

WHY INDONESIA SHOULD ENACT A CLIMATE CHANGE LAW?



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Why Indonesia Should Enact a Climate Change Law?

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INTRODUCTION

I.

IPCC expresses that the earth's temperature has risen exceeding 1°C since 1850, compared to the global temperature increase limit that is agreed to in the Paris Agreement, namely 1.5°C.¹ The concentration of greenhouse gas has also reached the highest concentration level within the past 2 million years for CO₂ and within the past 800 thousand years for other greenhouse gases.² Those conditions are projected to trigger the ecosystem's critical point, including the melting of Greenland's ice sheet, the 7-meter rise of sea level, and the release of methane gas in massive amount through permafrost. Furthermore, IPCC projects that the 1.5°C temperature rise will be reached in early 2040 if the global emission rate stays the same as currently.³

The complexity of climate change issue that is multi-faceted and has multiple cross-cutting characteristics makes the enactment of a specific legislation for this issue to be crucial

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¹ IPCC, 2021: Summary for Policymakers in IPCC, Climate Change 2021: The Physical Science Basis, p. 5.

² *Ibid*, p. 9

³ *Ibid*, p. 18

One of IPCC's recommendations to overcome the climate change issue is the urgency of enacting legal instruments that aim to curb greenhouse gas emissions. IPCC predicts that the currently available climate change legal instruments may lower emission up to 5.9 Gt CO₂e compared to the rate of emission in 2016.⁴ A study has also projected that legislation products relating to climate change that are passed on national level may lower emission at the rate of 0.78% per GDP during the first 3-year implementation of those legislations and at the rate of 1.79% after the 3-year period has passed. Up to 2016, the enactment of climate legislation products may prevent the release of 37.7 GtCO₂e.⁵

The complexity of climate change issue that is multi-faceted and has multiple cross-cutting characteristics makes the enactment of a specific legislation for this issue to be crucial. There are at least three reasons underlying the importance of a specific legislation on climate change: **Firstly**, legislation offers a grand and long-term design for instruments and policies relating to climate change control measures in Indonesia. After the Paris Agreement in 2015, there has not been any legislative product that specifically addresses climate change and more importantly adopts the long-term goals and norms as agreed in the Paris Agreement. This legislation is especially necessary as it will serve as the main legal framework for the implementation of Nationally Determined Contribution and Long-Term Strategy. **Secondly**, legislation serves as an instrument that is capable of comprehensively handling poly-centric elements of climate change, considering climate change issue involves multiple actors and multiple aspects. The climate change legislation is able to catalize policy harmonisation among government agencies and coordination between relevant stakeholders. In addition, the climate change legislation may also strengthen the role and function of the parliament in climate change mitigation and adaptation efforts. **Thirdly**, a legislation constitutes an appropriate instrument to accommodate both compliance and law enforcement mechanisms. In Indonesia, there are two Laws that include climate change in their provisions. The first one is Law No. 31 of 2009 on Meteorology, Climatology, and Geophysics. The second one is Law No. 32 of 2009 on Environmental Protection and Management. However, the norms on climate change in both laws are deemed to be very general.

Indonesian Center for Environmental Law (ICEL) proposes the Indonesian government to immediately draft the Law on Climate Change. According to a comparative study

⁴ IPCC, 2021: Summary for Policymakers in IPCC, Climate Change 2022: Mitigation of Climate Change, p. 15

⁵ Shaikh M.S.U Eskander and Sam Fankhauser, "Reduction in greenhouse gas emissions from national climate legislation" *Nature Climate Change* Vol. 10 (2020), p. 755

conducted by ICEL on climate legislations throughout the world⁶ and through a series of discussion with several experts, there are at least 8 (eight) provisions that must be addressed in the Climate Change Bill, namely: principles and purposes of the law, types and classification of greenhouse gases, institutional arrangement and stakeholder coordination, carbon budget, climate change targets and baselines, synergy of policies and regulations, governance of climate change control, and law enforcement.

⁶ See Grantham Research Institute on Climate Change and the Environment, "Climate Change Laws of The World", accessed through <https://climate-laws.org>.

MANDATORY PROVISIONS IN THE CLIMATE CHANGE LAW

II.

Climate change bill must emphasize in detail the scope of the regulated greenhouse gases, at least it should refer to the known seven greenhouse gases, whereas six gases are derived from the Kyoto Protocol and the remaining is derived from the Doha Amendment.



In addition, the collectively agreed global target in the Paris Agreement to prevent the earth's temperature rise over the 1.5°C must be integrated as one of the purposes in the Draft Bill.

2. Types and Classification of Greenhouse Gases

climate change bill must emphasize in detail the scope of the regulated greenhouse gases, at least it should refer to the known seven greenhouse gases, whereas six gases are derived from the Kyoto Protocol and the remaining is derived from the Doha Amendment. Those greenhouse gas emissions encompass carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur trifluoride (SF₆).

1. Principles and Purposes of the Law

Climate change bill is vital to ascertain that principles and goals of climate change control that are adopted in international and national instruments to be accommodated in the bill. For instance, the common but differentiated responsibilities principle that acknowledges different capabilities of each party, protection and promotion of human rights, and non-regression principle. This Draft Bill must also put generally acknowledged environmental principles, such as precautionary principle, intragenerational and intergenerational equity and participative principles as the foundation for climate change measures.

