

GLOBALIZATION AND CLIMATE CHANGE REGULATIONS IN INDONESIA

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Abstract

Globalization is rampant in every aspect of human life. Climate change is a global issue and hence Indonesia must equip itself with sufficient national laws and regulations that are easily implemented. Securing funds from the international community is also a strategy to prepare the nation to face climate change.

Abstrak

Globalisasi terjadi di setiap aspek kehidupan manusia. Perubahan iklim adalah isu global sehingga Indonesia harus mempersiapkan diri dengan cara menyusun peraturan perundang-undangan nasional yang dapat diterapkan dengan mudah. Mendapatkan dana bantuan internasional juga merupakan strategi yang dapat diambil untuk mempersiapkan diri menghadapi perubahan iklim.

Keywords: *globalization, climate change, environment.*

A. Introduction

Globalization is by no doubt happening. Tsunami at the other end of the world, from our TV screens has looked and felt like happened in our own back yard. People travelled easily from one country to another, some with extra fast jets, some merely only sit in the front of their computer and surfed the internet. But really, when one talks about globalization, what does one mean?

There are inter-changing words that are used when we want to explain globalization. Words such as international, transnational, cosmopolitan, supranational and post national are widely used. But what are the

features of globalization? In the article of 'Globalization of Law',¹ Halliday and Osinsky tries to explain the dimension of globalization. They define the dimension of globalization through the 'spheres of change' and 'dimensions of change'.

Halliday and Osinsky² define globalization's spheres of change in two elements, which are structural and discursive elements. In the structural element, changes occur: (a) through increases in the flow of people, money, ideas and material objects; (b) through responsive adaptations and adjustments of local institutions; and (c) through alterations in governance structures

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¹ Terence C. Halliday and Pavel Osinsky, "Globalization of Law", *Annual Review of Sociology*, Vol. 32, March, 2006, pp. 447-470.

² *Ibid.*, p. 449.

of global institutions and through some measure of exogenization of control by nation-states or sub-state governmental actors. Discursive changes occur through alterations in the meaning attached to structural changes. These involve epistemic realignments of initially contextualized definitions, interpretations, diagnoses, frames, archaeologies, genealogies, and extrapolations in accord with the universality inherent in the globalization discourse.

They continue that an arena maybe said to be globalized when there is a coincidence of structural and discursive elements. Variations in the advance of globalization occurs in both elements,³ which might take place along dimensions of extensity (i.e., breadth of inclusion of nation-states, policy domains within states), intensity (i.e., how deeply a global influence penetrates inside states, societies, and consciousness), velocity (i.e., how rapid the flow of a globalizing content), and impact (i.e., the degree of change effected directly or indirectly by a global encounter). Thus, highly globalized domain, includes structural changes that are fast moving and extensive and that penetrate intensively into a society with strong impacts. A highly globalized domain, also dominated by discourses that are universalized and that obtain consensus deep within adopter societies.

Law, on the other hand, was defined as a combination of formalized norms

and organizations.⁴ Formalized norms within a nation state take forms of substantive and procedural statutes, court cases, and regulations that are binding on citizens. While organizations of law include government bodies, such as courts and tribunals, regulatory agencies, and enforcement apparatuses, as well as private market entities such as the legal profession and nongovernmental methods of dispute resolution that operate in the shadow of the law. Examples of these organizations such as the United Nations (UN), international financial institutions (IFI), and the like. Global organizations generally do not have enforcement arms (although the UN has some enforcement power) and must rely on regional forces, but mostly on the cooperation of nation-states and private organization.

B. Climate Change, a Global Issue?

The global issues of the world change by the dynamic of the states' circumstances. Chirstoph Antons, in his article 'Law Reform in the Developmental State' argues that the picture drastically change after the Cold War, the communism in Eastern Europe fell and the onset of economic liberalization in China. Asia's high growth (including Indonesia in South East Asia) is now confronted with allegations of unfair trade from Western trading Partners,⁵ while foreign investment flows were partly

³ Quoted from Held, *et al.*, 1999, as mentioned in *Ibid.*

⁴ *Ibid.*

⁵ Prestowitz, 1988, as quoted in Christoph Antons, "Law Reform in the 'Development States' of East and South-east Asia: From the Asian Crisis to September 11, 2001 and Beyond", in Antons and Gessner (eds.), 2007, *Globalisation and Resistance: Law Reform in Asia since the Crisis*, The Oñati International Institute for the Sociology of Law, Vol. 20, Hart Publishing, Oxford, pp. 81-104.

diverted to former ideological foes, such as China, Vietnam and Russia.⁶

After September 11, Indonesia and its fellows 'developmental states' are now facing with sets of different problems, among other terrorism and something that was not mentioned in Antons's article: climate change.

