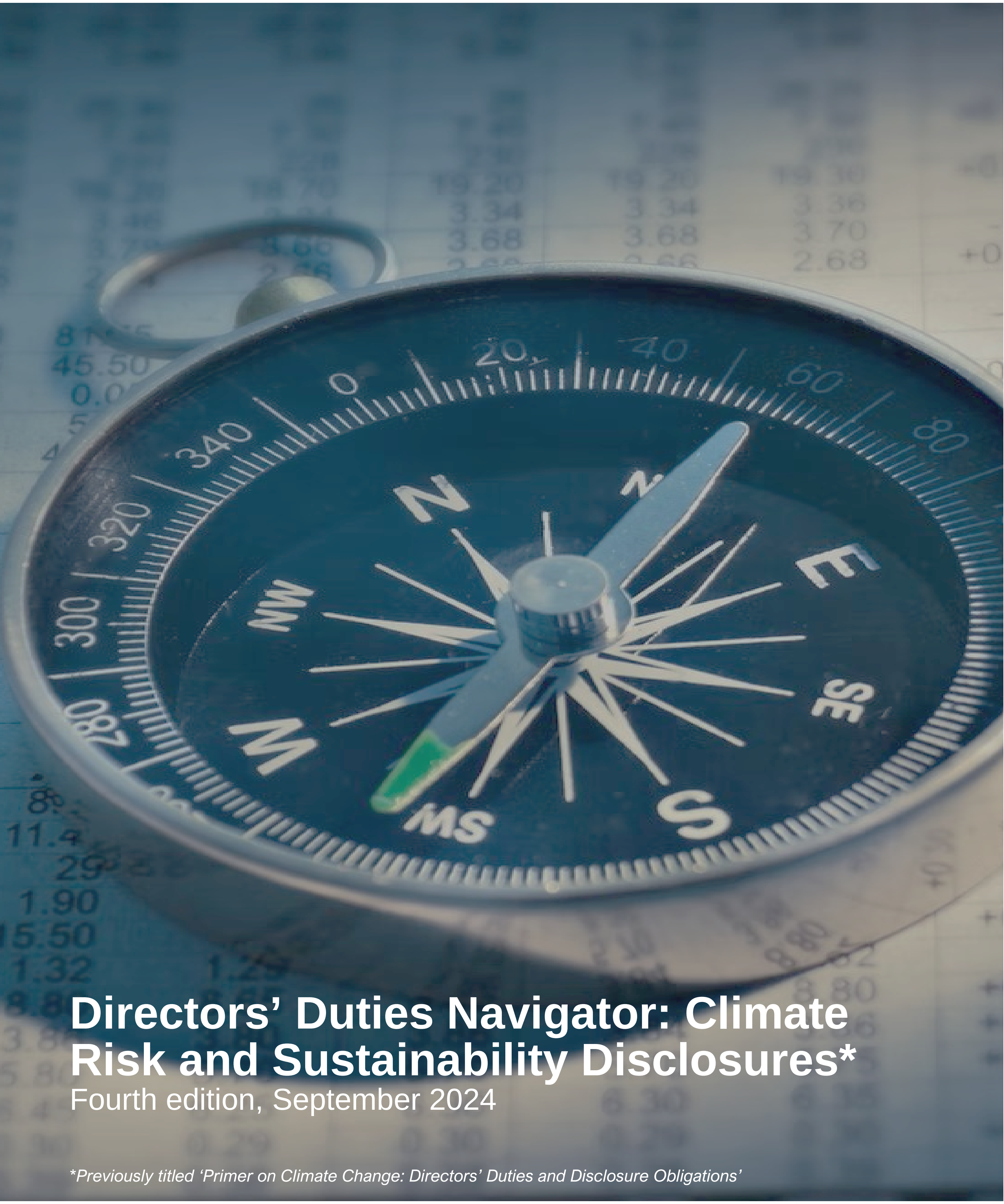

Directors’ Duties Navigator: Climate Risk and Sustainability Disclosures*

Fourth edition, September 2024

**Previously titled ‘Primer on Climate Change: Directors’ Duties and Disclosure Obligations’*

Commonwealth Climate and Law Initiative

Climate Governance Initiative

Indonesia

1. Legal and Regulatory Landscape Regarding Climate Change

1.1. Government approach to climate change

1.1.1. Climate change legislation

Indonesia does not have a specific climate change legislation *per se.* Nevertheless, Indonesia has enacted *Presidential Regulation No. 98 of 2021* regarding Carbon Economic Value (**PR 98/2021**).[1] PR 98/2021 was issued to address climate change by outlining key actions required to support Indonesia's commitment under the Paris Agreement. It acknowledges the importance of carbon as a universal indicator for climate action and aims to use carbon economy as a tool to achieve national emission reduction targets.

While there are other sectoral regulations focused on different efforts to address climate change, PR 98/2021 remains the key legislation in addressing climate change.

1.1.2. Transition plans and targets

Indonesia submitted its Enhanced Nationally Determined Contribution (**NDC**) to the United Nations Framework Convention on Climate Change (**UNFCCC**), pursuant to which it commits to reduce greenhouse gas (**GHG**) emissions by 31.89% by 2030 and by 43.20% by 2030, conditional on the receipt of international support.[2]

In addition, the Government of Indonesia (**GOI**) issued *Presidential Regulation No. 112 of 2022* regarding the Acceleration of Renewable Energy Development for Electricity Supply (**PR 112/2022**)[3], aimed at accelerating the transition to renewable energy by regulating the early retirement of Coal-Fired Power Plants (**CFPPs**).

PR 112/2022 mandates the Ministry of Energy and Mineral Resources (**MEMR**) to develop a roadmap to accelerate the early retirement of CFPPs.[4] The MEMR explicitly prohibits the development of CFPPs, with certain exceptions.[5] PR 112/2022 also instructs Indonesia's state-owned electricity company, PT Perusahaan Listrik Negara (**PLN**), to accelerate the early termination of: (a) the operation of PLN's CFPPs, and/or (b) CFPP Power Purchase Agreements with Independent Power Producers.[6] In addition to an energy transition strategy, PR 112/2022 further regulates (i) tendering for renewable projects, (ii) tariff mechanisms, and (iii) incentives provided for renewable energy projects.

By the end of 2024, Indonesia plans to submit its second NDC to the UNFCCC.[7] This new NDC will set a goal of reaching net zero emissions by 2060 and will follow a 1.5°C climate scenario. It will also align with Indonesia's Long-Term Strategy for Low Carbon and Climate Resilience (**LTS-LCCR**) for 2050.

The updated NDC uses 2019 as the base year for measuring emissions, with a target of reducing emissions by 140 million tons of CO_2 equivalent by 2030. The GHGs covered include CO_2, CH_4, N_2O, and HFCs. The updated NDC will include new sectors like marine environments and upstream oil and gas.

The Directorate General of Electricity of MEMR is currently preparing the 2023 – 2026 National Electricity General Plan

1 Presidential Regulation No. 98 of 2021, dated October 29, 2021, regarding the Implementation of Carbon Economic Value and Achievement of Nationally Determined Contribution Target and Control of Greenhouse Gas Emissions in the Context of National Development (PR 98/2021).

2 Enhanced Nationally Determined Contribution of the Republic of Indonesia, 2022 (Enhanced NDC) <https://unfccc.int/sites/default/files/NDC/2022-09/23.09.2022_Enhanced%20NDC%20Indonesia.pdf>.

