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SIMBUR CAHAYA

Adalah

*Hukum Adat yang dituliskan dan Berlaku di Wilayah Sumatera Selatan
Sebelum Zaman Hindia Belanda dan Zaman Kemerdekaan*

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Pada edisi ini kajian diawali dengan menampilkan hasil pembahasan tentang: Nasionalisasi Perusahaan Modal Asing: Ide Normatif Pengaturan Hukumnya dalam UU No. 25 Tahun 2007 dan Relevansinya dengan Konsep Negara Hukum Kesejahteraan Pancasila dalam UUD NRI Tahun 1945 **Oleh: Muhammad Syaifuddin.** *Parliamentary Threshold*¹ dalam Kaitannya dengan Sistem Kepartaian Indonesia **Oleh: Fahmi Yoesmar.** Gagasan Penyatuan Pengorganisasian Pengujian Peraturan Perundang-Undangan di Bawah Mahkamah Konstitusi **Oleh: Else Suhaimi.** The Evaluation of the Effectiveness of International Environmental Law With Reference to the Issue of Global Climate Change **Oleh: Mada Apriani Zuhir.** Legal Policy of Bank Indonesia in the Monetary Stability **Oleh: Vegitya Ramadhani Putri.** Problematika Penerapan Hukum Acara Perdata Barat di Lingkungan Peradilan Agama **Oleh: Abdullah Gofar.** Hubungan Pemerintah Pusat dan Pemerintah Daerah Menurut UU No. 32 Tahun 2004 Tentang Pemerintahan Daerah **Oleh: Helmanida.** Larangan Praktik Monopoli Bentuk Perlindungan Hukum Bagi Konsumen **Oleh: Putu Samawati** Pemberantasan *extraordinary crime* korupsi Dalam perspektif hukum internasional **Oleh: Syahmin AK.** Hak Asasi Manusia (Kajian Kritis Dalam Perspektik Islam) **Oleh: Rasyid Ariman.** Kebijakan Penanganan Tindak Pidana Pencucian Uang di Indonesia (Tinjauan Normatif terhadap Undang-undang No 8 Tahun 2010) **Oleh: Vera Novianti.**

Demikian pengantar dari Redaksi Majalah Simbur Cahaya semoga edisi kali semakin menambah khasanah kajian hukum di Indonesia. Selain itu redaksi mengharapkan kritik dan saran untuk meningkatkan mutu penerbitan majalah berikutnya. Selamat membaca.

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Redaksi

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THE EVALUATION OF THE EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL LAW WITH REFERENCE TO THE ISSUE OF GLOBAL CLIMATE CHANGE

Oleh:
Mada Apriandi Zuhir

Abstrak:

Global climate change is a very controversial issue. Opinions are divided. The majority of mainstream scientists agree that global warming is a serious problem that is growing steadily worse and there are some who disagree. Regulation in international level is still debatable. The United Nations Framework Convention on Climate Change (UNFCCC) 1992 and the Kyoto protocol 1997 are some examples of the agreement among countries related to climate change issue. This essay examines the question of the effectiveness of international environmental law. Effects of climate change will not be the same across the globe. Different regions will be affected differently, and not all regions will have the same resources available to adapt to the changes they face. The development of the climate change regime began in the 1979 Geneva Convention on Long-Range Transboundary Air Pollution and its protocols, the Vienna Convention for the Protection of Ozone Layer 1985 and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer are not address climate change directly, these international agreements are significant also for climate change since CFCs are greenhouse gases. There are two major international environmental laws on global climate change, the United Nations Framework Convention on Climate Change (UNFCCC) 1992 and the Kyoto Protocol 1997. This essay finds out that international environmental law with reference to the issue of global climate change is not effective because the doctrine of sovereignty and equality among state make the agreement in international level depends on economic, social, or political interests.

