

INTERNATIONAL POLICY LAW STUDIES OF KYOTO PROTOCOL 1997 ABOUT GLOBAL WARMING^Ω

Noer Indriati
Law Faculty Jenderal Soedirman University
E-mail: indriatiyuwanto@yahoo.co.id

Abstract

Global warming or Global Warming that occurs is not currently an issue which can be resolved quickly. Need awareness together to solve this problem, because the impact is felt all over the world. Developed countries must be responsible in emission reduction as a form of spirit of shared responsibility and vary, although developing countries will also do the same. This research used the juridical normative approach, with secondary data composed of materials of primary legal materials either law, secondary law materials and materials law tertier as a source of law. Legal political activity is to specify an option regarding objectives and how to be used to achieve the objectives of the law in the community. With regard to the Kyoto Protocol of 1997, the ways of achievement of that goal was left to each country, so that it can be set up in accordance with the conditions of the country concerned. The States parties have not yet fully accept the Kyoto Protocol of 1997 so that the target of emission decline/QELROs listed in article 3 has not been fully achieved.

Key word: global warming, legally binding, law politics international

Abstrak

Pemanasan Global atau *Global Warming* yang terjadi saat ini bukan merupakan suatu masalah yang dapat diselesaikan dengan cepat. Perlu kesadaran bersama untuk menyelesaikan masalah ini, karena dampaknya dirasakan di seluruh dunia. Negara-negara maju berprakarsa dalam pengurangan emisi sebagai bentuk semangat tanggung jawab bersama dan berbeda-beda, walaupun negara berkembang juga akan berbuat yang sama. Politik hukum merupakan aktivitas untuk menentukan suatu pilihan mengenai tujuan dan cara-cara yang hendak dipakai untuk mencapai tujuan hukum dalam masyarakat. Berkaitan dengan Protokol Kyoto 1997, cara-cara pencapaian tujuan tersebut diserahkan kepada masing-masing negara, sehingga dapat mengatur sesuai dengan kondisi negara yang bersangkutan. Negara-negara pihak belum sepenuhnya mengaksepsi Protokol Kyoto 1997 sehingga target penurunan emisi/QELROs yang tercantum dalam Pasal 3 belum sepenuhnya tercapai.

Kata kunci: kekuatan mengikatnya, pemanasan global, politik hukum internasional

Introduction

Phenomena regarding with the climate change is no longer need to be issued. Several scientific research describe that carbon dioxide (CO₂) in atmosphere layers as a result of combustion residuals of coal, forest fire, oil and gas has been increased nearly 20% since industrial revolution started. Industrial area which is built on almost of the entire area of land in the world have produced greenhouse gases waste (GHG) such as carbon dioxide (CO₂), methane (CH₄),

and nitrousoksida (N₂O), which can led to blanket effect. This effect will lead the increasing of Earth's surface temperatures.

People use various resources which available in environment for their lives necessities. People take food from what grow and live on land and water, also take oxygen from the air. People use coal, oil and other natural materials to generate energy or even run the factories. The factory produces goods that are useful for improving the standard of living and their well-being.

Nowadays in all of countries, the industry becomes new hope after the agrarian era ended.

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New Industrialized countries emerge in America, Europe and even Asia. The industry is change the world be more modern, for example: motor vehicle as a product of industry, but on the other hand industry also give negative impact to the environment. The vehicle engines using fuel oil.¹ The geographical conditions of each country require policy and right to get a good living environment and healthy is a form of human rights.²

The fuel combustion residuals will produce CO and CO₂ elements. Both gases are causing the Earth's temperature increases, i.e. when CO and CO₂ accumulate in the air, it will produce such a greenhouse effect against sunlight that will go to the Earth, so the Earth would be covered by both of gases. As a result, the Earth felt hotter than usual which is called global warming. Global Warming that currently happens is not an issue that can be solved immediately. It needs global awareness to solve the problems that will be felt by people all around the world, including Indonesia.

The expert of critical-constructivist ideology are basically understand the international political law from the structure of constitutional international agreements making, where country is deemed as an entity that juridically recognized and creation against the norms regarding the recognition and procedural justice which is used in making agreement. The ideal purpose from the structure is to create a binding norms that are mutual, which will bring the countries that involve in the agreement into the decisions that have a basis on mutual understanding and without enforcement.

A new understanding about the movement which is the political law is very dynamic.³ Coincide with current development era, thus the movement of political law is not merely to that country but rather extending beyond the restriction of the country up to international level.

