



## Harmonization of Common but Differentiated Responsibility Principles as an International Law Norm towards National Law for the World Climate System Protection

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### **Abstract**

Harmonization efforts are needed because the applicable laws and regulations must be adapted to the various changes that have occurred in the Indonesian legal system. There are two main issues. The first one is the form of harmonization of the common but differentiated responsibility principles as an international legal norm towards national law for the protection of the world climate system, and the second one is Indonesia's obstacles in implementing the CBDR principle. This study applies normative juridical method using descriptive analysis. The data will be analyzed in a qualitative manner. The results of this study are, firstly, Indonesia carries out harmonization as the implementation of the contents of the Kyoto protocol through Law No. 32 of 2009 concerning Environmental Protection and Management. Secondly, the biggest obstacle in implementing the CBDR principle in Indonesia is corruption, collusion and nepotism.

**Keywords:** Harmonization of Law; Common but Differentiated Responsibility Principles; International Law

### **Background of the Research**

Environment is a crucial component in human life and all living organisms on earth. One environmental issue that influences the life components and living systems is the climate change phenomenon. It appears as a form of the phenomenon of environmental damage locally, nationally and globally. It has become indisputable issue that the environment damage in a particular country will have an adverse effect on many other countries.

The damage mainly occurs through the production of greenhouse gases (GHGs); it is called this way because the gases have the same effect as the roof of a greenhouse. The excessive greenhouse gases result in a greenhouse effect resulting in global warming that causes climate change.<sup>1</sup> It has become a

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<sup>1</sup> Sam Ratulangi University Electronic Library Manado, <http://hukum.unsrat.ac.id/hi/climate.html>, 2006, accessed on January 20, 2018 at 10:00 p.m.

global issue that the world is experiencing the problem of climate change. It can be caused by, among other things, massive burning of coal, gasoline, wood, and the deforestation as well as industrial activities that produce greenhouse gas emissions. Through the Earth Summit in Rio de Janeiro, Brazil, the ideas and programs were planned to reduce GHG carbon emissions as a major cause of international climate change which gave rise to an agreement on the United Nations Framework Convention on Climate Change (UNFCCC) 1992 with the aim of stabilizing the concentration of greenhouse gases in the atmosphere at which does not endanger the world climate system.<sup>2</sup> The Convention on Climate Change has legal force and is valid after the ratification of the convention by 50 countries since March 21, 1994.<sup>3</sup> UNFCCC then formed an annual general meeting called Conference of the Parties (COP).

The Convention on Climate Change is a framework convention, so it requires the establishment of a protocol to set regulatory standards such as how much GHG that should be reduced, when the reduction will take effect, etc. Therefore, the Convention on Climate Change stipulates that the COP can create protocols to implement the provisions of the Convention on Climate Change and amend the obligations of the parties.<sup>4</sup> The COP-3 meeting which took place in Kyoto, Japan, in December 1997 resulted in an agreement on the Kyoto Protocol that regulated the emission reduction system and legally bound industrial countries to implement GHG emission reduction efforts that could be carried out individually or jointly.

To achieve the objectives of the Convention on Climate Change, there is a need for a basic principle that unites countries in the world to move together to save the environment with different responsibilities. It also becomes the background in formulating a principle, namely the Common but differentiated responsibility (CBDR) principle which is explicitly stated in article 3 (1) of the Convention on Climate Change. Based on the CBDR principle, the Kyoto Protocol was prepared to regulate quantitative targets for emission reductions and target time reductions for developed countries. While developing countries have no obligation or commitment to reduce their emissions.<sup>5</sup> In addition, the Kyoto Protocol is the only protocol used to implement the Convention on Climate Change 1992.<sup>6</sup>

Indonesia as a developing country does not have an obligation to reduce GHGs but may help developed countries at the expense of developed countries because they expect funding. Developing countries can use the CDM program because this is believed to create a win-win solution. CDM is a mechanism regulated under the Kyoto Protocol where developed industrial countries (Annex I) are required to reduce carbon emission levels by 5% from emission levels in 1990. This mechanism will help Annex I Countries to fulfill their obligations to reduce carbon content while developing countries helped by the funds to transfer technology.