3. Institutional Arrangement and Stakeholder Coordination

The Draft Bill must address the institutional aspect because climate change is an issue that intersects with various sectors and it falls under the authority of various ministries and agencies, both in the implementation of mitigation and adaptation. Institutional arrangement in this regard also relate to the role of and participation from the sub-national and local government in climate mitigation and adaptation. Lastly, institutional arrangement that needs to be addressed also relate to the agency that has the authority to manage climate change funds. This Draft Bill is expected to be up for the task in establishing a coordination mechanism between related ministries and agencies in tackling climate change. It is expected for the bill to also address the coordination between the national and local government in climate change control to guarantee the transparency, coherency, and sustainability of climate change mitigation and adaptation efforts in all levels of government. Bringing together the national and local government in this context is especially related to the distribution of authority between governments, coordination on the enactment and implementation of policies on sectoral and sub-national levels, coordination relating to the climate funding access, particularly for the local government and the public that participate in climate change actions.

4. Carbon Budget

Climate change bill is best to address provisions relating to carbon budget as one of main consideration in implementing climate change control. Carbon budget constitute the threshold or total cumulative greenhouse gas emission that is allowed to be emitted during a certain period to prevent the rise of earth's temperature.⁷ Climate Change Act passed in the United Kingdom, for instance, addresses carbon budgets. The Act requires the British Secretary of State to determine 5-year carbon budgets as a form of climate change control. The Act also mandates the Secretary of State to ascertain that the Britain's greenhouse gas emission does not exceed carbon budgets.⁸ The UK's Carbon budgets are determined to achieve the net zero emission by 2050.⁹ Although the details on how to determine the amount of carbon budgets do not necessarily have to be addressed on the level of a Draft Bill, the underlying provision relating to this issue serves as a vital cornerstone to make sure that the whole climate change measures to be in line with the purpose of

⁷ Carbon Tracker, "Carbon Budgets: Where are we now?", accessed through <https://carbontracker.org/carbon-budgets-where-are-we-now/> on 17 March 2023.

⁸ UK Climate Change Act 2008, Art. 4(1)

⁹ UK Climate Change Act 2008, Art. 1(1)

enacting this Draft Bill, namely preventing the temperature increase that exceeds 1.5°C.

5. Climate Change Targets and Baseline

Following-up the above goals, the climate change bill must also address provisions relating to climate change mitigation and adaptation targets, both in national, sub-national and sectoral levels. Those targets must be determined in short-term, medium-term, and long-term basis. This measure is needed to determine the sustainability of climate change policies on various levels of the government in annual basis. The Draft Bill on Climate Change may determine long-term, medium-term, and short-term targets. The Draft Bill may also stipulate the process for determining the climate targets, aspects that are required to be considered in determining the targets, and measures to integrate such targets with other policy and development instruments. Besides from addressing the climate targets, the Draft Bill must also regulate about climate change mitigation and adaptation baseline that serves as the basis for determining targets and measuring the achievement of the targets. The baseline is also stipulated in national, sub-national, and sectoral levels.

6. Synergy of Policies and Regulations

Climate change bill may mandate an assessment relating to climate change impacts and risks in decision making, for example, in Strategic Environmental Studies and Environmental Impact Analyses. In existing regulations, assessment relating to climate change risks is mandatory when formulating Strategic Environmental Studies,¹⁰ nevertheless, on a more technical decision-making level, such as the licensing process, the climate change risks have not been taken into consideration. Furthermore, this Draft Bill may also mandate issuers to perform mandatory assessment on potential impacts and risks to the climate change when preparing prospectuses, and Financial Services Institutions (*Lembaga Jasa Keuangan* – LJK) must perform assessment on potential impacts and risks to the climate change during business operation of LJK. The whole outputs of climate change impact assessments must be mandated as documents that are open for public.

7. Governance of Climate Change Control

Climate change bill must address the framework on governance of climate change control and funding. The first aspect that must be regulated is the mitigation and

¹⁰ See Regulation of the Government No. 46 of 2016 and Regulation of the Minister of Environmental Affairs and Forestry 69/2017

adaptation actions planning that are transparent, accountable, accessible, and participative. The planning includes funding of climate change actions. Secondly, the governance aspect that must be addressed relates to transparency and access to information on the implementation of climate change control. There is also a need to regulate the mechanism to monitor and evaluate the implementation of climate change actions on national, sectoral, and regional levels. Thirdly, the governance aspect that must be included in the draft is the credibility of climate change transparency framework, such as monitoring, reporting, and verification of greenhouse gas emission and the utilization of the SRN-PPI portal. Finally, the Draft Bill on Climate Change must also address capacity building for relevant parties through education, training, research development, or other means that may support active participation of many parties in climate change control.

8. Law Enforcement

Climate change bill must address the law enforcement aspect, among others, by addressing administrative sanctions in the form of fines within the context of emission trading. This fines aims to boost market compliance in performing emission trading, while simultaneously encourage the reduction in actual emission. The imposition of fines as administrative sanction will be enforced when there are activities that produce greenhouse gas emission exceeding the determined cap or allowances. Besides from sanctions relating to emission trading, sanctions are also needed for compliance of reporting and submission of emission data inventory and performance of climate change control actions. These sanctions are important because they relate to the credibility of transparency framework, the availability and transparency of climate change information, and specifically within the context of carbon trading, to prevent any double counting. Up until now, law enforcement still serves as one of aspects that is not yet properly regulated in climate change issue.

CLOSING

III.

For the past years, Indonesia has had laws and regulations on various hierarchy addressing climate change. However, there isn't any umbrella regulation that comprehensively addresses climate change with multi-sectoral and broad scale approaches.

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For the past years, Indonesia has had laws and regulations on various hierarchy addressing climate change. However, there isn't any umbrella regulation that comprehensively addresses climate change with multi-sectoral and broad scale approaches. Hence, ICEL deems that climate change bill may serve as a mean to strengthen Indonesian climate change control measures by laying down fundamental aspects on climate change control and responding issues that are encountered in the past years relating to policies and law enforcement, institutional matters and governance, and capacity building. Eventually, this Draft Bill is expected to support and strengthen Indonesia's commitment in tackling climate change.

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