3 Presidential Regulation No. 112 of 2022, dated September 13, 2022, regarding the Acceleration of Renewable Energy Development for Electricity Supply.

4 Article 3 paragraph (1) of PR 112/2022.

5 Exceptions include: (a) CFPPs as already stipulated in the existing Electricity Supply Business Plan approved by the MEMR prior to the enactment of PR 112/2022; or (b) CFPPs which are (i) integrated with a listed National Strategic Project that provides increasing added value for the natural resources sector and makes a large contribution to job creation or national economic growth; (ii) committed to a minimum 35% reduction in GHG emissions within 10 years of the CFPP's operation date in contrast to the average GHG emissions of the CFPP in 2021; and (iii) operating only until no later than 2050.

6 Article 3 paragraph (5) of PR 112/2022.

7 Ministry of Environment and Forestry Press Release No. SP.172/HUMAS/PPIP/HMS.3/07/2024 dated August 3, 2024.

(**RUKN**)[8] to update its 2019-2038 RUKN.[9] This update responds to the need for adjustment to meet the target of net zero emissions by 2060. According to the draft RUKN 2023-2060, to transition to net zero emissions by 2060 or sooner, Indonesia's electricity policies shall focus on the following areas:

1. **Coal-Fired Power Plants**: New coal-fired power plants are restricted with exceptions as regulated under PR 112/2022.
2. **Gas-Fired Power Plants**: While gas-fired power plants have lower emissions than coal, they still need to be reduced to meet the net zero emissions target.
3. **Diesel Power Plants**: Diesel power plants must be reduced gradually and are to be completely phased out by 2030.
4. **Geothermal Power**: Geothermal energy development will focus on both large-scale (flash and dry) and small-scale (binary and condensing) systems. The aim is to maximize geothermal potential according to the electricity system's needs, including the development of advanced geothermal systems and non-conventional geothermal methods.
5. **Hydropower**: Develop and optimize hydropower systems, including large-scale reservoirs, run-of-river, mini-hydro, and micro-hydro plants.
6. **Bioenergy**: Bioenergy technologies, including biomass, biogas, and waste-to-energy plants, will play a crucial role in replacing coal.
7. **Solar Power**: Solar power, including utility-scale, industrial, and rooftop systems, will be expanded significantly. To address the challenges of solar intermittency, improvements in weather forecasting, energy storage technologies, integration with hydropower, and smart grid systems will be essential. Domestic solar industry support will help reduce investment costs.
8. **Wind Power**: Expand wind power, including onshore, offshore, and small onshore turbines. Wind energy also faces intermittency issues that need to be managed with grid flexibility and high-tech control systems. Environmental impacts, such as noise pollution from wind turbines, need to be considered in development.
9. **Marine Energy**: Invest in marine energy technologies like tidal, wave, and thermal energy. The aim is to make marine energy investments more competitive, increasing the variety of renewable energy options available.
10. **Nuclear Power**: Develop nuclear power with a focus on safety, security, and appropriate site selection. This includes ensuring sites are free from geological hazards, not densely populated, and not major food production areas. Nuclear power must ensure reliable fuel supply and radioactive waste management, with independent oversight from nuclear regulatory bodies.
11. **Energy Storage**: Develop storage technologies such as pump storage and battery energy storage systems to support energy transition. Storage is crucial for balancing intermittent renewable energy sources and providing peak power. Although initial costs are high, they are expected to decrease over time.

Indonesia's national adaptation plan is outlined in Annex 2 of its Enhanced NDC.[10] The adaptation plan for economic resilience includes sustainable agriculture and plantations, integrated watershed management, reduction of deforestation and forest degradation, land conservation, utilization of degraded land for renewable energy, improved energy efficiency and consumption patterns.

For social and livelihood resilience, the key programs include enhancing adaptive capacity, developing community participation in local planning, securing access to natural resources, increasing

[8] Accessible at <https://gatrik.esdm.go.id/assets/uploads/download_index/files/eed9c-draft-rukn-cover.pdf>.

[9] Decree of the Minister of Energy and Mineral Resources Number 143 K/20/MEM/2019, dated August 1, 2019, regarding the National Electricity General Plan 2019-2038.

[10] Annex 2 of Enhanced NDC.

disaster preparedness, identifying vulnerable areas in spatial planning, improving human settlements and basic services, and addressing conflict prevention and resolution.

In terms of ecosystem and landscape resilience, the key programs involve social forestry, coastal zone protection, ecosystem conservation and restoration, integrated watershed management, and the development of climate-resilient cities.

1.1.3. Wider government approach to climate change

The GOI has shaped its national regulatory policies based on its commitment to contribute to climate change actions. To support this commitment, at the end of 2021, the GOI issued PR 98/2021, which was later supplemented by Minister of Environment and Forestry (**MOEF**) *Regulation No. 21 of 2022* regarding Procedures for the Implementation of Carbon Economic Values (**MOEF 21/2022**).[11] PR 98/2021 and MOEF 21/2022 are the framework for the establishment of carbon pricing instruments and govern the general rules of carbon trading, in addition to other climate change-related economic instruments such as result-based payments and carbon tax.

Carbon tax: The carbon tax mechanism is governed by *Law No. 7 of 2021* regarding the Harmonization of Tax Regulation[12] (**Law 7/2021**).

Under Law 7/2021, carbon emissions having a negative impact on the environment will be subject to carbon tax, with the tax subject being private persons or entities purchasing goods containing carbon or conducting activities resulting in carbon emissions.[13] Taxpayers participating in carbon emission trade, carbon emission offset, or any other mechanism set out under environmental regulations may be subject to a carbon tax deduction or other treatment for the fulfilment of the carbon tax payer's obligations.[14] The provisions on the rate, calculation, payment, reporting, and other mechanisms of the carbon tax are expected to be further regulated by the Minister of Finance.[15] Initially targeted for launch in April 2022, the imposition of a carbon tax is now not expected until around 2025. Businesses in carbon-intensive sectors such as coal-fired power plants, oil and mining, cement, plastic, petrochemicals, and palm oil plantations, among others, will be the most heavily affected. It is expected that implementation will first target coal-fired power plants and then broaden to other industries.

Carbon trading: Under PR 98/2021, carbon trading can be conducted through: (1) emissions trading, and (2) GHG emissions offset.[16] Under the emission trading scheme, the trade will be conducted by businesses and activities with emissions either above the regulated emission ceiling or below the regulated GHG emission ceiling imposed by the GOI or relevant ministries.[17] The GHG emissions offset scheme only applies to businesses and activities without any determined emission ceiling that provide a statement of emission reduction using the results of mitigation actions from other businesses and activities.[18] To conduct GHG emissions offset, businesses and activities with an emission surplus can sell their excess, and vice versa.

Carbon trading will be conducted through the sale and purchase of carbon units, which serve as proof of ownership in the form of a GHG Emission Reduction Certificate stated in one ton of carbon dioxide.[19] A GHG Emission Reduction Certificate is granted upon registration with the National Registry System of Climate Change Control (**SRN PPI**) and further verification by an independent verifier. MOEF 21/2022 regulates that a GHG Emission Reduction Certificate may be issued if the GHG emission reduction is,

11 Ministry of Environment and Forestry Regulation No. 21 of 2022, dated October 20, 2022, regarding Procedures for the Implementation of Carbon Economic Value (MOEF 21/2022).