One of the most feared things in the world today is the degradation of the environment. Whether the cause is man-made or natural cause, the impacts are severe and can be seen or experienced firsthand by human. From the most 'traditional' type of environmental degradation, such as pollution, landslides, deforestation, to the more 'sophisticated' or recently found such as holes in the ozone layers and climate change.⁷ For policy makers, regulations are some of the tools that they produce and hope for the best that they can halt, or even reverse, environmental degradation.

Regulation is understood to have a very substantial role to play in protecting the environment, but most existing approaches to regulation, are seriously sub-optimal, which means that they are either: not cost effective in delivering the policy goals; or not efficient so at least cost; nor do they perform well in terms of other criteria such as equity, administrative viability or political acceptability.⁸

The history of environmental regulation involves two phases. The first began in early 1970, when governments in most developed countries uses regulations designed to prohibit or restrict environmentally harmful activities, adopted from the United States model, commonly known as the 'command and control' regulation.⁹ As time goes by, in the late 1970, it was apparent that much of the command and control regulation had not turned out the way the policymakers had intended.

From the late 1970, a new phase begun, where they focused on the shortcomings of traditional government regulation as a basis for arguing the case for its replacement by market or property-rights approaches.¹⁰ But, limitation of these approaches are also severe, there is no scientific reason to believe that the phase known as the 'deregulation' phase would lead to a better environmental quality, especially when the empirical data shown that the market or property-rights approaches made have less capacity to deliver optimal environmental outcomes, in most cases, comparing to the command and control regulation.¹¹

According to Immanuel Kant,¹² the globalization of law is, a 'transcendental formula of public law', would be the consequence of a legalization of international politics, if the sovereign states were to agree to

⁶ *Ibid.*

⁷ Halliday & Osinsky did mentioned climate change and environmental issue quite a bit in the 'Globalization of Law' article, which will be discussed in the following sections.

⁸ Neil Gunningham, *et al.*, 1998, *Smart Regulation: Designing Environmental Policy*, Clarendon Press, Oxford, p. 4.

⁹ *Ibid.*, p. 5.

¹⁰ *Ibid.*, p. 6.

¹¹ *Ibid.*, p. 9.

¹² As quoted by Teubner, in Gunther Teubner, "Global Bukowina: Legal Pluralism in the World-Society", in Teubner (ed.), 1991, *Global Law Without A State*, Dartmouth Publishing, USA.

certain legal principles enshrined in a binding international agreement, a new and just legal order for all mankind could develop. But, as Teubner¹³ argues, the globalization that takes place now, in the modern experience is not a gradual emergence of a world society under the leadership of interstate politics as put forward by Kant, but is a highly contradictory and highly fragmented process in which politics has lost its leading role.

C. Why Climate Change?

If we are going to take an environmental issue that would definitely have a global impact, than climate change would certainly be the first pick. Why? The most recent assessment by the Intergovernmental Panel on Climate Change (IPCC) concludes that global average surface temperatures have increased by 0.8°C over the last century, with the linear warming trend over the past fifty years twice that of the past century¹⁴. Prior to the Industrial Revolution, atmospheric concentration of naturally occurring greenhouse gases had been relatively stable for 10,000 years.¹⁵

However, with the advent of fossil fuel-burning plants to support industry,

automobiles, and the energy demands of modern consumers, as well as substantial expansion of other human activities, including agricultural production, “humans began to interfere seriously in the composition of atmosphere” by emitting large amounts of additional greenhouse gasses.¹⁶

The human-driven buildup of greenhouse gases in the atmosphere has resulted in “radioactive forcing”; that is, increased levels of these gases result in greater absorption of outgoing infrared radiation, and ultimately an increase in temperatures when a portion of this radiation is reradiated to the Earth’s surface.¹⁷

The primary international legal response to climate change to date is the United Nations Framework Convention on Climate Change (UNFCCC), which entered into force in 1994 and has been ratified by 189 countries and the European Economic Community.¹⁸ In order to accommodate the ‘political needs’ of several nations, including the United States and OPEC States, the UNFCCC’s mandatory targets for greenhouse gas emissions resorted to “constructive ambiguities” and “guidelines, rather than a legal commitment”.¹⁹ Thus, UNFCCC merely calls on the Parties in

¹³ *Ibid.*

¹⁴ Susan Solomon, *et al.*, “Technical Summary”, in Solomon, Qin, Manning, Chen, Marquis, Averyt, Tignor and Miller (eds.), 2007, *Climate Change 2007: The Physical Science Basis*, Cambridge University Press, United Kingdom.