Keywords: *Global Climate Change, Effectiveness, International Environmental Law, UNFCC, Kyoto Protocol*

A. Introduction

Nowadays, according to Center for International Environmental Law (CIEL), in the Arctic the average annual temperature has increased approximately four times as much as average annual temperatures around

the world.¹ Moreover, it states that Caribou are falling through once solid sea ice, and thawing permafrost is causing damage to houses, roads, airports and pipelines as well as accelerating erosion and up to 100 feet of land per year are being lost to erosion in some locations along the coasts of the Siberian, Alaskan and Canadian Arctic.² The scientific community predicts that for the period of the 20th century, the average global temperature increased by about 0.6 degrees Celsius or slightly more than 1 degree Fahrenheit and it was predicted by the year 2100, the average global temperature will increase by 1.4 degrees to 5.8 degrees Celsius or approximately 2.5 degrees to 10.5 degrees Fahrenheit.³ As a result, global climate change is a very controversial issue. Opinions are divided. The majority of mainstream scientists agree that global warming is a serious problem that is growing steadily worse and there are some who disagree.⁴ In this context, international co-operation has been responding to this issue. Global climate change has been common consent of international community. However, the regulations in international level still debatable. The United Nations Framework Convention on Climate Change (UNFCCC) 1992 and the Kyoto protocol 1997 are some examples of the agreement among countries related to climate change issue. Some authors see the two international agreements above are weak and are not sufficient to the overall challenge, while others see they are acceptable and event excellent starting point.

¹Center for International Environmental Law, *Climate Change Program*, (NDP), <<http://www.ciel.org/Climate/programclimate.html>> (19 October 2011).

² *Ibid.*

³Alexis Manning, (2002), *An Economic Analysis of the Kyoto Protocol*, <<http://titan.iwu.edu/~econ/ppe/2002/alexis.pdf>> (10 October 2011).

⁴For example, John Christy, a professor and director of the Earth System Science Center at the University of Alabama in Huntsville is a respected climatologist who argues that global warming isn't worth worrying about. Christy reached that opinion after analyzing millions of measurements from weather satellites in an effort to find a global temperature trend. He found no sign of global warming in the satellite data, and now believes that predictions of global warming by as much as 10 degrees Fahrenheit by the end of the 21st century are incorrect Larry West, *What Is Greenhouse Effect*, Environmental Issue <<http://environment.about.com/od/globalwarming/a/greenhouse.htm>> (8 October 2011).

This essay will examine the question of the effectiveness of international environmental law. To answer this question, this essay will be divided into three discussion topics. Initially, this essay will explain what global climate change is and why this issue becomes controversial one. Secondly, this essay will explain the role of international law and international environmental law in general. After that this essay will describe development of international cooperation on global climate change. At the end, this essay will discuss the effectiveness of international environmental law with reference to the global climate change issue, stressing in the United Nations Framework Convention on Climate Change (UNFCCC) 1992 and the Kyoto protocol 1997.

B. Result

No doubt, life on earth depends on energy from the sun. However, greenhouses gases (GHGs), such as water vapour, carbon dioxide, ozone and methane regulate climate by trapping heat and holding it in a kind of warm air blanket that surrounds the Earth and make the average temperature on the Earth far too cold to sustain the current ecosystem.⁵ The effects of climate change will not be the same across the globe. Different regions will be affected differently, and not all regions will have the same resources available to adapt to the changes they face.⁶

According to climate change and environmental justice fact sheet, climate change refers to the warming of the planet, due largely to burning fossil fuel for cars and industry, that could induce crop failures, famines, flooding, health issues, and a host of other environmental, economic, and social problems.⁷

Global climate change issue is not something new among scientists. For example, in 1898, Swedish scientist Svante Ahrrenius warned that car-

⁵Ibid.

⁶World Bank, 2002, *International Environmental Law: Concepts and Issues*, World Bank Group <http://www4.worldbank.org/legal/legen/legen_iel.html> (8 October 2011).