The CDM program is designed for 3 (three) interests, namely first, CDM helps developing countries to achieve sustainable development; second, the CDM contributes to the achievement of the ultimate goal of the convention; and third, CDM helps developed countries to achieve the implementation of the obligation to limit and reduce emissions quantitatively as stipulated in article 3 of the Kyoto Protocol. Gatut Susanta and Hari Sutjahjo, 2007, *Will Indonesia Sink?*, Jakarta: Penebar Plus<sup>7</sup> The CDM program allows the government and private parties to carry out emission reduction activities in developing countries to obtain Certified Emission Reduction Units (CERUs) in return.<sup>8</sup> Heretofore the CDM is the most likely program that can involve developing countries in achieving the main objectives

<sup>2</sup> Kementerian Lingkungan Hidup. 2012. *Buku 1 Pedoman Penyelenggaraan Inventarisasi Gas Rumah Kaca Nasional*. hlm.1

<sup>3</sup> Climate Change Secretariat, 2006: 16-20. Lihat juga United Nations Department of Public Information, February 1997

<sup>4</sup> Sukanda Husin and Hilaire Tegnau, 2017, Corruption Eradication within the Protection of the Environment in Indonesia, *Asian Journal of Water, Environment and Pollution*, Vol. 14, No. 4, International Law Department, Faculty of Law, Andalas University, Padang

<sup>5</sup> Daniel Murdiyoso, 2003, *CDM: Clean Development Mechanism*, Jakarta: Penerbit Kompas

<sup>6</sup> Gatut Susanta and Hari Sutjahjo, 2007, *Will Indonesia Sink?*, Jakarta: Penebar Plus

<sup>7</sup> Agricultural R & D Website, Strengthens Regional Capabilities in Facing Climate Change, <http://www.litbang.pertanian.go.id/buku/memperkuat-kemampuan-wilayah/3.pdf>, accessed 2 January 2018 at 11:00 p.m. page. 9

<sup>8</sup> Sukanda Husin, *Hukum Lingkungan Internasional*, PT RajaGrafindo Persada, Jakarta: 2016, hlm. 92

of the Convention on Climate Change. It is also necessary for the CDM Project to adhere to the principles of sustainable development in Indonesia. The indirect benefits that can be learned by Indonesia can be in the form of technology transfer, capacity building, improving environmental quality, and increasing competitiveness.

Based on the above-mentioned explanation, the principle of Common but differentiated responsibility (CBDR) is used as the basis for the regulation of protection of the world's climate system. At present, more studies of existing regulations are needed. Therefore, to apply the Convention on Climate Change and the Kyoto Protocol 1997 into national law, harmonization efforts are essential because these regulations must be adapted to the various changes that have taken place in the Indonesian legal system. In the absence of harmonization and synchronization of regulations as the basis for the protection of the climate system formed by sectoral institutions, the management quality will remain the same or the condition of Indonesia's natural resources in the future are possibly going to be worse.

### ***Legal Research Method***

Legal research method is defined as ways to conduct research that aims to uncover truths in a structured and methodological manner. Legal research is conducted to produce a new argument, theory, or concept to solve a problem. Therefore, the results obtained will already contain value.<sup>9</sup> Similarly, the research and writing of this thesis are carried out using the scientific method, as follows:

#### ***1. Approach to Research Problems***

The approach to the research problems used in this research is normative legal research. Normative legal research is legal research conducted by examining literature materials and secondary data.<sup>10</sup>

#### ***2. Data Type***

The main data used as reference material for writing this thesis are secondary data<sup>11</sup> which includes the following:

- a. Primary legal material is material that has binding legal force, covers the applicable laws and regulations and has a relationship with this problem which consists of:
  - 1) United Nations Framework Convention on Climate Change on 1992
  - 2) The 1997 Kyoto Protocol concerning United Nations Framework Convention on Climate Change
  - 3) Law number 6 of 1994 concerning Ratification of United Nations Framework Convention on Climate Change
  - 4) Law number 17 of 2004 concerning Ratification of the Kyoto Protocol on the United Nations Framework Convention on Climate Change
  - 5) Law number 16 of 2016 concerning Ratification of the Paris Agreement to the United Nations Framework Convention on Climate Change