According to Satjipto Rahardjo that law

politics is an activity to decide an option regarding with objectives and procedures that will be used to achieve the purpose of law in society. The same opinion also stated by L.J. van Apeldorn, that political law as regulation politics. Law politics means deciding purpose and content of law and regulation (law politics definition is limited only for written law). Deeper observation needed regarding with the creation of Kyoto Protocol 1997, because the commitment in the protocol seems only run by developing country in term of reducing Greenhouse Gases emissions.⁴

Research Problem

The protocol as the result of an agreement is oblige to be implemented by the country parties, thus the legal binding of the protocol can be perceived by its member equally. Kyoto Protocol during enforcement process, seemed that it only oblige for the developing countries. Based on the problem proposed above, the points need to be answered is: how is the international law politics towards Kyoto Protocol 1997 about Global Warming?

Research Method

This research used juridical normative approach, with secondary data consists of legal materials either primary legal materials, secondary legal materials and also tertiary legal materials as law resources. Researcher did inventorying the legal materials obtained, then did categorizing/choosing the obtain materials. The presentation of the data is carried out by outlining systematically and put together into a meaningful sentence. Then analyzed with juridical qualitative way, where researcher outlining the results of the law analysis through narrative without up the tables.

Discussion

¹ Mohammad Ramlan, "Pemanasan Global (*Global Warming*)", *Jurnal Teknologi Lingkungan*, Vol 3, No. 1, January 2002, Jakarta: UPT-LSDE, BPP Teknologi, page 30.

³ Joseph W. Dellapenna, "International Law's Lessons for the Law of the Lakes", *40 U. Michigan Journal Law Reform*, 2007, Washington: the University of Michigan, page 747, 791 & n.274, 792.

³ Robinson, "Comparative Environmental Law: Evaluating How Legal Systems Address Sustainable Development", *Environmental Policy and Law Journal*, Vol. 27, No. 4, 1997, North America: IOS Press, page 338.

⁴ Vincent Gray, "The Cause Of Global Warming", *Frontier Center For Public Policy Journal - Policy Series*, No. 7, January 2001, Canada: PCPP.

Global warming is not a vague scientific theory, if it happens on a sufficient scale, it will give an important practical implication to all human beings in a relatively short time. The issue of climate change in international diplomacy is so remarkable. On the decade 1970 until the late 1980s, environmental issues of global warming include the understanding of climate change is still limited to the discourse, but in the 1990s, this issue can be attractive in a public discussion in line with more easily proof finding of the academic level of the epistemic group and the strong support from the NGO.⁵

Definition and causes of global warming

Global warming is a process of increasing mean temperature of atmosphere, sea, and earth surface. Gas molecules in atmosphere composed of more than two atoms which have characteristics absorbing sunlight heat waves. These gas called greenhouse gases (GHG). Earth is exposed by sunlight becomes heat, the heat is emitted by the Earth's surface back into space, but it is absorbed by GHG. Heat wave is absorbed by GHG, then the temperature of earth surrounding is increasing so the earth-surface temperature increase. This is called Global Warming.⁶ Another opinion says that global warming is a phenomenon of global temperature gradually increase from year to year due to the greenhouse effect caused by increasing emissions of gases such as carbon dioxide (CO₂), methane (CH₄), dinitrooksida (N₂O), and CFC so the solar energy trapped in the earth's atmosphere.⁷

Global warming is generally caused by two circumstances i.e: *firstly*, the fossil combustion of industry, car, power plants and etc; *secondly*, chlorofluor carbon (CFC) emissions. CFC damages the ozone layer which allow ultraviolet rays pe-

netrate the Earth. In addition, the increase in the Earth's temperature also caused by a build-up of greenhouse gases such as carbon dioxide, methane, nitric oxide, and chlorofluor carbon (CFC) in the atmosphere. The accumulation increasing heat from the Sun causes the temperature of the heat rising.

According to Inter Governmental Panel on Climate Change (IPCC), there are two main causes of global warming, which are greenhouse effect on earth and the existence of gas that will lead to increasing of greenhouse effect due to human activities. In international society, many parties accuse the third world countries as the causes of the global warming, for example due to massive forest fire in the country. The forest fire itself releases a lot of carbon dioxide into the atmosphere.⁸

The effects of global warming are the declining and melting of ice in south and North Pole and others, causing the sea level rise. Heat increasing of the weather on earth resulting rapid evaporation of sea water will cause rapid onset of rains. Horrible weather lead to a very dense rain forest, forest fire, flood, and hurricane that unexpected.⁹

Native migration in particular area, migration of animal due to natural disasters. Beside of that the disease outbreak is against human nor animal. Nowadays, a lot of city resident are exposed to several diseases caused by air pollution that is lethal and could not be cured expect with organ transplantation which is very expensive.¹⁰

International law politics of Kyoto Protocol about Global Warming

The momentum of the active involvement of countries in the world in anticipation of cli-

⁵ Broto Wardoyo, "Mandat Bali: "Fottpint on the Sand", *Global & Strategis journal*, Th. II, No. 1, January - June 2008, Surabaya, page 38.

