Environmental law in Indonesian: Recent and possible future changes

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Among recent actions taken by Indonesian President Joko Widodo to strengthen regulatory and enforcement functions in the environmental sector was the integration of two previously separate but interlinked departments to become the Ministry of Environment and Forestry (“MOEF”), through the issuance of Presidential Regulation No. 16 of 2015 regarding the Ministry of Environment and Forestry (“PR 16/2015”).

Another action was the issuance of Presidential Instruction No. 8 of 2015 (“PI 8/2015”), which effectuated a moratorium on the issuance of new licenses in primary natural forest areas (hutan alam primer) and peatland (lahan gambut) located in conservation forests, protected forests, production forests, and other utilization areas, as stated in the Indicative Map of Suspension of New Licenses. This moratorium, however, does not apply to (i) applications that have received principle approval from the MOEF, (ii) vital national development in the fields of geothermal, oil and gas, electricity, and land for rice and sugar cane, (iii) the extension of existing forest utilization licenses and/or the use of the forest area licenses of companies whose main businesses licenses are still valid, and (iv) ecosystem restoration.

Possible Future Developments

A. Environmental Management and Protection Plans: To support systematic and integrated management and protection of the environment, the Government of Indonesia (“GOI”) is considering the enactment of a regulation regarding environmental management and protection plans, as mandated by Article 11 of Law No. 32 of 2009 regarding Environmental Management and Protection (the “Environmental Law”). The MOEF, the Governor, and/or the regent or mayor, in accordance with their respective authority, would be responsible for the formulation of an environmental management and protection plan, which would consist of plans on the utilization and/or reservation of natural resources, preservation and protection of environmental quality and/or functions, control and supervision of natural resources, and adaptation and mitigation of climate change.

B. Indonesia’s Haze Issue: Increasing public awareness of environmental sustainability and improving legal foundations have caused law enforcement to be more aggressive to ensure that business operations and activities in Indonesia do not adversely impact the environment and to take actions against those that do. For example, in the last trimester of 2015, the MOEF, among others, was under scrutiny and pressure in light of the massive Sumatra forest fires that created unhealthy haze in and beyond the Indonesian archipelago. In addition to imposing administrative sanctions on
the perpetrators, the MOEF indicated it would represent the community in bringing claims for compensation against the perpetrators on the basis of Article 90 of the Environmental Law, which allows the GOI standing to make environmental claims for compensation. The President also indicated that entities responsible for slash-and-burn practices would lose their concessions.

C. Global Commitments: The GOI has committed to contribute to reducing global emissions up to 26 percent below the Business As Usual ("BAU") standard by 2020 in the Intended Nationally Determined Contribution ("INDC"). Based on www.climateactiontracker.org, Indonesia’s deforestation and peatland destruction “at present account for the largest source of the country’s emissions, an average of 60% of total emissions over the last ten years (based on national data).” PI 8/2015 is one of the GOI’s responses to this issue (see above).

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