12 Law No. 7 of 2021, dated October 29, 2021, regarding the Harmonization of Tax Regulation (Law 7/2021).

13 Article 13 paragraphs (1) and (5) of Law 7/2021.

14 Article 13 paragraph (13) of Law 7/2021.

15 Article 13 paragraphs (10) and (14) of Law 7/2021.

16 Article 49 paragraph (2) of PR 98/2021.

17 Article 50 of PR 98/2021.

18 Article 52 of PR 98/2021.

19 Articles 1 points 14, 15, and 17 of PR 98/2021.

among other things, permanent, accurate, measurable, and results from climate change mitigation actions.[20] The GHG Emission Reduction Certificate may be utilized: (i) as proof of performance of GHG emission reduction, (ii) for carbon trading, (iii) as payment for climate change mitigation action, (iv) as GHG emission compensation, and (v) as proof of performance of a sustainable business/activity to obtain green financing in the form of bonds or sukuk. At the moment, MOEF has yet to issue any GHG Emission Reduction Certificates although several business actors have submitted application for verification.

PR 98/2021 allows carbon trading to be conducted cross-sector.[21] Based on PR 98/2021 there are six sectors that are targeted for the implementation of climate change mitigation actions. These sectors are: (i) energy, (ii) waste, (iii) industrial process and product use, (iv) agriculture, (v) forestry, and (vi) other sectors in accordance with the development of technology.[22] Specifically for power plants, the carbon market is regulated under *MEMR Regulation No. 16 of 2022* regarding Implementation Procedures for Carbon Pricing in the Power Plant Sub-Sector (**MEMR 16/2022**).[23]

Carbon units can also be traded overseas in international markets through emission trading and emission offset.[24] PR 98/2021 indicates that any contractual arrangement which transfers the value of an emission reduction certificate in any international market must obtain the MOEF's prior approval.[25] PR 98/2021 does not clearly regulate the procedure for transferring an emission reduction certificate or the process for obtaining MOEF approval, details which are expected to be provided in a future implementing regulation. Pursuant to the MOEF's Position Paper dated 5 May 2023, the MOEF confirmed that Indonesia is open to international carbon trade. However, such trade must be systematically regulated, with upstream and downstream carbon governance, supervised by the government. The MOEF said the authorization of the state party to the Paris Agreement would be required.

<u>Carbon exchange</u>: On 12 January 2023, the GOI enacted *Law No. 4 of 2023* regarding the Development and Strengthening of the Financial Sector (**Law 4/2023**).[26] This law, among other things, amends existing laws to include provisions on carbon exchange. The Financial Services Authority (*Otoritas Jasa Keuangan* or **OJK**) is mandated to prepare regulations required to implement carbon trading. OJK had further enacted *OJK Regulation No. 14 of 2023* regarding Carbon Trading through the Carbon Exchange, which now provides the basic legal framework for carbon trading through the Indonesia Carbon Exchange (**IDX Carbon**). The IDX Carbon was launched in September 2023 for the trading of domestic voluntary carbon credits and potentially international voluntary carbon credits. The carbon exchange regulates carbon trading and records ownership of carbon units.[27] Carbon trading through the carbon exchange shall be done with: (i) the development of carbon trading infrastructure; (ii) the regulation of state revenue deriving from carbon trading; and (iii) the administration of carbon trading transactions.[28]

<u>National budget for climate change</u>: *Law No. 19 of 2023* regarding the State Budget for the 2024 Fiscal Year does not specifically address any allocation for climate change.[29] The state's spending on climate change is calculated by a climate budget tagging system introduced by the Ministry of Finance in 2016. This system is used to identify and allocate funds within the central government's spending on

20 Article 60 paragraph (1) of MOEF 21/2022.
21 Article 49 paragraph (3) of PR 98/2021.
22 Article 7 paragraph (1) of PR 98/2021.
23 MEMR Regulation No. 16 of 2022, dated December 27, 2022, regarding Implementation Procedures for Carbon Pricing in the Power Plant Sub-Sector.
24 Article 48 paragraph (1) of PR 98/2021.
25 Article 73 paragraph (3) of PR 98/2021.
26 Law No. 4 of 2023, dated January 12, 2023. Regarding the Development and Strengthening of the Financial Sector (Law 4/2023).
27 Article 24 paragraph (2) of Law 4/2023.
28 Article 24 paragraph (4) of Law 4/2023.
29 Law No. 19 of 2023 regarding the State Budget for the 2024 Fiscal Year dated January 1, 2024.

climate change mitigation and adaptation activities, managed by relevant technical ministries. The green budget tagging helps the government identify spending areas that are beneficial or detrimental to green goals.[30]

According to a report from the Ministry of Finance,[31] the climate change budget within the State Budget is divided into the Climate Change Mitigation Budget and the Climate Change Adaptation Budget. Funding has been tagged by seven ministries for mitigation and by 16 ministries for adaptation.

According to a report published by the Budget Analysis Centre, Expertise Agency, Secretariat General of the House of Representatives of the Republic of Indonesia in 2022, from 2016 to 2017, climate change budget tagging was initiated, starting with mitigation programs and expanding to include both mitigation and adaptation activities by 2018.[32] The budget tagging has shown a significant increase of 82.96% from IDR 72.4 trillion in 2016 to IDR 132.47 trillion in 2018. In 2018, the Government allocated IDR 72.2 trillion for ministries involved in mitigation and IDR 37.5 trillion for those involved in adaptation. The largest source of funding comes from the State Budget's direct allocations, with the smallest portion coming from foreign grants.

Between 2018 and 2020, the government cumulatively allocated IDR 307.94 trillion for climate change, averaging IDR 102.65 trillion per year, representing about 4.3% of the State Budget. In 2018, climate change spending reached IDR 126.04 trillion, representing 95.1% of the allocated budget. By 2019, the allocation was IDR 97.66 trillion, with spending at IDR 83.54 trillion, which is 85.5% of the allocation. In 2020, the Government maintained its commitment to low-carbon and climate-resilient development, allocating IDR 77.81 trillion for mitigation and adaptation activities as per *Presidential Regulation No. 72 of 2020*.

<u>Green taxonomy</u>: Indonesia has a green taxonomy published by the OJK in February 2024.[33] The Indonesia Sustainable Finance Taxonomy is a classification system for economic activities that support Indonesia's sustainable development goals, covering economic, environmental, and social aspects. It is designed to guide the allocation of capital and sustainable financing to help Indonesia achieve its net zero emissions targets. The taxonomy emphasizes scientific credibility, interoperability, and inclusivity, aligning with national interests and key environmental objectives such as climate change mitigation and adaptation, ecosystem protection, and resource resilience.

The framework is built on environmental objectives, including climate change mitigation and adaptation, ecosystem protection, and the transition to a circular economy. It classifies activities into "*Green*" or "*Transition*" categories, with specific criteria for corporate and Micro, Small, and Medium Enterprises (**MSME**) segments. Initially, the taxonomy focuses on the energy sector, expanding to other sectors related to Indonesia's Enhanced NDC.

1.2. Regulatory approaches to climate change

1.2.1. Climate change as a systemic financial risk

Indonesia's regulators, including Bank Indonesia and OJK, have increasingly acknowledged the importance of their roles as the central bank and financial regulator, respectively, in issuing regulations and policies in sustainable finance to help

[30] "*Indonesia's Green Budget in Addressing Climate Change*", Budget Analysis Centre, Expertise Agency, Secretariat General of the House of Representatives of the Republic of Indonesia, 2022, p. 27, accessible at https://berkas.dpr.go.id/pa3kn/referensi-apbn/public-file/referensi-apbn-public-32.pdf.

