



Erasmus+ Jean Monnet Modules, Summer Course Program: "EU Regulations and Sustainable Investment"
(TransContinental Partnerships: EU Regulations and Sustainable Investments)

"Are Carbon Units Same as Securities?" A Critical Analysis Based on Capital Market Law in Indonesia^{*)}

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The progress of Carbon Trading represents a lengthy journey shaped by environmental policies, which embraced the principle of the polluter pays during the Rio de Janeiro Conference held in Brazil. This approach aligns with the United Nations Framework Convention on Climate Change (UNFCCC), resulting in the introduction of the Financial Services Authority Regulation Number 14 of 2023 regarding Carbon Trading via Carbon Exchange by the Indonesian Government. In this context, Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector states that Carbon Units that are traded will be recognized as Securities within the secondary market.

According to Widhayani Dian Pawestri's opinion, based on her research, proved that Carbon Units should not be regarded as Securities. It has *a sui generis* character. In details, the differences of characteristics between Carbon Units and Securities, are distinguished from the following aspects: Consumables, investment vehicle, company's fundamentals, Initial Public Offering (IPO), retirement concept, sales on the stock exchange, as assets, and as commodities.

From the aspect of consumable, Carbon Units are consumable goods, once used, it cannot be reused in the future, while Securities are not consumables due to availability in the secondary market even after being transferred to other shareholders. From the aspect of investment vehicle, Carbon Units are not an investment vehicle, it only supports the green taxonomy and decreases in value, while Securities are an investment vehicle because it gains profits from investments, either through capital gain, dividend, or interest payments (income return). From the aspect of company's fundamentals, Carbon Units do not affect the company's fundamentals, while Securities affect the company's fundamentals, such as granting voting rights in the General Meeting of Shareholders (GMS). From the aspect of IPO, Carbon Units do not recognize an Initial Public Offering, while Securities should go through an IPO before being traded in the secondary market. From the aspect of retirement concept, Carbon Units recognize the retirement concept, which can be performed at any time., while Securities do not recognize the retirement concept, only delisting, which requires approval. From the aspect of sales on the Stock Exchange, Carbon Units are traded on the exchange, particularly Carbon Exchange, while Securities are traded on the exchange, particularly the Indonesia Stock Exchange. From the aspect of Carbon Units as assets, Carbon Units are not considered assets, though respective exact classification remains unclear, while Securities can be categorized as intangible assets. From the aspect of Carbon Units as commodities, Carbon Units are not classified as commodities, while Securities are not classified as commodities.

Regulatory and institutional challenges of Carbon Trading are: 1) Some lack of technical guidance from Financial Services Authority (OJK); 2) There are unclear market mechanisms and valuation standards; and



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3) Need more coordination between financial and environmental authorities. Furthermore, the critical insights of Carbon Units as Securities are: 1) Carbon Units is a hybrid instruments: both of environmental and financial; 2) Need for tailored regulation for Carbon Units; 3) Not equating Carbon Units with Securities; and 4) Role of state in ensuring both climate integrity and investor trust.

Meanwhile, the policy recommendations of Carbon Units as Securities, are: 1) Clarify legal classification of Carbon Units; 2) Strengthen regulatory cooperation between OJK and Ministry of Environment and Forestry (KLHK); 3) Develop technical standards and market infrastructure; and 4) Ensure transparency and accountability in Carbon Trading.

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