⁷Environmental Justice and Climate Change Initiative, (2002), *Climate Change and Environmental Justice Fact Sheet* January 28.

bon dioxide emissions could lead to global climate change.⁸ Meanwhile, this issue becomes international controversy around the last two decades.

Present day, approximately 80 percent of all energy used in the world comes from burning of fossil fuels. The United Nations Environmental Programme (UNEP) states that atmospheric concentrations of the carbon dioxide, methane, and nitrous oxide or green house gases (GHGs), In the past century have increased by about 30%, 145%, and 15%, respectively.⁹ This problem arises because human activities distort and accelerate the natural process by creating more greenhouses in the atmosphere than are necessary to warm the Earth to an ideal temperature. Burning natural gas, coal and oil, some farming practices and land-use changes, factories producing long-lasting industrial gases that do not occur naturally, deforestation and population growth are some of human activities that contribute to global climate change.¹⁰

Kirby reports that some physical evidences of the effect of global climate change which are visible such as, the extent of Arctic sea ice has shrunk by 10-15%, while Antarctic sea ice retreated south by 2.8 degrees latitude from the mid-1950s to the early 1970s; Alaska's boreal forests are expanding northwards at about 100 km for every one degree Celsius rise; ice cover on lakes and rivers in the mid to high northern latitudes now lasts for about two weeks less than it did in 1850; in Europe, some Alpine plants are migrating upwards by from one to four metres every decade, and between 1959 and 1993 the growing season in gardens lengthened by nearly 11 days; and in the northern hemisphere, migratory birds are arriving earlier and staying later.¹¹ Moreover, global climate change will lead rising temperatures would raise sea levels as well, reducing supplies of fresh water as flooding occurs along coastlines worldwide and salt water reaches inland, many of the world's endangered species would become extinct as rising temperatures changed their habitat, millions of people also

⁸United Nations Environment Programme (1997), *Combating Global Warming: The Climate Change Convention*, Earth Summit+5.

⁹Donald Goldberg and Stephen Porter, (1998), "Global Climate Change", *Info-cus* Vol. 3 NO. 12 May, 1.

¹⁰Larry West, above n. 5.

¹¹Alex Kirby, (2001), *Climate' Will Lead to Hungry Century*, BBC news 19 February, <<http://news.bbc.co.uk/1/hi/sci/tech/1174272.stm>> (8 October 2011).

would be affected, especially poor people who live in precarious locations or depend on the land for a subsistence living and certain vector-borne diseases carried by animals or insects, such as malaria, would become more widespread as warmer conditions expanded their range.

In addition, the impacts of this unprecedented warming increased floods and drought, rising sea levels, spread of deadly diseases such as malaria and dengue fever, increasing numbers of violent storms-threaten to be more severe and imminent than previously believed.

1. International Environmental Law and Global Climate Change

To find out whether international environmental law with references to global climate change is effective or not, this part will examine how international law system generally and international environmental law system specifically be operated. International environmental law refers to the body of international law relevant to environmental issues.¹² The development of international environmental law is premised on the globalisation of environmental problems and concerns, attributable to two crucially interrelated factors: ecological and economic interdependence.¹³ Moreover, article 38 of the Statute of the International Court of Justice is considered as sources of international law and international environmental law.¹⁴ These are international convention, international custom and general principles of law recognized by civilized nations.¹⁵ International convention can only be binding on countries that consent to them; they are solemn binding agreements between subjects of the international legal order, principally states. Once the text is agreed upon, the process of ratification commences. This is the process by which the parties ensure, by their various constitutional means that when the treaty comes into force, the legal, financial, and administrative mechanisms by which the parties will be able to honour their new obligations, and are in place. Once a treaty has received the agreed upon number of ratifications, it will then come into force. However, this process is not easy because pressures of government

¹²World Bank, above. 6.

¹³Ibid.

¹⁴John O'Brien, *International Law*, Cavendish Publishing Ltd, (2002), 65-66.