[31] Accessible at https://visual.kemenkeu.go.id/apbn-menjaga-perubahan-iklim.

[32] "*Indonesia's Green Budget in Addressing Climate* Change", p. 29.

[33] Accessible at https://ojk.go.id/id/berita-dan-kegiatan/info-terkini/Documents/Pages/Taksonomi-untuk-Keuangan-Berkelanjutan-Indonesia/Buku%20Taksonomi%20untuk%20Keuangan%20Berkelanjutan%20Indonesia%20%28TKBI%29.pdf.

address climate change. Bank Indonesia and OJK have enacted regulations and policies to promote sustainable finance initiatives. However, Indonesian regulators have not formally recognized climate change or climate risk as a systemic financial risk. They are currently focused on supporting the transition to a sustainable economy rather than categorizing climate change as a systemic financial risk.

1.2.2. Financial regulation and guidance

Otoritas Jasa Keuangan: Acknowledging the need for support from the financial sector, the OJK has passed regulations encouraging investments in businesses that can help address climate change.

In the financial sector, the OJK published Sustainable Finance Roadmaps for 2015-2019 and 2021-2025, which are aimed at increasing the capacity of the financial services sector to adapt to a low-carbon economy.[34] The OJK introduced the concept of "*sustainable finance*" as comprehensive support from the financial services sector to create sustainable economic growth by harmonizing economic and environmental interests.[35]

Under the OJK's Sustainable Finance Roadmap for 2015-2019, one of the things that must be realized is the development of green bonds, the issuance of which is intended to maintain or enhance environmental sustainability. The OJK issued *OJK Regulation No. 60/POJK.04/2017 of 2017* regarding the Issuance and Requirements for Green Bonds (**OJK 60/2017**).[36] OJK 60/2017 regulates the issuance of green bonds to finance or refinance environmentally friendly business activities aimed at protecting, improving, and/or increasing the quality or function of the environment.[37] These business activities include: (i) renewable energy; (ii) energy efficiency; (iii) pollution prevention and control; (iv) management of biological natural resources and sustainable land use; (v) conservation of terrestrial and aquatic biodiversity; (vi) eco-friendly transportation; (vii) sustainable water and wastewater management; (viii) climate change adaptation; (ix) products that can reduce the use of resources and produce less pollution; (x) environmentally sound buildings that meet standards or certifications that are recognized nationally, regionally, or internationally; and (xi) other environmentally friendly businesses or activities.[38] At least 70% of the funds from the public offering of green bonds must be used to finance environmentally friendly business activities.[39] The OJK has reported that since OJK 60/2017 was issued green bonds amounting to USD3.72 billion have been issued.[40] Moving forward, the OJK plans to increase the financial sector's awareness of sustainable finance.[41]

In March 2024, OJK issued Climate Risk Management and Scenario Analysis (**CRMS**) Guide for the Banking Sector.[42] This guide provides a framework for banks to assess the resilience of their business models and strategies against climate change impacts. It covers governance, business strategy, risk management, measurement and targets, and reporting of climate risks and carbon emissions.

This guide emphasizes the critical role of the banking sector in maintaining economic and financial stability amid climate change challenges. It encourages banks to adopt

34 OJK, Sustainable Finance Roadmap (2015-2019) <https://ojk.go.id/id/Documents/Pages/Keuangan-Berkelanjutan/roadmap%20keuangan%20berkelanjutan.pdf>; OJK Sustainable Finance Roadmap Phase II (2021-2025) <https://ojk.go.id/id/berita-dan-kegiatan/publikasi/Documents/Pages/Roadmap-Keuangan-Berkelanjutan-Tahap-II-(2021-2025)/Roadmap%20Keuangan%20Berkelanjutan%20Tahap%20II%20(2021%20-%202025).pdf>.

35 Definition of "sustainable finance" pursuant to Article 1 of OJK Regulation No. 51/POJK.03/2017, dated July 27, 2017, regarding the Implementation of Sustainable Finance for Financial Services Institutions, Issuers, and Public Companies (OJK 51/2017).

36 OJK Regulation No. 60/POJK.04/2017 of 2017, dated December 22, 2017, regarding the Issuance and Requirements for Green Bonds (OJK 60/2017).

37 Article 1 point 3 of OJK 60/2017.

38 Article 4 of OJK 60/2017.

39 Article 8 of OJK 60/2017.

40 OJK Sustainable Finance Roadmap Phase II (2021-2025), page 15.

41 OJK Sustainable Finance Roadmap Phase II (2021-2025), page 11.

42 Accessible at <https://ojk.go.id/id/berita-dan-kegiatan/info-terkini/Pages/Climate-Risk-Management-and-Scenario-Analysis-CRMS.aspx>.

sound governance and risk management practices to better understand, manage, and test the resilience of their financial positions against climate risks.

Bank Indonesia: Bank Indonesia has also taken steps to address climate risk and promote green finance through several regulations.

Bank Indonesia issued Macroprudential Liquidity Incentive Policy,[43] which provides macroprudential incentives to banks that allocate credit to environmentally friendly sectors. This policy provides extra liquidity incentives to banks that engage in green financing.

Bank Indonesia also issued *Bank Indonesia Regulation No. 21/13/PBI/2019*[44] which amends *Bank Indonesia Regulation No. 20/8/PBI/2018* regarding Loan to Value (**LTV**) Ratio for Property Loans, Financing to Value (**FTV**) Ratio for Property Financing, and Down Payment for Motor Vehicle Loans or Financing.[45] The amendment was designed to support the growth of a green economy by introducing more favorable LTV and FTV ratios for financing environmentally friendly properties and vehicles.

1.2.3. Liability risk: enforcement action by regulators

To date, there have been no publicly reported enforcement actions by Bank Indonesia or the OJK specifically targeting non-compliance with climate risk disclosures or sustainable finance regulations.

2. Directors' Duties and Climate Change

2.1. Legal framework for directors' duties

Indonesia adopts a civil law system. Directors' duties are codified in laws and their implementing regulations, including government regulations, ministerial regulations, and sector specific regulations such as OJK regulations. In Indonesia, while court decisions can be persuasive, they do not have binding precedent in the way they might in a common law system. This means that when presented with similar set of facts, courts are not bound to previous courts decisions.

The general duties of members of the board of directors of an Indonesian limited liability company are regulated under *Law No. 40 of 2009* regarding Limited Liability Companies (**Company Law**).[46] The Company Law recognizes and requires a two-board system, consisting of a board of directors and a board of commissioners. The board of directors constitutes the company's management and directors are the day-to-day operating officers of the company, managing the company in the interest of the company and in accordance with its purposes and objectives.[47] Directors are expected to manage the company in good faith, with full responsibility, diligently, and with caution.[48] The board of commissioners serves a supervisory function.

In the case of listed entities, the board of directors is also tasked with managing and being responsible for the management of the listed company in the interest of the company, in accordance with its purposes and objectives.[49] Each director must

[43] Bank Indonesia Regulation No. 11 of 2023 regarding Macroprudential Liquidity Incentive Policy dated September 18, 2023 and Regulation of the Members of the Board of Governors Number 11 of 2023 concerning the Implementation Regulations of the Macroprudential Liquidity Incentive Policy dated October 1, 2023.

[44] Bank Indonesia Regulation No. 21/13/PBI/2019 regarding Amendment to Bank Indonesia Regulation No. 20/8/PBI/2018 regarding the Loan to Value Ratio for Property Loans, the Financing to Value Ratio for Property Financing, and the Down Payment for Motor Vehicle Loans or Financing dated December 2, 2019.