<sup>9</sup> Peter Mahmud Marzuki, , *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2006, hlm. 35

<sup>10</sup> Soerjono Soekanto dan Sri Mamudji, , *Penelitian Hukum Normatif*, PT Raja Grafindo Persada, Jakarta, 2006, hlm. 13

<sup>11</sup> Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Rajawali Pers, Jakarta, 2014, hlm.31-32

- 6) Law number 32 of 2009 concerning Environmental Protection and Management
  - 7) Presidential Regulation number 61 of 2011 concerning the National Action Plan for Reducing Greenhouse Gas Emissions
- b. Secondary legal material is material that provides an explanation of primary legal materials, such as the draft of the Law, the research findings, or writing from the legal community.
  - c. Tertiary legal material is supporting legal material which includes explanations of primary materials and secondary materials such as dictionaries (of law) and encyclopedias.

### **3. Method and Instrument for Collecting Legal Material**

The legal material collection technique used is the library research method; i.e. by studying legislation, books, internet sites, mass media, and dictionaries related to the title of this thesis that is theoretical scientific and can be used as a basis in research to analyze the problems.<sup>12</sup>

### **4. Legal Material Analysis Technique**

Processing and analysis of data used in this research is qualitative analysis; that is elaborating the collected data by not using numbers. Thus, it does not use statistical formulas but based on laws and regulations, views of legal experts, legal literature, international agreements or conventions, author's logic, and so forth.

### ***Harmonization of Common but Differentiated Responsibility Principles as an International Law Norm towards National Law for the World Climate System Protection***

To impose international law on a certain country according to the doctrine of transformation is to do a specific adoption. This special adoption requires an instrument of ratification and the making of national law to provide legal effects for its citizens. It is called as the harmonization of law.<sup>13</sup> The implementation of various laws and regulations requires harmonization to avoid overlapping authority and conflict of interest, both between central government agencies and between the central and regional governments.

Indonesia utilizes a dualism approach in the relations of international law and the Indonesian legal system, where international and national law are two separate and different legal systems. Based on its primacy, national law does take precedence. In applying international law into the national legal system, Indonesia uses the theory of transformation, where international law needs to be transformed in the form of laws and regulations recognized in Indonesia, such as the law or presidential decree.<sup>14</sup> All international agreements in Indonesia are non-self-executing because the agreement must be transformed into a legislative act that has been regulated in Indonesian law to be applied in national law.

The international policy is a reference for cooperation and commitment in an effort to anticipate the global environmental problems, for instance, the existence of the UNFCCC and the Kyoto Protocol for climate change along with the details of their cooperation. Indonesia is quite accommodating to respond to the global environmental problems by publishing various relevant national policies. This is to

<sup>12</sup> Soerjono Soekanto, , *Pengantar Penelitian Hukum*, Universitas Indonesia (UI Press), Jakarta, 2007, hlm. 21

<sup>13</sup> Sukanda Husin, *Hukum Internasional dan Indonesia Tentang Perubahan Iklim*, PT RajaGrafindo Persada, Jakarta, 2016, hlm.21

<sup>14</sup> Wisnu Aryo Dewanto, *Status Hukum Internasional Dalam Sistem Hukum di Indonesia*, Mimbar Hukum Volume 21, Nomor 2, Juni 2009, hlm.336

facilitate the process of implementation in the country that is adjusted to the needs of the country itself besides ratifying the UNFCCC and the Kyoto Protocol.<sup>15</sup>

### ***The Kyoto Protocol***

The Kyoto Protocol was formed at COP-3 on December 12, 1997 as an amendment to the UNFCCC. The Kyoto Protocol 1997 included hard obligations about reducing greenhouse gases, because it already involved a new principle, Common but Differentiated Responsibilities, and thus the QELROs (Quantified Emissions Limitation and Reduction Objectives) were determined differently between countries according to their abilities and responsibilities.<sup>16</sup> Based on the CBDR principle, the Kyoto Protocol does not impose developing countries participating in reducing greenhouse gas emissions. While the developed countries and the transition countries are required to limit or reduce greenhouse gas emissions to a certain amount.<sup>17</sup> The international rules, as stated in the Kyoto Protocol, want concrete reductions carried out in a sustainable manner, but national regulations only discuss protection and supervision without any progressive efforts from the national rules.

