



**KEMENTERIAN LINGKUNGAN HIDUP/  
BADAN PENGENDALIAN LINGKUNGAN HIDUP  
DEPUTI BIDANG PENGENDALIAN PERUBAHAN IKLIM DAN  
TATA KELOLA NILAI EKONOMI KARBON**

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<b>Project</b>	: <i>Result Based Payment Programme Forest Carbon Facility (RBP FCPF) Carbon Fund</i> Tingkat Nasional
<b>K/L</b>	: Kementerian Lingkungan Hidup / Badan Pengendalian Lingkungan Hidup
<b>Eselon I</b>	: Deputi Bidang Pengendalian Perubahan Iklim dan Tata Kelola Nilai Ekonomi Karbon
<b>Pelaksana</b>	: Direktorat Mitigasi dan Perubahan Iklim (MPI)
<b>Tahun</b>	: AWP Tahun 2025

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**TERMS OF REFERENCE**

**Emission Reduction Legal Reference and Framework Advisor Specialist**

Legal Opinion on the Authority of the Program Entity and Emission Reduction Title Transfer under the Extended Implementation of the FCPF-CF ERPA in East Kalimantan

**A. Background**

The Forest Carbon Partnership Facility – Carbon Fund (FCPF-CF) supports developing countries in their efforts to reduce emissions from deforestation and forest degradation, enhance forest carbon stocks, and foster sustainable land use through jurisdictional approaches. Indonesia, through the Ministry of Environment (MoE), has signed an Emission Reductions Payment Agreement (ERPA) with the International Bank for Reconstruction and Development (IBRD), acting as Trustee of the FCPF Carbon Fund, for the implementation of the East Kalimantan Jurisdictional Emission Reductions Program (EK-JERP).

As a jurisdictional REDD+ initiative under Indonesia's climate change mitigation framework, the ER Program in East Kalimantan serves not only as a pilot for performance-based carbon finance but also as a legal precedent in managing carbon rights at the national level. The ability to demonstrate clear and uncontested legal authority over the transfer of Emission Reduction titles is essential to ensure the environmental integrity of the program, the enforceability of international agreements, and the credibility of Indonesia's commitment under its Nationally Determined Contributions (NDC). As such, a robust legal foundation is critical for both fiduciary compliance and international recognition of Indonesia's jurisdictional carbon transactions.

The ERPA, signed on November 25, 2020, consists of Tranche A and Tranche B, with a combined Contract ER Volume of 22 million tons and an Additional ER Call Option Volume of 20 million tons. The ERPA requires that the Program Entity demonstrate its legal capacity to enter into the agreement and to transfer full legal and beneficial title to the Emission Reductions (ERs)

generated in the program's accounting area, by Criterion 36 of the Carbon Fund Methodological Framework (MF).

To fulfill the effectiveness conditions of the original ERPA, a Legal Opinion was issued by an independent legal expert on October 15, 2021. This opinion affirmed the ability of MoE, as Program Entity, to transfer the title to ERs to the Carbon Fund, supported by national legal frameworks including the Indonesian Constitution, Forestry Law, Law No. 23/2014 on Regional Government, and the draft of the Presidential Regulation on the Economic Value of Carbon (Perpres NEK), which was under finalization at the time. **Given regulatory developments since 2021, the updated Legal Opinion must take into account the promulgation of Presidential Regulation No. 98/2021 and its implementing regulation, Ministerial Regulation No. 21/2022, as well as any relevant provisions concerning carbon rights and environmental governance under other national legislation, including the Omnibus Law (Law on Job Creation), the Village Law, and land-related laws. Additionally, the updated legal opinion should clarify Indonesia's legal provisions governing the transfer of Emission Reduction Units to the Carbon Fund, ensuring alignment with the ERPA framework and international carbon transaction standards.**

The updated Legal Opinion will serve as a critical legal instrument to support the continuity of ERPA implementation, enable smooth and transparent transactions of ERs under Tranche A and Tranche B, and ensure legal certainty for the Government of Indonesia and the World Bank as Trustee of the FCPF Carbon Fund.

## **B. Objectives**

The objective of this assignment is to produce an independent and updated Legal Opinion confirming that, under the current legal and regulatory framework of Indonesia, the Ministry of Environment (MoE), as the Program Entity of the East Kalimantan Jurisdictional Emission Reductions Program (EK-JERP), maintains full legal authority to:

1. Enter into and continue implementing the Emission Reductions Payment Agreement (ERPA) with the International Bank for Reconstruction and Development (IBRD) as Trustee of the FCPF Carbon Fund;
2. Transfer full legal and beneficial title to the Emission Reductions (ERs) generated within the EK-JERP accounting area to the Carbon Fund in accordance with ERPA provisions;
3. Apply such authority to both Contract ER Volume and Additional ERs under the Call Option mechanism;
4. Operate within the applicable legal scope of Presidential Regulation No. 98/2021, Ministerial Regulation No. 21/2022, and other relevant laws, including but not limited to the Job Creation Law (UU Cipta Kerja), Village Law (UU Desa), and land tenure legislation;
5. Clarify the legal basis and procedural mechanism for transferring ER units to the Carbon Fund, ensuring alignment with international standards under the ERPA framework.