[45] Bank Indonesia Regulation No. 20/8/PBI/2018 regarding the Loan to Value Ratio for Property Loans, the Financing to Value Ratio for Property Financing, and the Down Payment for Motor Vehicle Loans or Financing dated August 1, 2018, as lastly amended by Bank Indonesia Regulation No. 23/2/PBI/2021 of 2021 regarding the Third Amendment to Bank Indonesia Regulation No. 20/8/PBI/2018 regarding the Loan to Value Ratio for Property Loans, the Financing to Value Ratio for Property Financing, and the Down Payment for Motor Vehicle Loans or Financing dated March 1, 2021.

[46] Law No. 40 of 2009, dated August 16, 2007, regarding Limited Liability Companies (Company Law), as last amended by Law No. 6 of 2023 regarding the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation as Law (Job Creation Law) (Company Law).

[47] Articles 92(1) and 97(1) of the Company Law.

[48] Articles 97(1) and 97(2) of the Company Law.

[49] Article 12(1) of OJK Regulation No. 33/POJK.04/2014 of 2014, dated December 8, 2014, regarding Board of Directors and

perform their duties and responsibilities with good faith, full responsibility, and caution.[50] The board of directors is authorized to manage the company in accordance with policies deemed appropriate, in line with the company's purposes and objectives.[51] Additionally, the board of directors and the board of commissioners are required to establish binding guidelines for all members of both boards. These guidelines must, at a minimum, include:[52]

a. legal basis;
b. description of duties, responsibilities, and authorities;
c. values;
d. working hours;
e. meeting policies, including attendance and minutes of meetings; and
f. reporting and accountability.

These guidelines must be fully published on the listed company's website.[53] In performing their obligations, the board of directors must adhere to these guidelines.

Subject to the terms of the company's Articles of Association (**AOA**), the board of directors may generally represent the company. The Company Law stipulates that if the board of directors consists of more than one director, each director is authorized to represent the company unless stipulated otherwise in the company's AOA.[54] The AOA may stipulate which directors can represent the company. Often, the AOA will provide that the company can only be represented by the president director, acting alone, or any two other directors, acting jointly. The Company Law further regulates that if the board of directors consists of two or more directors, the assignment of managerial functions and authorities among the directors may be stipulated based on resolutions of the General Meeting of Shareholders (**GMS**) of the company.[55] If the GMS does not stipulate this, the allocation of management authorities and responsibilities among the directors shall be stipulated in resolutions of the board of directors.[56] Directors may delegate duties and functions to other employees, but they remain legally responsible for all actions taken on behalf of the company.

Indonesia does not have specific regulations or policies regarding directors' duties in addressing climate change. However, in fulfilling directors' fiduciary duty to act for the best interest of the company, directors should take climate change risks into consideration. Recognizing and addressing climate change risks have become increasingly important due to their potential impact on companies in light of the GOI's and other states' commitment to their NDCs. The drivers influencing directors' actions in relation to mitigating climate change risks can vary and may include government regulation, the influence of their regional company, or their local internal agenda.

Government regulation is a significant driver that can shape directors' actions regarding climate change risks. The GOI has implemented regulations aimed at mitigating climate change by reducing GHG emissions and transitioning to renewable energies. Directors have a responsibility to consider these regulations when making decisions for their companies' management. For example, if a company is engaged in the operation of coal power plants, directors must assess the potential financial risks associated with changing regulations, i.e., the phasing out of coal in the energy sector as mandated under PR 112/2022 and the imposition of a carbon tax under Law 7/2021.

The influence of a regional company can also drive directors to consider climate change risks. In some cases, Indonesian companies are part of a larger corporate structure, with a regional company overseeing their operations. The regional

Board of Commissioners of Listed or Public Companies (OJK 33/2014).

50 Article 12(3) of OJK 33/2014.
51 Article 14 of OJK 33/2014.
52 Article 35(1) of OJK 33/2014.
53 Article 35(2) of OJK 33/2014.
54 Article 98(2) of the Company Law.
55 Article 92(5) of the Company Law.
56 Article 92(6) of the Company Law.

company may have established sustainability goals that require its subsidiaries to address climate change risks.[57] Directors of Indonesian subsidiaries may be influenced by the strategic direction and expectations set by the regional company, leading them to incorporate climate change considerations into their decision-making processes.

Directors' actions may also be driven by the local internal agendas of their companies, which encompass the priorities and demands of the companies' stakeholders. Directors who are responsive to these concerns and recognize the business benefits of addressing climate change risks may prioritize them as part of their fiduciary duty.[58] This can involve adopting sustainable practices, reducing GHG emissions, or integrating climate risk assessments into strategic planning.

In addition, since the board of directors is authorized to represent the company, the board of directors is essentially responsible for ensuring that the company complies with all environmental obligations to which the company is subject, including regulations aimed at mitigating the impact of climate change. Pursuant to the Company Law, companies that carry out business activities in the field of and/or related to natural resources are required to implement social and environmental responsibility by committing to participate in sustainable economic development in order to improve the quality of life and the environment for the company, local communities, and society in general.[59]

2.2. Guidance on interpretation of directors' duties

2.2.1. Legal guidance

At the time of writing, Indonesian courts and judges have not provided specific guidance on directors' duties in Indonesia specifically with respect to climate change. Moreover, Indonesia does not currently have any legal opinion or white paper on directors' duties regarding climate change.

The business judgment rule is recognized under Article 97(5) of the Company Law (see section 2.3).

2.2.2. Regulatory guidance

Indonesian regulators have not given any guidance on the interpretation of directors' duties with respect to climate change.

2.3. Directors' liability and litigation risk

The liabilities of the board of directors of an Indonesian limited liability company are regulated under the Company Law.

Each director is fully responsible personally for losses suffered by the company if the concerned director has made mistakes and been negligent in carrying out his/her duties.[60] Shareholders representing at least 1/10 (one-tenth) of the total voting shares of the company may file a claim through the district court against directors who, due to their mistakes and negligence, have caused losses to the company.[61] Directors shall not be liable for losses of the company if the directors can prove that: (i) the losses were not caused by their mistakes or negligence; (ii) they managed the company in good faith and prudently, in the interest of and in accordance with the purposes and objectives of the company; (iii) there were no conflicts of interest either directly or indirectly in their management acts causing the losses; and (iv) they took action to prevent said losses from occurring and continuing.[62]

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57 For instance, Nestlé is aiming for net zero emissions by 2050. Nestlé intends to reduce emissions across its business and supply chains by implementing various measures such as regenerative agriculture, and sustainable logistics, packaging, and manufacturing practices. Nestlé's roadmap for net zero emissions and its relevant policies may impact Nestlé's subsidiaries in Indonesia (See: https://www.nestle.co.id/sustainability/aksi-iklim/perjalanan-menuju-net-zero).

58 The president director of PT Indika Energy Tbk (Indika Energy) stated that the company has invested in the renewable energy sector, digital technology, electric vehicles, nature-based solutions, and other sustainable businesses. The company intends to realize the energy transition and is committed to achieving carbon neutrality by 2050 and increasing its revenue from the non-coal sector to 50 percent by 2025 (See: https://kilaskorporasi.kompas.com/net-zero/read/2021/10/20/18082861/rayakan-hut-ke-21-indika-energy-perkuat-komitmen-netral-karbon).