Indonesia ratified the Kyoto Protocol through Law No.17 of 2004 concerning Ratification of the Kyoto Protocol on the Framework Convention on Climate Change on 28 July 2004. The ratification of the Kyoto Protocol has an impact on Indonesia's participation as a country supporting programs to reduce environmental pollution and carbon emissions. One important program that has been implemented by Indonesia is technology transfer and coordination in the application of biofuels to reduce carbon emissions. In addition, Indonesia's forests and natural resources are also land for investment, exploration and capital exploitation of developed countries.<sup>18</sup>

For years, only Law No. 6 of 1994 and Law No. 17 of 2004 which became the legal basis for law-level related to climate change in Indonesia. Based on this, the lawmaker of Law No. 32 of 2009 concerning Environmental Protection and Management considers that a strong legal basis for climate change legal policies in Indonesia needs to be given.<sup>19</sup>

#### ***1. Indonesia has replaced Law No. 23 of 1997 concerning Environmental Management by Law No. 32 of 2009 concerning Environmental Protection and Management***

The development of environmental law in Indonesia was begun since the enactment of Law No. 4 of 1982 concerning Basic Provisions for Environmental Management on March 11, 1982 (abbreviated as UULH 1982). UULH 1982 on September 19, 1997 was replaced by Law No. 23 of 1997 and then Law No. 23 of 1997 (UULH 1997) also declared invalid by Law No. 32 of 2009 concerning Environmental Protection and Management (abbreviated as UUPPLH).

The basic difference between Law No. 23 of 1997 with Law No. 32 of 2009 is the strengthening of the principles of environmental protection and management based on a good governance in Law No. 32 of 2009 because in each process the formulation and application of instruments for prevention of pollution and / or environmental damage and countermeasures and law enforcement require integration of aspects of transparency, participation, accountability, and justice. All of the above laws only contain basic principles and principles for environmental management, so the law serves as an umbrella for the

<sup>15</sup> Deni Bram, Mumu Muhajir, dan Melly Setiawati, *Dinamika Wacana Perubahan Iklim Dan Keterkaitannya Dengan Hukum Dan Tenurial Di Indonesia: Sebuah Kajian Kepustakaan*, <http://epistema.or.id>, Jurnal Seri Hukum Dan Keadilan Iklim, Eoitesma Institute, Jakarta, 2013, hlm. 42

<sup>16</sup> Sukanda Husin, *Penegakan Hukum Lingkungan di Indonesia*. Sinar Grafika, Jakarta, 2009, hlm. 28

<sup>17</sup> Sukanda Husin, *Op.Cit.*, hlm. 62

<sup>18</sup> Sylviera Pradita, *Implikasi Ratifikasi Protokol Kyoto terhadap Politik Internasional dan Domestik Indonesia*, Departemen Hubungan Internasional, Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Airlangga, Jurnal Analisis Hubungan Internasional, Vol. 6 No. 1, Januari 2017, hlm. 184

<sup>19</sup> Andri G. Wibisana, "Pencegahan dan Pengendalian Pencemaran dan Kerusakan Lingkungan" dalam *Hukum Lingkungan: Teori, Legislasi dan Studi Kasus*, (n.p.: USAID, Kemitraan dan the Asia Foundation, n.t.), hlm. 433

preparation of other laws and regulations. Thus, the Environmental Law or Environmental Management Act or Environmental Protection and Management Act is referred to as the "umbrella act" or "umbrella provision".<sup>20</sup>

Indonesia as one of the countries that ratified the Kyoto Protocol conducted harmonization as a form of implementation of the contents of the protocol through Law No. 32 of 2009 concerning Environmental Protection and Management. Although it does not fully adopt the provisions stipulated in the protocol, there have been government efforts through policies related to protection, environmental preservation and sustainable development as a result of global warming and climate change.