⁶ G. Marata et al., "Renewable Energy Incentives in the United States and Spain: Different Paths - Same Destination?," *Journal of Energy and Natural Resources*, Vol. 28, 2010, London: International Bar Association, page 481.

⁷ Damayanti dan Destia Pentiana, "Global Warming" in the Perspective of Environmental Management Accounting (EMA)", *Jurnal Ilmiah ESAI*, Vol. 7, No.1, January 2013, Bandar Lampung.

⁸ Daniel M Bodansky, "Is There an International Environmental Constitution?," *Indiana Journal of Global Legal Studies*, University of Georgia School of Law, October 2008, Bloomington, Indiana: Indiana University Maurer School of law.

⁹ J. Morgan, "Carbon Trading Under the Kyoto Protocol: Risks and Opportunities for Investors", *Fordham Environmental Law Review*, Vol. 18, 2006, New York: Fordham University, page 151.

¹⁰ *Ibid*

mate change effects started since the signing of the United Nations Framework Convention on climate change (UNFCCC) on High-level Conference of Earth Summit about United Nations Conference on Environment and Development (UNCED) at Rio de Janeiro, Brazil on 1992.¹¹

The main objectives of Convention on Climate Change as stated on Article 2, which is to stabilize the concentration of greenhouse gases (GHG) in the atmosphere at a level that would prevent dangerous anthropogenic (i.e., human) interference with the climate system. In order to achieve these objective, agreed upon the basic principles of the Convention emphasizes on equality principle and precautionary principle, as stated in Article 3 that every party has equal responsibility, but specifically must be distinguished according to their abilities (common but differentiated responsibilities).

The whole of provisions about the obligations in Article 4 of the Convention applied to all parties, one of them is cooperation to mutually develop and share scientific research, technology, socio-economic and legal information related with the climate system and climate change, including the economic and social consequences of various policy strategies. There is a difference obligation between industrialized countries (Annex I and Annex II) and developing countries, where the Annex I countries collectively obliged to decrease the emissions by 5% from the level of emissions in 1990, as well as within the year 2008 until 2012.

The articles above suggest that there is a purpose to be reached in the formation of the Kyoto Protocol. This is in accordance with Sajtjpto Rahardjo's opinion as saying that law politics is an activity to decide an option regarding with objectives and procedures that will be used to achieve the purpose of law in society. The ways of achieving objectives of the Kyoto Protocol submitted to each country, so that it can

be set up in accordance with the conditions of the country concerned.

After the implementation of a rule or an important decision, then it forwards to the environment. The specified ways no more than solution's election that approved collectively, thus causing the Member States adapt their behaviour. This is accompanied with the hope that other Member States do similar things, so that the cooperation can be realized. This condition means that decisions taken by the Member States more or less influenced by the surrounding environment including the attitudes and the role of other countries.¹²

The process of implement the Convention turned out to create two big blocks which are the block of developed countries and block of developing countries so that in carrying out the agreement nor does the same. Moreover both of big blocks further divided into various smaller groups in order to fight for each interests and opinions.

The Kyoto Protocol of 1997 formed during the Conference of Parties 3 on 12 of December 1997, which is an amendment toward UNFCCC. This Protocol was designed as a reinforcement mechanism of emissions reductions for parties whose signing GHG Convention climate change, so it does not disturb the Earth's climate system.¹³ Several reports explain, in order to accommodate the interests between developed countries and developing countries that different each others. The Kyoto Protocol international agreement was made to put together in a commitment to reduce emissions by GHG of how to set up the problem in a more assertive way and bind by law.

The Kyoto Protocol 1977 is regulating the specific obligations in carrying out the main agreement. The Protocol is generally used to ensure the treaty making process which is faster and simpler, and has been used in particular

¹¹ G. Marata et al., *op.cit*, page 481. See also Maxine Burkett, "Climate Justice and the Elusive Climate Tort", *121 Yale Law Journal*, Online 115, 2011, <http://yalelawjournal.org/2011/09/13/burkett.html>, last visited Oct. 26, 2012, New Haven: Yale Law School)

¹² Ike Anggi Yulianto, "Pengunduran Diri Kanada Dari Protokol Kyoto", *eJurnal Ilmu Hubungan Internasional*,

Volume 1, Number 3, 2013, Samarinda: Faculty of Social and Politic, UNMUL

¹³ Petra Lea Lâncos, "Flexibility and Legitimacy - The Emissions Trading System under the Kyoto Protocol, Special Issue: Public Authority & International Institutions", *German Law Journal*, Vol. 09, No. 11, 2008, Virginia, USA: Washington & Lee University School of Law.

on environmental law. An example of this Protocol is Montreal protocol on Substances that Deplete the Ozone Layer which is based on Article 2 and Article 8 of Vienna Convention for the Protection of the Ozone Layer 1985. The Kyoto Protocol set emissions reduction provisions of the GHG only during the first period from 2008 to 2012, but the long-term target is the reduction of the mean global weather between 0.02°C and 0.28°C by 2050.