¹⁵Ibid.

time, changing priorities, or simple second thoughts, can cause dramatic delays. The larger the endeavour, the more apparently intractable the problems often are.¹⁶ For example, on November 16, 1994, the Law of the Sea Convention signed in Montego Bay, Jamaica, in December 1982 finally came into force. It had taken 12 years and considerable legal ingenuity in the negotiation of an amending Agreement, for this major international legislative act to receive the 60 ratifications it required to enter into force.

International customary law is defined by the Statute of the International Court of Justice as "general practice accepted as law" by States.¹⁷ In other word it is something that states do because they regard themselves as legally obliged to do it. In one hand, treaties and custom constitute hard law, law that nation states are obliged to follow under pain of sanction from the international legal system and community.¹⁸ In another hand, opposite of hard law is soft law, which is generally based on international diplomacy and customs. It is comprised of nonbinding instruments that lay down guidelines for future action, or through which states commit them politically to meeting certain objectives.¹⁹ For examples, the 1972 Stockholm Declaration and the 1992 Rio Declaration, which embody a series of widely revered environmental principles. Subsidiary sources of international law also exist are doctrine, judicial decisions, general assembly resolutions, and opinions of international jurists.

In its development, the international environmental law has tended to be reactive to the environmental problems which arise rather than proactive. Environmental problems have progressed from being tackled within a bilateral, coexistence framework to a multilateral, cooperation framework. Further, international environmental law has traversed the path from being merely reactive, such as in the negotiation of treaties to address the known threats of marine oil pollution, to being proactive, such as in the case of the U.N. Framework Convention on Climate Change (UNFCCC), which is an anticipatory response to the possibility of future global climate change.

¹⁶World Bank, above n. 6.

¹⁷John O'Brien, above n. 7.

¹⁸World Bank, above n. 9.

¹⁹Patricia Birnie and Alan Boyle, *International Law and The Environment* (2nd ed., 2002), 10-27.

2. Development of International Environmental Law on the Global Climate Change Issue

The development of the climate change regime in the late 1980s and early 1990s rode a wave of environmental activity, which began in 1987 with the discovery of the ozone hole and the publication of the Bruntland Commission report, and also the 1992 UN Conference on Environment and Development (UNCED) in Rio de Janeiro.²⁰

Although, the 1979 Geneva Convention on Long-Range Trans-boundary Air Pollution and its protocols, the Vienna Convention for the Protection of Ozone Layer 1985 and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer are not address climate change directly, these international agreements are significant also for climate change since CFCs are greenhouse gases.

The Vienna Convention for the Protection of Ozone Layer 1985 is general in terms but represents a move towards preventive action and is consistent with the precautionary principle set out subsequently in the Rio Declaration 1992. For the purpose of the convention the ozone layer is defined as the layer of atmospheric ozone above the planetary boundary layer and adverse effects are defined as change in the physical environment or biota, including changes in climate, which have significant deleterious effect on human health or on the composition resilience and productivity of natural and managed ecosystem, or on materials useful to mankind.²¹ In broad terms of the convention is a framework document envisaging future protocols under which more specific action will be taken. As a basis for future action the convention provides with the establishment of a conference and a secretariat which will be concerned with the adoption of future protocols and the settlement of disputes.

In the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the format chosen was a framework convention: general obligations and institutional framework were laid down by the Treaty, to be made more specific in the future by the negotiation of detailed protocols or sub treaties open to the parties to the main Convention. The Protocol was intentionally designed as a flexible and dynamic instrument-countries

²⁰Daniel Bodansky, 1997, *The History and Legal Structure of the Global Climate Change Regime*, PIK Report 29 May.

²¹John O'Brien, above n. 17.

were allowed to select the most economic mix of reductions, with incentives to reduce the most harmful chemicals.²² However, special rights were stipulated for the interest of developing countries and provision was made in respect of the transfer of alternative technologies.