UUPPLH 2009 does not only contain legal provisions and legal instruments as contained in the previous laws, namely UULH 1982 and UULH 1997, but also includes new norms and legal instruments, including:<sup>21</sup> The first one is that UUPPLH has explicitly adopted the principles contained in the 1992 Rio Declaration, namely the principles of state responsibility, integrity, prudence, justice, polluters pay principle, participatory and local wisdom. The adoption is important legal politics because it can strengthen the interests of environmental management in dealing with short-term economic interests. Judges can use these principles to try a case to give attention to the interests of environmental management that may be ignored by business actors or authorized government officials.

The second one is that UUPPLH, especially with Article 66, is very advanced in providing legal protection to people who fight for rights over the environment from possible criminal and civil claims. This legal protection is very important because there have been cases where environmental activists who reported allegations of environmental pollution and destruction have been sued in a civil or criminal case on the basis of defamation of companies suspected of causing environmental pollution or environmental damage.

The third one is that UUPPLH has caused changes in the field of investigative authority in environmental cases. Under the KUHAP (Criminal Procedure Code) system, the investigator is not authorized to submit the results of the investigation directly to the public prosecutor, but it has to pass through the Police. UUPPLH has amended the provisions which have given authority to the National Police as the only institution that can submit the results of the investigation to the public prosecutor as stated in Article 8 paragraph (2) of the Criminal Procedure Code. The aforementioned change occurs through Article 94 paragraph (6) UUPPLH which states: "the results of investigations conducted by civil servant investigators are submitted to the public prosecutor." Thus, environmental investigator can and are authorized to submit the results of the investigation directly to the public prosecutor without going through the police. The granting of this authority still has to be empirically proven in the future whether it will bring positive development for the efforts to enforce criminal environmental law or not bring any changes.

The fourth one is that in the UUPPLH the criminal law approach is not as the last resort, commonly referred to "*ultimum remedium*", which means to punish business behavior that creates environmental problems. In UULH 1997 criminal sanctions became the last resort after the enforcement of the state administrative law was ineffective. In UUPPLH, "*ultimum remedium*" only applies to one Article, namely Article 100 UUPPLH which states:

- (1) Anyone who violates waste water quality standards, emission quality standards, or quality standards for interference shall be punished with imprisonment for a maximum of 3 (three) years and a fine of a maximum of IDR 3,000,000,000.

<sup>20</sup> Masrudi Muchtar, *Hukum Lingkungan Indonesia*, dalam <https://masrudimuchtar.wordpress.com> diakses tanggal 28 Mei 2018 jam 22.22 wib

<sup>21</sup> **Takdir Rahmadi**, *Perkembangan Hukum Lingkungan Di Indonesia*, dalam <http://pn-ponorogo.go.id> diakses 28 Mei 2018 jam 22.03 wib

- (2) The criminal acts as referred in paragraph (1) can only be imposed if the administrative sanctions that have been imposed are not complied with or the violations are committed more than once. "

From the formulation of Article 100 paragraph (2), it is clear that the criminal sanctions listed in Article 100 paragraph (1) can only be imposed if the administrative sanctions are not effective or the violations are repeated. It means that criminal sanctions serve as the last resort. The fifth one is that UUPPLH has explicitly put criminal responsibility to the heads of business entities that have caused environmental pollution or damage. UULH 1997 does not explicitly state that the head or management of a business entity can be subject to criminal liability. UULH 1997 only uses the term "giving orders" or "acting as leader" in a criminal act. UUPPLH 2009 states that the criminal responsibility of business entity leaders is formulated in Article 116 up to Article 119. However, UUPPLH still adopts corporate liability. UUPPLH Article 116 contains criteria for the emergence of the accountability of business entities and those who must be responsible.