¹⁵ Haroon S. Kheshgi, *et al.*, 2005, “Emissions and Atmospheric CO₂ Stabilization”, *Mitigation & Adaptation Strategies for Global Change*, Vol. 10, pp. 213-214.

¹⁶ Fred Pearce, “World Lays Odds on Global Catastrophe”, *New Sci*, April, 1995, p. 4.

¹⁷ UNEP, *Vital Climate Change Graphics 10* (2005).

¹⁸ United Nations Framework Convention on Climate Change, “Background on the UNFCCC: The International Response to Climate Change”, http://unfccc.int/essential_background/items/6031.php, retrieved on 15 March 2011.

¹⁹ Raneë Khooshie Lai Panjabi, “Can International Law Improve the Climate? An Analysis of the United Nations Framework Convention on Climate Change Signed at the Rio Summit in 1992”, *North Carolina Journal of International Law and Commercial Regulation*, Vol. 18, 1993, p. 401 and 404.

Annex I (developed countries and economies in transition) to “aim” to return their emission back to 1990 levels.²⁰

The realization for more substantive measures in greenhouse gases emission led to the adoption of the Kyoto Protocol to the UNFCCC at the Third Conference of the Parties in 1997. The Protocol entered into force in 2005 and currently has 169 States and the EEC as Parties.²¹ Indonesia is both a party of the UNFCCC and a signatory for the Kyoto Protocol.

In terms of human impacts, 100 million people may be imperiled by coastal flooding, with the very future of many small island nations potentially hanging in the balance.²² Indonesia, as an archipelagic state with 17,000 islands with only 7 of them are considered large, would most certainly hampered hardest by climate change impacts.

But is climate change issue can be characterized as a global law? Teubner²³ states that there are characteristics that differs global law from the law of the nation-state: (1) **Boundaries.** Global law are not formed by a core ‘territory’ and expanding on a federal basis in a nation-state, but rather by invisible colleges, invisible social networks that transcend territorial boundaries, just like the issue of climate change. In this case it is a world-wide environmental event that will impact the whole world so it is nevertheless press for the emergence of genuinely legal norms; (2) **Sources of law.**

Global law is produced in self-organized processes of ‘structural coupling’ of law with ongoing globalized process of a highly specialized and technical nature. This certainly fits the climate change regulations which started as an issue advocated by scientists all over the world, then backed up by international organizations, international NGOs and finally pressed into the international decision makers and then trickled down to national levels; (3) **Independence.** Climate change regulations although seem independent, nonetheless have a close and diffuse dependency with environmental regulations fields, in the international forums and also national levels; (4) **Unity of the law.** The traditional worldwide unity for the law, a symbol of universal justice has already passed its time. In climate change regulations, the laws vary, as different locations would have a different perception and interpretation as well as impacts of climate change.

D. Climate Change Laws in Indonesia, is it Ruled by Global Law?

Indonesia has ratified the UNFCCC’s Kyoto protocol in the Act No.17/2004, enacted the national action plan in dealing with climate change (*RAN MAPI*) in 2007, formed a National Committee of Climate Change chaired by the President of Indonesia in 2008, and established a National Task Force for Climate Change in 2010. In addition, Indonesia has entered

²⁰ UNFCCC, *supra.* note 18.

²¹ UNFCCC, *supra.* note 18.

²² William Burns, “Potential Implications of Climate Change for the Coastal Resources of Pacific Island Developing Countries and Potential Legal and Policy Responses”, *Harvard Asia Pacific Review*, Vol. 8, No. 1, 2005.

²³ Gunther Tuebner, 1991, *Op.cit.*

to a 'Climate Change Loan Program' with Japan and France in 2008 for a total amount of 500million dollars. It is apparent that Indonesia is arming itself with regulations, institutions and budget on climate change. In a relatively short time, Indonesia has produced regulations and institutions on climate change, how does this fit the picture of globalization of law?

Halliday and Osinsky proposed that globalization of law can be explained with identifying four domains that which explain outcomes in terms of agents, mechanism they employ, the power they exercise, and the structures and arenas through which power is arrayed.

We can try to explain this in the climate change issues in Indonesia's environmental regulation, for example. Halliday and Osinski will look at, first, the **outcome** (a) the variation in the extensity, intensity, velocity and impact of structural changes inflow, institutional adaptations and exogenization of state control, in this case the state of Indonesia. It has been understand that during the past 15years the issue of climate change has extensified in the international forums and this influenced national forums in Indonesia in terms of environmental issues. In terms of velocity, during the 15years, it can be seen that the Government of Indonesia (GOI) has managed to create environmental acts and climate change related regulations as well as creating institutions of climate change in the national level.