Furthermore, in 1992 the Rio Summit resulted some important point related to global protection on climate change, such as the Agenda 21, an action plan for the next ten years and into the 21st Century, the Rio Declaration on the Environment and Development, the 1992 United Nations Framework Convention on Climate Change, which was to provide a framework for the negotiation of detailed protocols on further issues, such as controls on the emissions of greenhouse gases, particularly carbon dioxide and deforestation, the 1992 Convention on Biological Diversity, aimed at arresting the alarming rate at which species were disappearing through pollution and habitat destruction, and the Non-Legally Binding Authoritative Statement on Forests.²³

The United Nations Framework Convention on Climate Change (UNFCCC) was opened for signature at the 1992 UNCED conference in Rio de Janeiro. On June 12, 1992, 153 nations signed the UNFCCC that contained a legal framework to reduce atmospheric concentrations of greenhouse gases with the goal of preventing dangerous anthropogenic interference with Earth's climate system. These actions were aimed primarily at industrialized countries, with the intention of stabilizing their emissions of greenhouse gases at 1990 levels by the year 2000 and other responsibilities would be present upon all UNFCCC parties.

The objective of the UNFCCC is the "stabilization of greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system".²⁴

Seeking grounds for a uniform approach toward climate protection, the Conference of Parties (COP) to FCCC met for the first time in Berlin, Germany in the spring of 1995, and voiced concerns about the adequacy of countries' abilities to meet commitments under the Convention. These were expressed in a United Nation Ministerial Declaration known as the

²²*Ibid.*

²³World Bank, above n. 18.

²⁴Article 2 of the UNFCCC 1992

"Berlin Mandate," which established a 2 year Analytical and Assessment Phase (AAP), to negotiate a "comprehensive menu of actions" for countries to pick from and choose future options to address climate change which for them, individually, made the best economic and environmental sense. Criticism was levelled by many industrialized countries, including the United States, at newly industrializing countries, such as Brazil, India, and China. These would continue to be classified as non-Annex I countries and enjoy exemption from any future, legally binding emissions reduction agreements even though, collectively, these would be the world's largest emitters of greenhouse gas emissions 15 years hence.

The Second Conference of Parties to the FCCC (COP-2) met in July 1996 in Geneva, Switzerland. Its Ministerial Declaration was adopted July 18, 1996. The Kyoto Protocol to the United Nations Framework Convention on Climate Change was adopted by the COP-3, in December 1997 in Kyoto, Japan. Most industrialized nations and some central European economies or Annex B countries in transition agreed to legally binding reductions in greenhouse gas emissions of an average of 6%-8% below 1990 levels between the years 2008-2012, defined as the first emissions budget period.²⁵ Different with the UNFCCC, Kyoto protocol provides for specific Quantified Emission Limitation and Reduction Commitments to be met by the countries listed in UNFCCC Annex I, which are member countries of the Organization for Economic Cooperation and Development and those with Economies in Transition, together Annex I Countries over the first commitment period, beginning in 2008 and ending in 2012. The Annex I Countries have agreed to reduce their Greenhouse Gas emissions by an average of 5.2% below their 1990 levels. The European Union, the United States and Japan have agreed to reductions of 8%, 7% and 6%, respectively. To do so they have to rely mainly on domestic action. The European Emission Trading Scheme that is currently under development is an example of such a domestic policy to curb greenhouse gases. As a supplement to domestic action, Parties may also use some of the most innovative features of the Kyoto Protocol, the so called flexible mechanisms, in article 6 for joint implementation, article 12 clean development mechanism, and article 17 permits the trade in the assigned amount units of

²⁵John R. Justus and Susan R. Fletcher, (2001), *Global Climate Change*, National Council for Science and Environment.

Annex I countries as a means of meeting Quantified Emission Limitation and Reduction Commitments to achieve a portion of the required emission reductions beyond their own borders. As the global climate system benefits from reductions in greenhouse gas emissions wherever they occur, achieving emission reductions in developing countries and Economies in Transitions as part of a national strategy of industrialized countries is a cost effective way of reducing global emissions and reaching emission reduction targets.

