/CCUS activity will expire:

- a. upon obtaining verification of the closure of a CCS/CCUS facility from the DGOG;
- b. when the monitoring results show no leakage, groundwater contamination, unplanned distribution of carbon emissions and/or other risks related to the injection of carbon emissions; and
- c. when the PSC expires.

However, it is not clear under the current Indonesian regulatory regime what liability a Contractor would bear for subsequent leakage/contamination over the longer term.

Further, prior to the expiry of the PSC, the Contractor may request to relinquish part of the Work Area for a Depleted Reservoir that has been used for CCS/CCUS activity. Again, it is not clear, under the Regulation, what longer term liabilities will attach to these relinquished areas and who bears them.

Indonesia is the first country in Asia to enact a legal framework for CCS. Malaysia is also said to be considering the development of a CCUS law, and Singapore and Thailand are also interested in CCS. Japanese companies have been involved in CCS, EOR and EGR studies and feasibility studies for oil and gas fields in Indonesia. The Regulation may provide a tailwind for Japanese companies wishing to participate in CCS or CCUS in Indonesia. It will be interesting to see whether CCS or CCUS facilities will be operated not only in Indonesia but also across borders under the Regulation.