59 Article 74 of the Company Law.

60 Article 97(3) of the Company Law.

61 Article 97(6) of the Company Law.

62 Article 97(5) of the Company Law.

To date, directors' duties with respect to climate change have not been texted in the Indonesian courts. However, directors can be held liable for environmental crimes, which has been tested by the court.

Other laws imposing environmental obligations on companies include *Law No. 32 of 2009* regarding Environmental Protection and Management (**Law 32/2009**),[63] *Law No. 41 of 1999* regarding Forestry (**Law 41/1999**),[64] and *Law No. 18 of 2013* regarding Prevention and Eradication of Forest Destruction (**Law 18/2013**).[65] The imposition of social corporate liability is governed under *Government Regulation No. 47 of 2012* regarding Corporate Social and Environmental Liability (**GR 47/2012**). Under GR 47/2012, a company running a business utilizing natural resources is required to have a corporate social and environmental plan in place and implement said plan. Indonesia also has other regulations concerning agriculture, peatlands, energy and transportation, industry, and waste management, among others.

The above laws impose corporate criminal liability for environmental crimes committed by corporations. Criminal liability may also be imposed on directors. Pursuant to Law 32/2009, if an environmental crime is committed by, for, or on behalf of a corporation, any penalties shall be imposed on: (i) the corporation, and/or (ii) the person who gave the order to commit such criminal activity or any person acting as a leader in such crime ('functional perpetrators'),[66] specifically those persons with authority over the physical perpetrators and any persons who accepted the actions of the physical perpetrators by agreeing, allowing, or not sufficiently supervising the actions of physical perpetrators, and/or parties who put in place the policies that allowed these criminal acts to occur.[67] Sanctions for individuals can be in the form of imprisonment and fines.[68] If the crime was conducted by a person within the scope of their employment, the person who gave the order or led the crime shall be subject to criminal sanction, regardless of whether the crime was committed together or individually.[69]

In contrast to Law 32/2009, Law 41/1999 and Law 18/2013 contain provisions which state that for certain environmental crimes committed by the corporations, both the corporation and the officers shall be criminally liable and subject to criminal sanctions in the form of fines and/or imprisonment.[70] However, Law 41/1999 and Law 18/2013 do not provide the specific elements that must be proven to hold a corporate officer criminally responsible for crimes committed by the corporation. Further, Law 18/2013 and Law 41/1999 impose imprisonment, in addition to fines, for corporations that commit environmental crimes. Indonesian courts often confuse the criminal liability of the company with that of its directors. This can lead to directors being held responsible for the company's environmental crimes without the court examining their actual involvement. In short, directors can be imprisoned or fined just because they hold that position, even if they weren't directly involved in the crime. Nevertheless, in practice, this is unlikely provided that the crime was conducted by other corporate officers e.g., Environmental, Health and Safety (**EHS**) manager who is responsible specifically to oversee the environmental compliance of the company. Kindly refer below on further elaboration on the criminalization of corporate officers.

In practice, in past court cases in Indonesia, the courts imposed criminal liability on individuals acting as corporate officers or directors for the crime of the

[63] Law No. 32 of 2009, dated October 3, 2009, regarding Environmental Protection and Management, as amended by the Job Creation Law (Law 32/2009).
[64] Law No. 41 of 1999, dated September 30, 1999, regarding Forestry, as amended by the Job Creation Law.
[65] Law No. 18 of 2013, dated August 6, 2013, regarding Prevention and Eradication of Forest Destruction, as amended by the Job Creation Law.
[66] Article 116 paragraph (1) of Law 32/2009.
[67] Article 118 of Law 32/2009 and its Elucidation.
[68] Article 117 of Law 32/2009.
[69] Article 116 paragraph (2) of Law 32/2009.
[70] Article 78 paragraph (11) of Law 41/1999; Article 82 paragraph (3), Article 83 paragraph (4), Article 84 paragraph (3), Article 85 paragraph (2) of Law 18/2013.

company. In *Republic of Indonesia v. PT Adei Plantation & Industry* (**PT API**), the court found that PT API was guilty and liable for environmental crimes.[71] The court also ruled that if PT API was not able to pay the fine, the director, even though he was not a defendant, would be imprisoned for five months. In *Republic of Indonesia v. Kosman Siboro*, although the court was unsure of the director's role in the crime, they still found him liable due to his position as director of the corporation.[72] In both cases, the courts found that because the companies were subject to both fines and imprisonment pursuant to the environmental provisions which the companies had violated, it was also necessary to subject the directors to imprisonment, since corporations cannot be imprisoned. In short, it is evident that Indonesia's environmental laws, namely Law 32/2009, Law 41/1999, and Law 18/2013, and Indonesian courts are open to the possibility of piercing the corporate veil to hold directors criminally responsible for environmental crimes committed by companies.

In 2023, in attempt to further distinguish company liability with directors' liability, Indonesian Supreme Court issued *Supreme Court Regulation No. 1 of 2023* regarding Guidelines for Adjudicating Environmental Cases (**SC 1/2023**). Although SC 1/2023 is aimed at guiding judges on how to handle environmental cases, it is also relevant to directors. This is because SC 1/2023 includes guidelines on corporate criminal liability

Under SC 1/2023, corporate officers (which may include directors) can be held criminally liable if, at the time a crime occurred, they:[73]

- participated in committing the crime;
- had control and authority to prevent the crime but failed to do so;
- accepted the actions of the physical perpetrator by agreeing to, allowing, or failing to adequately supervise the perpetrator's actions; or
- lacked policies to prevent the crime from happening.

Criminal sanctions can be imposed on both the corporation itself and the corporate officers, including directors, who either ordered the crime or acted as leaders in the criminal activity.

For directors, this means that if they fail to prevent environmental crimes or allow them to happen, they could face criminal charges. Therefore, while SC 1/2023 is directed at judges, it serves as an important reminder for directors to ensure they have strong policies and oversight in place to prevent any involvement in criminal activities.

3. Directors' Duties and Sustainability Disclosure Obligations

3.1. Narrative sustainability disclosures

3.1.1. Sustainability disclosure frameworks

Indonesia does not have a mandatory voluntary sustainability disclosure framework applicable to all companies. Currently, there are no announcements about the intended future adoption of sustainability disclosure frameworks for Indonesian companies. However, sustainability disclosure is currently mandatory for public companies, issuers, and financial service institutions as regulated under *OJK Regulation No. 51/POJK.03/2017* regarding the Implementation of Sustainable Finance for Financial Service Institutions, Issuers, and Public Companies (**OJK 51/2017**). OJK 51/2017 requires financial service institutions, issuers, and public companies to implement sustainable finance, defined as the comprehensive support from the financial services sector to create

[71] *Republic of Indonesia v. PT. Adei Plantation & Industry* (District Court of Palawan) [2013] Decision No. 228/Pid.Sus/2013/PN.PLW.

[72] *Republic Indonesia v. Kosman Siboro* (High Court of Pekanbaru) [2015], Decision No.186/Pid.Sus/2015/PTPBR.