The purpose of Joint Implementation and Clean Development Mechanism is to contribute to the objectives of the UNFCCC by lowering greenhouse gas emissions while at the same time furthering sustainable development in host countries through environmentally sound investment and the proliferation of cleaner technology.²⁶

COP-4 took place in Buenos Aires in November 1998. in COP-4. UNFCCC parties adopted a 2-year "Plan of Action" to advance efforts and to devise mechanisms for implementing the Kyoto Protocol. FCCC parties also addressed compliance and financial response mechanisms to encourage more developing countries to sign on to the protocol. The 5th Conference of Parties to the UN Framework Convention on Climate Change met in Bonn, Germany, between October 25 and November 4, 1998. COP-5 included sessions of the Subsidiary Bodies on Implementation and Science and Technology and a two-day ministerial session. Major themes of negotiations included devising the technical and political mechanisms, such as the Clean Development Mechanism, Joint Implementation, and developing criteria for project eligibility, all processes that would allow both developed and developing countries to meet their respective responsibilities under the FCCC, and 1997 Kyoto Protocol, with optimum flexibility. The Sixth Conference of Parties to the United Nations Framework Convention on Climate Change (COP-6) convened November 13-25, 2000. Despite a major impasse reached at this session for final implementation of the Kyoto Protocol, a number of FCCC parties expressed confidence that progress was made in resolving a number of technical issues associated with the Kyoto Protocol. Throughout the session, however, the United States and European Union (EU) parties remained at odds over a number of issues, particularly credit for carbon absorbed by forests and agricultural lands.

²⁶World Bank, above n. 23.

Talks continued in Ottawa, Canada during the first week of December 2000, but no further agreements were reached.²⁷

At the COP-7 meeting in Marrakech, Morocco October 29-November 10, 2001, negotiators in effect completed the work of the Buenos Aires Plan of Action, finalizing most of the operational details and setting the stage for nations to ratify the Protocol. The main decisions at COP-7 included: operational rules for international emissions trading among parties to the Protocol and for the CDM and joint implementation; a compliance regime that outlines consequences for failure to meet emissions targets but defers to the parties to the Protocol after it is in force to decide whether these consequences are legally binding; accounting procedures for the flexibility mechanisms; and a decision to consider at COP-8 how to achieve to a review of the adequacy of commitments that might move toward discussions of future developing country commitments.²⁸

3. The Effectiveness of International Environmental Law on the global climate change issue

The concern of the General Assembly was indicated by resolution 45/43, which declared in paragraph 1 that climate change was to be regarded as a common concern of mankind.²⁹ Since 1972, the United Nations and international community have convened many international agreements on shared environmental concerns. Yet today, most of these agreements remain ineffective and incomplete, and dismay at their failings is widespread.

International environmental law has tended to be reactive to the environmental problems which arise rather than proactive. However, a range of regulatory methods have been adopted at the international level to control activities and pollution.

A sceptic assessing the present state of international environmental law might make three main criticisms: that it remains preponderantly “soft” in character, unsystematic and insufficiently comprehensive in scope, and weak in matters of compliance and enforcement.³⁰

²⁷John R. Justus and Susan R. Fletcher, above. 25.

²⁸Ibid.

²⁹John O’ Brien, above n. 21.

³⁰Patricia Birnie and Alan Boyle, above n. 19.

In this context, beside others international agreement focus on global climate change such as explanation above, the explanation below will examine two major international agreements, the UNFCCC 1992 and the Kyoto Protocol 1997 to find out whether the international environmental law on the global climate change effective or not.