The obligations of the State parties of the Kyoto Protocol contained in Article 2, which stated that every party in achieving the commitment of the restrictions and reduction of the number of emission under Article 3, in order to encourage sustainable development, oblige to: (a) Implement and/or lays out policies and actions in accordance with its national circumstances, such as: energy efficiency improvement; encouraging the practice of forest management and sustainable agriculture, afforestation and reforestation; emissions reductions. (b) Cooperate with other parties to enhance the effectiveness of the policies and actions of individual and combined adopted pursuant Article 4, paragraph (2) letter e and i, of the Convention. Considering the ways to facilitate specific cooperation, taking into account all the associated information, and actions taken. Such as: minimize adverse consequences including the adverse consequences of climate change, influence on international trade, social impact, economic and environmental.

International politics according to Holsti is the study of State action toward the external environment as a reaction to the other countries responses. Besides the action of power, interest and action, international politics also include attention to the international system, deterrence, and the behavior of decision makers in a conflict. In general, who became the object of the study of international politics shows political studies abroad, which focuses on a description of the interests, action and element of power.

The expert of critical-constructivist ideology are basically understand the international political law from the structure of constitutional international agreements making, where coun-

try is deemed as an entity that juridically recognized and creation against the norms regarding the recognition and procedural justice which is used in making agreement. The ideal purpose from the structure is to create a binding norms that are mutual, which will bring the countries that involve in the agreement into the decisions that have a basis on mutual understanding and without enforcement.

This point of view encourages countries to engage in international relations, accompanied by norms such as mutual understanding, mutual trust, compliance, and the avoidance of over forms of cheating as well as the use of coercion and violence. Finally make the international treaty is not only seen as a means of fulfilment of purely national interests, but rather as a form of recognition of a State as a member of the international community. The role of non-State actors in the international society do with prudence, due to its perceived may damage the of justice communicative relationship between countries that have been created through the effort of creating new norms that not proper well with the existing norms.

Sociological definition of legitimacy elements is a process negotiating international agreements, include the conflict between idealism and reality as well as the need for public approval. This is not only look at the actions of the State in the process of shifting the international norms, but also the State of the internal affairs of a country and the reaction from other countries and the international society.

The external factor is the condition of the international system that in progress at present, which is influenced by international institutions, namely the Kyoto Protocol of 1997 and it is an international conditions (economic competition with the Member countries of NAFTA). Targets of emissions reduction known as the QELROs is the core of whole contents of the Kyoto Protocol 1997, as stated in Article 3 that has implications that is legally binding, commitment period, use (sink) to achieve the target, ration of emissions (assigned amount) and inclusion of the six types of greenhouse gases.

One of important issue that deserve long

discussion is the mechanism to fulfill commitment or reach the target of emissions reduction by annex 1 countries. Mechanism of reduction in the value of the emissions of greenhouse gases listed in the Kyoto Protocol instruments is only able to provide minimum investments compared to the absence of the Kyoto Protocol.¹⁴ Negotiations bothered with different opinion related with the question whether rich Nations should provide compensation to developing countries for losses due to climate change or not.

This issue as the key of dispute because developed countries are pressed to show that the countries would fulfill the promise of increasing the funds address climate change becomes a US\$100 billion per year in 2020, up from about US\$30 billion in 2010-2012. The package includes an agreement to increase the fund helps developing countries in addressing climate change as well as the search for an environmentally friendly source of energy.

Closing

Conclusion

Law politics is an activity to decide an option regarding with objectives and procedures that will be used to achieve the purpose of law in society. Regarding with the Kyoto Protocol 1997, the ways of achieving that goal is handed over each country, so that it can be set up in accordance with the conditions of the country concerned. The States parties have not yet fully accept the Kyoto Protocol of 1997, thus target of emissions/QELROs reduction listed in Article 3 has not been fully achieved.

Suggestion

An agreement executed in achieving the goals depends on a serious commitment, so it needs strong awareness and willingness from the states parties.

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¹⁴ Marsudi Triatmodjo, "Implikasi Berlakunya Protokol Kyoto 1977 Terhadap Indonesia", *Jurnal Hukum Internasional*, Vol. 2 No. 2 Year 2005, Jakarta: The Research Institu-

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