Article 3J UUPPLH covers an anticipation of global environmental issues such as climate change which is one of the objectives of environmental management. Although climate change is formulated, UUPPLH does not contain specific articles or chapters that regulate the principles of climate change control and management. The term climate change is only mentioned in Article 10 paragraph (2) f and (4) d which regulates the Environmental Protection and Management Plan and article 16 e which regulates Strategic Environmental Assessment (SEA).<sup>22</sup> One of the thirteen instruments of pollution prevention and / or environmental damage is stated in Article 14 of UUPPLH No. 32 of 2009. It has been socialized by the Ministry of Environment as a new instrument that is not mentioned in the previous UUPPLH, namely the Strategic Environmental Assessment (SEA) which must be carried out by the government and regional governments to ensure the integration of the principles of sustainable development in the development of a region and / or policy. plan and / or program, according to Article 15 paragraph 1 of Law Number 32 Year 2009.

SEA is a framework in the early stages of development planning with the intention that in the future it can achieve harmony between development and the environment.<sup>23</sup> The main emphasis on sustainable development has been established as the operational foundation for the implementation of development, as stated in the RPJP and national RPJM. The presence of SEA is needed now due to two main factors, namely: first, the SEA overcomes the weaknesses and limitations of the Environmental Impact Assessment (EIA), and second, the SEA is a more effective instrument to encourage sustainable development.<sup>24</sup>

## 2. *The Establishment of the National Action Plan on Climate Change in 2007 and 2011*

One of Indonesia's national climate change policy documents is the National Action Plan in the Face of Climate Change (RAN MAPI) published by the Ministry of Environment in November 2007.<sup>25</sup> RAN-MAPI specifically includes action plans related to the Land Use, Land Use Change Sector Forestry (LULUCF) which is divided into three target categories, first is the target of reducing emissions and increasing carbon absorption capacity. The second category is the implementation of incentives for the LULUCF sector. The third category is the development of supporting policies.

Indonesia issued Government Regulation Number 61 of 2011 concerning the National Action Plan for Reducing Greenhouse Gas Emissions (RAN-GRK) which was ratified by former Indonesian

<sup>22</sup> Takdir Rahmadi, *Hukum Lingkungan Di Indonesia*, Rajawali Pers, Jakarta, 2011, hlm. 57

<sup>23</sup> Bahan Ajar Pelatihan Penilaian AMDAL Kajian Lingkungan Hidup Strategis, 2009, Pusat Pendidikan dan Pelatihan Kementerian Lingkungan Hidup, hlm. 3

<sup>24</sup> SEA: The Importance of SEA Application in Indonesia, <http://www.menlh.go.id/pentingnya-penerapan-klhs-di-indonesia/> accessed on 3 January 2019 at 10.23 p.m.

<sup>25</sup> Bonn, *Impact of Climate Changes*, Yayasan Pelangi Indonesia, Jakarta, 2007, hlm 44.

President Susilo Bambang Yudhoyono on September 20, 2011.<sup>26</sup> This regulation regulates in detail the targets for reducing the sector's emissions nationally and instructs regional governments to make similar things. RAN-GRK proposes mitigation actions in five priority areas (agriculture, forestry and peat land, energy and transportation, industry, waste management) and other supporting activities.<sup>27</sup>

### 3. *Clean Development Mechanism Program (CDM)*

The legal basis for CDM implementation in Indonesia is Law Number 6 Year 1994 concerning the UNFCCC and Law Number 17 of 2004 concerning the Ratification of the Kyoto Protocol. Under the law, all CDM projects must meet the requirements outlined by the Conventions and Protocols, one of which must be towards sustainable development. CDM is the most likely program that can involve developing countries in achieving the objectives of the Climate Change convention.<sup>28</sup> In general, CDM allows developed countries to invest in developing countries in various sectors to achieve emissions reduction targets. Meanwhile, developing countries have an interest in achieving the goals of sustainable development as their national agenda while achieving the main objectives of the convention. This mechanism can be done multilaterally, bilaterally, and even recently has developed in a unilateral manner. This all depends on the source of funding and the distribution system.<sup>29</sup> Annex-I investment in developing countries that results in emission reduction will be certified and credit from "certified emission reductions" will be given to Annex-I countries.<sup>30</sup>