The provisions of the Kyoto Protocol are legally binding on the ratifying nations, and stronger than the UNFCCC. Under terms of the agreement, the Kyoto Protocol would not take effect until 90 days after it was ratified by at least 55 countries involved in the UNFCCC. Another condition was that ratifying countries had to represent at least 55 percent of the world's total carbon dioxide emissions for 1990. The first condition was met on May 23, 2002, when Iceland became the 55th country to ratify the Kyoto Protocol. When Russia ratified the agreement in November 2004, the second condition was satisfied, and the Kyoto Protocol entered into force on February 16, 2005.³¹

According to the United Nations Environmental Programme (UNEP), the effectiveness of Kyoto really depends on whether it lays a good foundation for the climate convention process, which might lead to greater reductions later.³²

Doctrine of sovereignty and equality of states are principle in international law concept. This doctrine enshrines the principle that national states are sovereign and have equal rights and duties as members of the international community, notwithstanding differences of an economic, social, or political nature.³³ This fundamental feature of international law has created systemic limitations-the absence of an established central legislative authority, comparable to a nation system and of a compulsory, or even widely used, judicial system, often coupled with the absence of effective enforcement machinery for breaches of international law.³⁴ That is why, generally accepted international law exists, but the question whether international law really law or not still arises.

³¹Environmental Issue, (2005), *Should the US Ratify the Kyoto Protocol*, <<http://environment.about.com/od/kyotoprotocol/i/kyotoprotocol.htm>> (8 October 2005).

³²United Nations Environmental Programme, (NDP) *Climate Change*, <<http://climatechange.unep.net/jcm/doc/emit/kyoto.html>> (8 October 2005).

³³World Bank, above n. 26.

³⁴*Ibid.*

The problem arises in the failure to negotiate and implement effective solutions to global problems stems from an inability of nations to agree on the nature of a problem or the appropriate cure.³⁵ For example, the Biodiversity Convention written in Rio de Janeiro in 1992, encourages nations to conserve biodiversity, but contains no clear mandate to preserve the globe's richest and most endangered storehouse of species, its tropical forests and also scientists, the timber industry, and its critics have failed to agree on a prescription for sustainable forestry.³⁶

Moreover, negotiation of international agreements has been complicated by deep distrust between the developed countries of the North and the less developed South. Some developing countries look to their native forests as potential sites of economic development in forestry or agriculture and resent efforts by developed countries to preserve them. To encourage conservation of natural habitats at some short-term sacrifice, parties at the 1992 biodiversity summit conference at Rio de Janeiro called for industrialized nations to double their foreign aid to less-developed countries to finance sustainable development. But more than eight years later, developed countries have reduced their aid to the developing world. In 1997 Speth, the UN Development Programme administrator complained that "rich countries have failed utterly to keep their end of the bargain."³⁷

In parallel, sceptical on environmental law related to global climate change arises because the enforcement of the Kyoto Protocol remains a perplexing, unresolved problem, due to the extremely high projected cost of Kyoto; countries will have a strong incentive to cheat.³⁸ As a result, high transaction costs to ensure enforcement will add to the already burdensome cost of Kyoto. Beside that, the Kyoto Protocol fails to address the specifics of enforcement and consequently, punishment.³⁹

Moreover, the Kyoto Protocol targets apply only to industrialized nations. Stavins states, the Protocol contains ambitious, short term emissions reduction targets, but no long term targets and it provides flexibil-

³⁵Rand, (2003), *Finding Global Environmental Solutions*, <<http://www.rand.org/scitech/stpi/ourfuture/Newworld/section7.html>> (8 October 2005).

³⁶Ibid.

³⁷Ibid.

³⁸Alexis Manning, above n. 3.

³⁹Ibid.

ity through market based mechanisms, such as tradeable permits, which would impose high costs, fail to provide for full participation by developing countries, and generate modest short-term climate benefits, while failing to provide a long-term solution.⁴⁰ The protocol has only short term targets, an average 5 percent reduction from 1990 levels by the 2008-2012 compliance periods. If industrialized nations reduce their need for fossil fuels, the cost of coal, oil and gas will go down, making them more affordable for developing nations. That would simply shift the source of the emissions without reducing them. In addition, the Kyoto Protocol focuses on greenhouse gases without addressing population growth and other issues that affect global warming, making the Kyoto Protocol an anti-industrial agenda rather than an effort to address global warming.