Second, Halliday and Osinsky will look the **agents** who globalize this climate change

issue. In Indonesia, the climate change issues was introduced by outside agents, in this case international communities, international organizations (such as UNFCCC/United Nations Framework Convention on Climate Change, WWF/World Wildlife Fund and international NGO) as well as donor organizations such as USAID, AUSAID, GTZ, CIDA and the like.

Third, Halliday and Osinsky will look at the **mechanism**, or how to globalize the issue. In this respect, they look at several processes, such as military coercion, economic coercion, modeling (when states have to conform their laws to the model law on a UN commission), reciprocal adjustment, nonreciprocal coordination, system of reward and capacity building. In the case of climate change related issues in Indonesia's environmental regulations, it as a first look, I would argue that the issue was globalized via several process as mentioned by Terence and Halliday, in particular: **economic coercion**, as in pressures from the international community's for Indonesia to shape up and regulate climate change in its environmental regulations and policy, **modeling**, as Indonesia is modeling its national environmental regulation in relation to climate change to UNFCCC, **system and reward**, since the recent reward system offered in the REDD/Reducing Emissions from Deforestation and Forest Degradation in Developing Countries²⁴, Indonesia is very active in enacting national climate change related regulations, as well as establishing national institution of climate change, the

²⁴ Kementerian Kehutanan Republik Indonesia, 2011, "REDD-Indonesia", <http://www.redd-indonesia.org/>, retrieved on 15 March 2011.

Dewan Nasional Perubahan Iklim (DNPI or National Body of Climate Change) and the *Satgas Perubahan Iklim* (Special Task force on Climate Change).

Fourth, Terence and Halliday will look at the **exercise and distribution of power**, which means the actors' power potential depends on the volume of resources they have at their disposal and, consequently, on their ability to compel to other actors to act in a desirable way. In the case of climate change related regulations in Indonesia, the exercise and distribution of power would certainly be dominated by the government, although the green movement, in this case environmental NGOs and international donor would also be very important power sources.

Fifth, **the structure and arenas**. All the elements above, allow us to outline contours of emergent structuration within the global society. Structuration occurs when global actors, in this case the international organizations, i.e. UNFCCC, International NGOs, GOI, donors exercise their power through conventional structures in established arenas of norm making and lawmaking. On the other hand, transnational actors articulate and enforce global norms, in this case climate change regulations through global correspondence e.g. UN forums, global regulatory bodies and global dispute resolution bodies (although in the environmental sector these bodies are yet to be established, but there are several international agreements which have quite 'strong' enforcement power, such as the Stockholm convention and Kyoto Protocol).

From this explanation, it is obvious that climate change regulations are part of

the global law. They fit the criteria set by Halliday and Osinsky of 'globalization of law'. But how does this trickle down to national law? They explained that episodes of lawmaking may begin with a crisis or precipitating event, it can be a tangible and grave event such as the Asian financial crisis in 1997, or something that has been lingering for a long while and finally has a tangible impact, such as climate change or environmental degradation. These episodes will continue until a settlement occurs. As a result, national law making in the context of global norm making frequently displays the recursivity of law. Halliday and Osinsky's theory explained that climate change is not only a global issue, but it is also a globalization of law and regulation.

E. Conclusion

Indonesia, as one of the 'developmental states' as mentioned by Antons, is by no means spared from globalization. It is, in fact, the breath and the bolts of Indonesians' understanding of 'freedom' as explained by Sen. As a country in South East Asia, a big brother in the ASEAN (Association of South East Asian Nations), and also the country with the biggest population in South East Asia, Indonesia is still striving its way to be recognized and documented. Indonesia as a country, and South East Asia as a region have so many 'new stories to tell', and yet, from the available readings it is astonishing how different impacts and reactions of each states in this region is to a common phenomenon, such as the Asian Financial Crisis of 1998, governance crisis and the issue of climate change.

Climate change as a global issue and a global law has satisfied all the characteristics and requirements set out by Halliday and Osinsky. Indonesia, as a nation state, confirms, models and coerced by economic and political pressures from the agents which in this case are the international community, international organizations, environmental non-governmental organizations/ENGOS, media, civil society groups, as well as most importantly, donor communities, to enforce climate change related regulations. Freedom listed by Sen and Ong's Globalization happen simultaneously in Indonesia. She has tried

her hardest to implement the 5 freedom mentioned by Sen, but at the same time, she also wants to spread her wings and embrace globalization. So Indonesia is giving away some of her power to 'other' outside agents, such as multinational organizations and international organizations. It is clear that Indonesia as a country has equipped itself with national laws and regulations, as well as secured funds from the international community, but the question remains is, whether those regulations will and can be quickly and easily implemented in Indonesia? The clock is ticking, the pressure is on, and the world is watching.

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