## **B. Tasks**

The task of the Legal Opinion Specialist as Consultant is to provide independent analysis and confirmation of the Ministry of Environment (MoE) legal authority, as the Program Entity, to transfer legal title to Emission Reductions (ERs) to the Carbon Fund in accordance with the Emission Reduction Payment Agreements (ERPAs) signed for Tranche A and Tranche B, including the extended period of ERPA implementation. In line with this, the following elements shall be confirmed through the Legal Opinion:

1. Confirm that the authority to transfer ER title under both Tranche A and Tranche B also applies to the Additional ERs (Call Option) under the extended ERPA period.
2. Confirm that the MoE is (i) legally authorized and prepared to transfer title to ERs to Tranche A Carbon Fund participants, and that such transfer or re-transfer is consistent with applicable Indonesian laws and regulations; and (ii) that such transfer does not affect the recognition and definition of carbon rights under Indonesian legal frameworks.
3. Clarify and explain in detail which specific provisions in Presidential Regulation No. 98/2021 on the Carbon Pricing and Ministerial Regulation No. 21/2022 on the Governance of NEK Implementation are relevant to the ERPA transactions, including foreign carbon trading, and how these provisions support MoE's authority to transfer title to ERs.
4. Include additional legal interpretation as necessary on other relevant regulations such as the Job Creation Law, Village Law, land tenure legislation, and the legal basis for transferring ER units to international parties (the Carbon Fund), in line with the ERPA framework.
5. Other aspects as may be required by MoE and the World Bank
6. Submit a comprehensive and independent legal opinion in both English and Bahasa Indonesia, including relevant legal citations and documentation.

#### **D. Scopes of Legal Opinion**

The Legal Opinion to be prepared by the Consultant is expected to cover the following subject matters:

1. Analyze whether the legal arrangements supporting the authority of the Ministry of Environment (MoE), as the Program Entity, to transfer legal title to Emission Reductions (ERs) to the Carbon Fund (as required under Indicators 36.1 and 36.2 of Criterion 36 in the FCPF Methodological Framework) are in accordance with Indonesia's existing legal and regulatory frameworks.
2. Assess whether such authority also extends to the transfer of title for Additional ERs (Call Option), and confirm that the procedures for title transfer are aligned with applicable national laws and relevant international agreements.
3. Clarify and interpret key provisions in Presidential Regulation No. 98/2021 on the Carbon Pricing and Ministerial Regulation No. 21/2022 on the Governance of Carbon Pricing Implementation, as well as other relevant legal instruments (e.g., the Job Creation Law, Village Law, land governance regulations) that relate to the implementation of the ERPA and the transfer of ER units to international entities.
4. Assess whether any legal gaps, normative conflicts, or regulatory uncertainties exist that could affect the enforceability or operationalization of the extended ERPA, particularly in relation to institutional mandates, carbon rights governance, and cross-border carbon trading mechanisms.

5. Provide legal analysis supported by normative arguments and direct references to laws and regulations, including citation of legal articles, court decisions (where relevant), legal doctrines, and applicable international best practices.

#### **E. Reporting Arrangements**

The Legal Opinion shall be submitted under the following conditions:

1. The Legal Opinion shall be produced in **English**, using proper legal terminology, and accompanied by an **official translation in Bahasa Indonesia**.
2. The Legal Opinion shall be submitted with all **supporting documents**, including relevant excerpts of Indonesian laws and regulations, cited court opinions, and legal instruments referenced in the opinion. All supporting documents shall be provided in **English** or **accompanied by certified English translations**.
3. The Consultant shall submit the final Legal Opinion in accordance with the **timeline agreed with the Deputy of Climate Change and Carbon Governance– Ministry of Environment (MoE)**, as the implementing agency and direct user of the report.
4. The Consultant is expected to **coordinate closely** with Deputy of Climate Change and Carbon Governance - MoE and the Provincial Project Management Unit (PPMU) of East Kalimantan during the assignment period, and be available for meetings or clarifications requested by MoE and the World Bank.
5. **Payment to the Consultant** will be made based on the satisfactory **completion and formal acceptance** of the final Legal Opinion by Deputy of Climate Change and Carbon Governance – MoE

#### **F. Qualifications**

1. At least a Master's/Doctorate /PhD in Law with at least 14 years of experience
2. Experienced in providing critical legal studies and thorough legal research
3. have experience in providing legal opinions for at least the last three years
4. have experience in public, private international law, international climate, negotiations, climate finance, and REDD+, ability to produce legal opinions in English.
5. Have good leadership and cooperation in teamwork.
6. Strong client orientation with commitment to results
7. Not as a civil servant, except Lecturer/Professor from a university
8. Strong ability to communicate in English, Bahasa Indonesia both written and verbal.