Another reason for sceptical on the Kyoto Protocol is the Kyoto Protocol lacks the ability to counteract the global warming trend but retains a prohibitively high price.⁴¹ Both the economic and ecological ramifications of Kyoto raise concern. For example, the reason why the US do not ratify the Kyoto protocol because the US considers the Kyoto Protocol risks significantly harming the U.S. and global economies, which would require the United States to meet its target no matter what the cost, which could be substantial.⁴²

Other thing as challenging of the effectiveness of the Kyoto Protocol is the opposition of big countries such as The United States and Australia to the Kyoto Protocol. This condition leads to difficult choice for other Annex 1 countries, to continue on the path towards ratification of the Kyoto Protocol without the assurance that sufficient numbers will be reached for it to come into force, or to accept that a different approach towards the issue of climate change must be negotiated and agreed.⁴³ The second choice means starting a new negotiation and need more time to implement.

⁴⁰Robert N. Stavins, 2004, Can an effective global climate treaty be based on sound science, rational economics, and pragmatic politics?, Resources for the Future May 2004 Discussion paper 04-28.

⁴¹Alexis manning, above n. 38.

⁴²Environmental Issue, above n. 30.

⁴³Steven Freeland, (NDP), *The Kyoto Protocol: an Agreement Without a Future*, UNSW Law Journal Volume 24 (2).

As a result, although global climate change issue is consent of international community, international agreement such as the UNFCCC 1992 and the Kyoto Protocol is considered not effective. In this context, the industrialized countries should provide leadership by adopting policies to reduce greenhouse gas emissions, develop needed technology, and provide new and additional resources to help developing countries achieve sustainable development while managing their own emissions.

C. Conclusion

In summary the effects of climate change will not be the same across the globe. Different regions will be affected differently, and not all regions will have the same resources available to adapt to the changes they face. This problem arises because human activities distort and accelerate the natural process by creating more greenhouses in the atmosphere than are necessary to warm the Earth to an ideal temperature.

The development of the climate change regime began in the 1979 Geneva Convention on Long-Range Transboundary Air Pollution and its protocols, the Vienna Convention for the Protection of Ozone Layer 1985 and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer are not address climate change directly, these international agreements are significant also for climate change since CFCs are greenhouse gases. In the recent year, there are two international agreements, which are considered as major international environmental law on global climate change, the United Nations Framework Convention on Climate Change (UNFCCC) 1992 and the Kyoto Protocol 1997.

However, this essay finds out that international environmental law with reference to the issue of global climate change is not effective because the doctrine of sovereignty and equality among state make the agreement in international level depends on economic, social, or political interests. Beside that the enforcement of the Kyoto Protocol remains a perplexing, unresolved problem, due to the extremely high projected cost of the Kyoto Protocol, countries will have a strong incentive to cheat. Moreover, the Kyoto Protocol targets apply only to industrialized nations, which have short term emissions reduction targets, an average 5 percent reduction from 1990 levels by the 2008-2012 compliance periods. The Kyoto Protocol also focuses on greenhouse gases without addressing population growth and other issues that affect global warming, making the Kyoto Protocol an

anti-industrial agenda rather than an effort to address global warming as well as the Kyoto Protocol lacks the ability to counteract the global warming trend but retains a prohibitively high price. Finally, the opposition of big countries such as The United States and Australia to the Kyoto Protocol leads to difficult choice for other Annex 1 countries, to continue on the path towards ratification of the Kyoto Protocol without the sufficient numbers or to accept that a different approach towards the issue of climate change must be negotiated and agreed.

That is why, in the context of global climate change, international agreement to protect environment have to consider without any economic, social and politic interest among countries.

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