Basically, CDM activities can be distinguished from activities that reduce GHG emissions at the sources and activities that absorb GHG from the atmosphere. Activities that reduce emissions from sources usually focus on the sectors that use energy, while activities to absorb GHG from the atmosphere, also known as carbon sequestration, are non-energy activities such as forestry.<sup>31</sup> Indonesia also ratified the establishment of the National Clean Development Mechanism Commission serving as a national authority appointed through the Minister of Environment Decree No. 206 of 2005. The decision was passed on July 21, 2005 as a form of technical implementation of the CDM.<sup>32</sup> In terms of implementing the CDM in Indonesia, the National Commission on CDM is authorized to give approval for CDM proposals, before the CDM project is validated at the international level. Then provide annual reports to the UNFCCC Secretariat regarding the implementation of CDM projects in Indonesia. At present, the National Commission on CDM is removed and its authority is given to the Ministry of Environment and Forestry.

### 4. *Reducing Emissions from Deforestation and Forest Degradation/REDD+ in Indonesia*

The REDD+ program involves developing countries like Indonesia in reducing carbon dioxide emissions from deforestation and forest degradation.<sup>29,33</sup> With the REDD program, Indonesia through the Regional Government, non-governmental organizations, indigenous peoples, and individuals can carry out reforestation, afforestation and conservation forest projects to get credit from developed countries that receive carbon credits. There are some laws and regulations related to REDD in Indonesia, including:

- a. Presidential Instruction Number 10 of 2011 concerning Delays in Granting New Permits and Improving the Management of Primary Natural Forests and Peatlands.

<sup>26</sup> Diakses dari situs [sains.kompas.com/read/2011/09/26/18573116/](http://sains.kompas.com/read/2011/09/26/18573116/) tanggal 2 Juni 2015 jam 22.28 wib

<sup>27</sup> Website Bappenas; Latar Belakang GRK, <http://ranradgrk.bappenas.go.id/rangrk/tentang/tentang-rangrk/latar-belakang>, diakses 3 Juli 2018 jam 21.55 wib

<sup>28</sup> Sukanda Husin, *Penegakan Hukum Lingkungan Indonesia*, Sinar Grafika, Jakarta, 2009, hlm.48

<sup>29</sup> Daniel Murdiyarto, *CDM: Mekanisme Pembangunan Bersih*, Penerbit Kompas, Jakarta, 2003, hlm.2

<sup>30</sup> Hanan Nugroho, 2004, *Ratifikasi Protokol Kyoto, Mekanisme Pembangunan Bersih dan Pengembangan Sektor Energi Indonesia* : Catatan Strategis, diakses dari [www.kompas.com](http://www.kompas.com) pada 30 Mei 2018 jam 00.21 wib

<sup>31</sup> Chandra Panjiwibowo, dkk., *Mencari Pohon Uang: CDM Kehutanan di Indonesia*, Yayasan Pelangi, Jakarta, 2003, hlm.19

<sup>32</sup> Wahyu Yun Santoso dan Andy Omara, *Adopting Green Growth Approach for Climate Change in Indonesia*, Asia Law Quarterly, Volume 1, No.2 October 2009, hlm. 43

<sup>33</sup> Sukanda Husin and Hilaire Tegnan, 2017, *Corruption Eradication within the Protection of the Environment in Indonesia*, Asian Journal of Water, Environment and Pollution, Vol. 14, No. 4, International Law Department, Faculty of Law, Andalas University, Padang, hlm. 105



- b. Presidential Regulation No. 62 of 2013 concerning Management Agency for Reducing Greenhouse Gas Emissions from Deforestation, Forest Degradation, and Peatlands.
- c. Minister of Forestry Regulation Number 68 of 2008 concerning Implementation of Demonstration Activities Reducing Carbon Emissions from Deforestation and Forest Degradation.
- d. Minister of Forestry Regulation Number 30 of 2009 concerning Procedures for Reducing Emissions from Deforestation and Forest Degradation (REDD).
- e. Minister of Forestry Regulation Number 36 of 2009 concerning Procedures for Licensing Businesses for Using Carbon Absorption and / or Storage in Production Forests and Protected Forests