[73] Article 68(4) of Supreme Court Regulation No. 1 of 2023 regarding Guidelines for Adjudicating Environmental Cases (SC 1/2023).

sustainable economic growth by aligning economic, social, and environmental interests.[74]

Public companies, issuers, and financial service institutions also are required to submit annual sustainability reports to the OJK (**Sustainability Reports**).[75] The Sustainability Report shall at a minimum include (i) an explanation on sustainability strategy; (ii) a summary of sustainability aspects (economic, social, environmental); (iii) company profile; (iv) director's explanation of policies to respond to challenges in fulfilling sustainability strategies, the implementation of sustainable finance, and strategies for achieving targets; (v) sustainability governance; (vi) sustainability performance; (vii) written verification from an independent assurance service provider of the contents of the Sustainability Reports; (viii) readers' feedback section; and (ix) issuer's or public company's response to the readers' feedback.[76]

In general, any business actor, generally defined as an individual or a business entity that engages in business and/or activities in specific fields, is required to provide accurate, transparent and timely information related to the protection and management of the environment.[77] The disclosure is made by submitting the environmental approval, e.g., Environmental Impact Assessment, Environmental Management Efforts and Environmental Monitoring Efforts, or Statement of Commitment to Environmental Management and Environmental Monitoring, to the MOEF, governor, or regent/mayor in accordance with their authority (referred to in this document as an **Environmental Report**). The disclosure is also made by submitting periodical reports with regard to the company's environmental requirements or obligations related to its environmental approval. The specific content and format of the required reporting may differ from one company to another, noting that the environmental approval for different types of business activities may result in different obligations and fulfillments. For example, a business actor that manages hazardous and toxic waste is required to submit a periodical hazardous and toxic waste management report.[78] The periodical report is usually submitted to the local/regional environmental management agency under the regional government, referred to as the Environment Services Office (*Dinas Lingkungan Hidup* or **DLH**), every six months, depending on the requirements set out in the Environmental Report.

Further, the Law 32/2009 requires every person and company that commits environmental contamination or destruction to disclose the contamination and destruction to the impacted communities, in addition to taking other steps to manage the contamination and destruction, such as by isolating the contamination or destruction and stopping the source of contamination or destruction.[79]

Environmental contamination and destruction shall also be reported to government authorities by the persons in charge of businesses entities, which may include directors of companies. For instance, a groundwater contamination disclosure is explicitly required in the form of a report (the **Contamination Report**).[80] This Contamination Report should made to the relevant government authority, e.g., the MOEF, governor, and/or regent/mayor, through the online Quick Response System managed by the MOEF[81] within 24 hours as of the knowledge of the occurrence of the contamination.[82] The Contamination Report shall include the location, time, cause, possible impact on the environment,

[74] OJK Regulation No. 51/POJK.03/2017, dated July 27, 2017, regarding the Implementation of Sustainable Finance for Financial Services Institutions, Issuers, and Public Companies (OJK 51/2017).

[75] Article 10 paragraph (1) of OJK 51/2017.

[76] OJK Circular Letter No. 16/SEOJK.04/2021, dated June 29, 2021, regarding the Content and Form of Annual Report of Issuers or Public Companies.

[77] Article 68(a) of Law 32/2009.

[78] Article 362 paragraph (1) k of Government Regulation No. 22 of 2021, dated February 2, 2021, regarding the Implementation of Environmental Protection and Management (GR 22/2021).

[79] Article 53 of Law 32/2009.

[80] Article 151 of GR 22/2021.

[81] Accessible at http://plttdlb3.menlhk.go.id/qrs/landing

[82] Article 151 paragraphs (3) and (4) of GR 22/2021.

and measures that have been taken to stop or repair the contamination.[83]

There are specific requirements for air contamination and sea contamination.[84]

3.1.2. Specific sustainability disclosure requirements for listed entities

Public companies are required to submit a Sustainability Report, as described above.[85]

Additionally, public companies that are financial service institutions are obliged to submit annual Sustainable Finance Action Plans (**SAFP**) to the OJK, prepared by the company's board of directors and approved by the board of commissioners.[86] The SAFP must be prepared based on the priorities of each financial service institution and at a minimum cover the: (i) development of sustainable financial products and/or services including increasing the financing portfolio, investment or placement in financial instruments or projects that are in line with the implementation of sustainable finance; (ii) development of the financial service institution's internal capacity; and (iii) changes to the organization, risk management, governance, and/or standard operating procedures of the financial service institution in accordance with the principles of implementing sustainable finance.[87]

3.1.3. Specific sustainability disclosure requirements for financial institutions

Financial service institutions are required to submit a Sustainability Report, as described above.[88]

Financial service institutions are also obliged to submit annual SAFP to the OJK, prepared by the company's board of directors and approved by the board of commissioners.[89] Financial service institutions are subject to the same requirements for annual SAFP as described in section 3.1.2.

3.1.4. Directors' duties regarding sustainability disclosures

The legal duty of directors in relation to sustainability reporting is regulated under the regulations that require the reports to be submitted. Under *Government Regulation No. 22 of 2021* regarding the Implementation of Environmental Protection and Management (**GR 22/2021**), the legal duties of directors are regulated, particularly in the context of environmental management and pollution control. GR 22/2021 imposes obligations on directors to report incidents of water pollution, implementation of air pollution mitigation, obligations related to the control of marine pollution and/or damage, and implementation of marine pollution mitigation to government authorities.[90]

Under OJK 51/2017, the regulation expressly states that the board of directors must prepare SAFP, subject to the approval of the board of commissioners.[91] While not explicitly mentioned that the board of directors must prepare the Sustainable Reports, OJK 51/2017 also requires Sustainable Reports to contain a section containing a board of directors' explanation for its content.[92]

Directors are required to ensure the report comprehensively covers the organization's policies for addressing sustainability challenges. These policies should elucidate the value of sustainability initiatives, describe the organization's response to sustainable finance issues, explain leadership commitments to sustainability goals, and detail both the achievements and challenges in implementing these initiatives. Additionally, the report should present the organization's performance in sustainable finance compared to its targets and discuss significant events during the reporting

83 Article 151 paragraph (5) of GR 22/2021.
84 Article 213 paragraph (4), Article 263 paragraph (5) and Article 264 paragraph (1) of GR 22/2021.
85 Article 10 paragraph (1) of OJK 51/2017.
86 Article 4 paragraphs (4) and (5) of OJK 51/2017.
87 Article 7 paragraph (1) of OJK 51/2017.
88 Article 10 paragraph (1) of OJK 51/2017.
89 Article 4 paragraphs (1) and (4) of OJK 51/2017.
90 Article 151 paragraph (4), Article 213 paragraph (4), Article 260 paragraph (1), and Article 263 paragraph (5) of GR 22/2021.
91 Article 4 paragraph (4) of OJK 51/2017.
92 Appendix II of OJK 51/2017.

period that have impacted sustainability efforts. Directors must also outline strategies for achieving future sustainability targets, which include managing risks related to economic, social, and environmental aspects, leveraging business opportunities, and evaluating external factors that could affect the organization's sustainability.

In addition to the above, according to the Company Law, directors act on behalf of the company.[93] While other reporting obligations, such as the submission of Environmental Reports, may be imposed directly on companies, it is the board of directors that is ultimately responsible for ensuring that these obligations are met.

According to the Company Law, the board of directors is tasked with the overall management of the company,[94] which includes ensuring compliance with all applicable laws and regulations. This management role involves the duty to oversee the preparation and submission of required reports to relevant government authorities.

The Company Law further emphasizes that directors must perform their duties in good faith, with full responsibility, and in accordance with the law.[95] This places an obligation on directors to ensure that reports and other mandated disclosures are accurately prepared, timely, and properly submitted to the relevant authorities.

In conclusion, while the legal requirement to prepare and submit sustainability reports may also be directed at the company, the Board of Directors, acting on behalf of the company under the Company Law, is accountable for ensuring compliance with these requirements. Consequently, while directors may assign employees in assisting with the mandatory reports and disclosures, directors must take steps to actively oversee the reporting process, verifying that the reports meet all regulatory standards, and ensuring that the reports are submitted before deadlines.

3.1.5. Liability risk arising from narrative sustainability disclosures

The Sustainability Report must be published on the company's website.[96] Failure to submit and publish the Sustainability Report is subject to administrative sanctions in the form of reprimand or written warning.[97] However, there are no direct sanctions imposed on directors for non-compliance with these reporting requirements. Sustainability Reports are expected to provide transparency in the environmental impact of public companies, issuers, and financial service institutions.

Non-disclosure of contamination may be subject to administrative sanctions if the environmental document requires such contamination disclosure.[98] However, the regulation does not specify which sanctions apply for non-compliance with sustainability disclosure obligations. The range of administrative sanctions imposed on persons in charge of the business activity includes written warnings, government enforcement actions, and administrative fines. While these sanctions are directed at the individuals in charge, they are more likely to impact the business or the company. For example, sanctions such as the suspension of production activities or business operations under government enforcement actions typically affect the company rather than individual directors.

In addition, under Law 32/2009, conveying false, misleading, partial, or damaging information is subject to a maximum of one year imprisonment and a maximum criminal fine of IDR 1 billion.[99] As explained in section 2.3, criminal sanctions under Law 32/2009 may be imposed both on the director or the company.

93 Article 98 paragraph (1) of the Company Law.
94 Article 92 paragraph (1) of the Company Law.
95 Article 97 paragraphs (1) and (2) of the Company Law.
96 Article 12 of OJK 51/2017.
97 Article 13 of OJK 51/2017.
98 Articles 506, 508, 510, 511, 514 (1) of GR 22/2021.
99 Article 113 of Law 32/2009.

3.2. Climate-related disclosures in financial statements

3.2.1. Climate-related disclosures in financial statements

In Indonesia, there are currently no mandatory frameworks that specifically require companies to disclose climate-related risks and impacts in their financial statements under the Financial Accounting Standards.

Additionally, no regulators in Indonesia have issued mandatory guidance or statements specifically requiring climate-related disclosures in financial statements. While companies may choose to disclose such information if deemed material, there are no explicit regulations or guidelines mandating these disclosures.

3.2.2. Directors' duties regarding climate-related disclosures in financial statements

Under the Company Law, the board of directors must prepare and submit annual reports, which include financial statements. Financial statements must consist of at least the balance sheet for the most recent fiscal year-end compared to the previous fiscal year, the income statement for the relevant fiscal year, the cash flow statement, the statement of changes in equity, and the notes to the financial statements.[100] The financial statements produced must accurately reflect the true condition of the company's assets, liabilities, capital, and business results.[101] Currently, directors do not have a duty to reflect climate-related risks in financial statements, as there is no specific legal requirement under Indonesian law requiring the disclosure of such risks.

3.2.3. Liability risk arising from financial statements

According to Company Law, if financial statements are found to be inaccurate or misleading, both the board of directors and the board commissioners are jointly and severally liable to any parties harmed as a result.[102] The board of directors and the board of commissioners bear full responsibility for the accuracy of the contents of the company's financial statements.[103] However, directors and commissioners may be exempted from liability if they can demonstrate that the inaccuracies were not due to their fault.[104]

Currently, there is no specific obligation for companies to disclose climate and nature-related risks under Indonesian law. As such, there is no liability for failing to disclose these risks in the financial statements.

100 Article 66 paragraph (2) a of the Company Law.
101 Elucidation of Article 69 paragraph (3) of the Company Law.
102 Article 69 paragraph (3) of the Company Law.
103 Elucidation of Article 69 paragraph (3) of the Company Law.
104 Article 69 paragraph (4) of the Company Law.

4. Biodiversity Risk

Indonesia is one of the most biologically diverse country in the world.[105] It is one of 17 megadiverse countries with two of the world's 25 biodiversity hotspots.[106] It is estimated that agriculture, forestry and fishing contribute around 11.4% of the country's GDP and the country could face a 33% reduction in forest productivity with projected losses of USD 144 billion in GDP by 2030.[107] The CCLI has published a report on how companies in Indonesia and other jurisdictions may depend on biodiversity for the functioning of their business models.[108] Biodiversity risks may constitute material financial risks which boards are required to consider within the purview of directors' duties.

The Government of Indonesia recognises the importance of nature to economic growth and is proactively addressing the challenges to manage it[109]. It is developing and strengthening the Indonesian System of Environmental-Economic Accounts (**SEEA**),[110] and its Financial Services Authority (the OJK) is developing policies related to sustainable finance, covering both climate and nature-related risk.[111]

In Indonesia, financial institutions are increasingly responding to stakeholder expectations to report on nature-related risks. They have been required to make financial disclosures on the management of natural resources, sustainable land, use and biodiversity conservation since 2019.[112] Furthermore, a sustainable finance action plan (1-5 year perspective) and an annual report covering the nature-related items listed above is a mandatory requirement. Some banks are starting to put additional requitements on clients requesting credit for commodity business, requirement commitment for the Roundtable on Sustainable Palm Oik (**RSPO**) or the Indonesia Sustainable Palm Oil (**ISPO**) certification.[113]

5. Practical Implications for Directors

Given the GOI's focus on managing climate change, to ensure companies comply with climate change mitigation regulations and environment-related disclosures, directors of Indonesian companies should:

a) Assess and, if necessary, modify the company's governance and operating procedures regarding compliance with environmental obligations to mitigate climate change. This includes considering any negative impacts resulting from the company's activities and products, as well as potential legal risks associated with environmental obligations.
b) Assign the identification and assessment of environmental impacts and climate risks to a designated management team that reports directly to the board of directors.
c) For industrial companies, conduct regular environmental site assessments to identify possible on-site violations of environmental regulations.
d) Evaluate reporting and disclosure frameworks and guidelines to ensure that the company's disclosures align with regulatory requirements and, where applicable, meet investor requirements.
e) Initiate, a board agenda to develop a climate transition roadmap that includes transparent targets for carbon neutrality or reduction, bearing in mind the relevant regulations issued by the GOI.

[105] USAID, Indonesia Tropical Forest and Biodiversity Analysis (FAA 118 & 119), October 2019
[106] Convention on Biological Diversity, Indonesia – Main Details (last accessed on 22 September 2024)
[107] https://www.fsb.org/wp-content/uploads/P180724.pdf
[108] CCLI, Biodiversity Risk: Legal Implications for Companies and their Directors, December 2022.
[109] Convention on Biological Diversity, Indonesia – Main Details (last accessed on 22 September 2024)
[110] World Bank Group, Synthesis Report: Natural Capital Accounts and Policy in Indonesia, May 2019
[111] Financial Stability Board, Stocktake on Nature-related Risks: supervisory and regulatory approaches and perspectives on financial risk, July 2024
[112] United Nations Development Programme, National Readiness for nature-related disclosures in emerging markets: Recommendations from 5 case studies for a successful disclosure framework, May 2022
[113] United Nations Development Programme, National Readiness for nature-related disclosures in emerging markets: Recommendations from 5 case studies for a successful disclosure framework, May 2022

f) Entrust relevant board committees, such as the risk, audit, legal and governance, scenarios/strategy, nominations/remuneration, or sustainability/corporate responsibility committees, with translating the company's long-term strategy into a clear decision-making process specific to each committee's responsibilities.
g) Consult with appropriate legal counsel and subject matter experts to discuss environmental obligations, disclosure requirements, and best practices.

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