The description above shows the importance of harmonizing international law in Indonesian national law for several reasons:

- 1) Domestically, it will add more legal instruments that guarantee legal certainty over the implementation of environmentally sound and sustainable development. The provisions will be part of national law that regulates climate and environmental issues.
- 2) Internationally, it will show that Indonesia is also responsible for global environmental problems, especially on the issue of Earth's climate change that its impacts raise concern for humanity.
- 3) The implementation of international environmental law can encourage economic development and environmental protection in Indonesia.

### ***Indonesia's Obstacles in Implementing the Common but Differentiated Responsibility Principles for the Protection of the Climate System***

In Indonesia, there are often obstacles that hinder the implementation of policies or regulations which ultimately lead to legal disharmony due to the emergence of different interpretations of the rule of law. The implementation of REDD programs in Indonesia does not make a significant contribution to mitigation efforts because of corrupt behavior.<sup>34</sup> Corruption is one of the main reasons why environmental cases are not brought to the court. The struggle to eradicate corruption in environmental protection is hindered by various principles such as subsidies in criminal law and *lex specialis derogat legi generali*, which means that special legal rules are under general laws. In the case of Indonesia, both the Environmental Protection Act and the Anti-Corruption Law are *lex specialis* from the Criminal Code, which raises questions about which law should be used when there are violations of environmental law.<sup>35</sup> The establishment of the Corruption Eradication Commission and the Corruption Criminal Court (Law number 46/2009 on the Corruption Court) has succeeded in drawing a number of corruption cases that were brought to court.<sup>36</sup> There are 3 (three) types of law enforcement available under the Environmental Protection Law, namely administrative, civil and criminal enforcement. The possibility of corruption in civil enforcement is that the judges are bribed by a defendant or pollution maker so that they make a decision to free the polluters from any responsibility. With regard to administrative and criminal

<sup>34</sup> Munir Fuady, *Dinamika Teori Hukum*. Cetakan Kedua, Ghalia Indonesia, Bogor, 2010

<sup>35</sup> Sukanda Husin and Hilaire Tegnan, 2017, *Op.Cit.*, hlm. 107

<sup>36</sup> *Ibid.*, hlm.104

enforcement, corruption can be carried out by law enforcement, administrators or by business people. That happens in all legal processes such as inspection, investigation, prosecution, court and execution.<sup>37</sup>

## ***Conclusion and Suggestion***

### ***1. Conclusion***

- a. Indonesia harmonizes international law into national laws related to climate change starting from the UNFCCC ratified through Law Number 6 of 1994 concerning Ratification of the UNFCCC and the Kyoto Protocol that is ratified through Law Number 17 of 2004 concerning Ratification of the Kyoto Protocol on the Framework Convention on Climate Change. Indonesia harmonizes the law as a manifestation of the implementation of the contents of the Kyoto protocol by replacing Law No. 23 of 1997 concerning Environmental Management by Law No. 32 of 2009 concerning Environmental Protection and Management.
- b. Corruption is one of the main reasons why environmental cases are not brought to the court. There are several reasons why corruption occurs. In practice, the adoption of REDD programs, local governments, non-governmental organizations, indigenous peoples and individuals usually cut down trees planted and transfer or plant them in other project areas for financial gain. This act is considered corruption under the Corruption Eradication Act and has been around for some time and is likely to continue because of a legal vacuum.

### ***2. Suggestions***

- a. The author suggests that a concept/an idea regarding environmental norms in the constitution be made separately and not combined with other parts and for strengthening environmental norms in the constitution to get a central position, because it does not contain the political-pragmatic interests of certain groups.
- b. To prevent corruption in utilizing international funds under the REDD + program, the Environmental Protection Act must be revised so that it can regulate deviations in the use of international funds as a crime (corruption), intensify integration and coordination between related sectors in the management of natural resources and the environment, and sanctions firm for obstinate or undisciplined companies in managing waste in accordance with applicable rules.

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