

INDONESIAN PROVISIONS ON ENERGY AND ITS RELATION TO CLIMATE CHANGE: IS IT IN LINE WITH “THE COMMON HERITAGE OF MANKIND PRINCIPLE”?

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The energy consumption in more less two last decades has increased and it happens due to economic and world growth population. Based on *Handbook of Energy and Economic Statistics of Indonesia* in 2012, it showed that there were five sectors that consumed energy more than the other sector; industrial sector, domestic sector, commercial sector, transportation sector, and other sectors. This energy consumption growth is caused by the increased number of economic that affects and in line with the consumption itself. Indonesia as a country where is located in South East Asia region is the biggest energy consumption with 36% from all total energy consumption state in ASEAN. The problem arises when the Indonesian provisions on energy do not meet with the climate change issue. One principle that should be taking into account is that “The Common Heritage of Mankind Principle”. This international law principle cannot be neglected because Indonesia as a state and part of international community is also obliged and have to take part in sustaining and preserving current environment and resource so still can be utilized for future generations. This writing is intended to analyze more about Indonesian Provisions on Energy where its content and implementation already in harmony with “The Common Heritage of Mankind Principle” or not including its relation to climate change sphere.

Keywords: “The Common Heritage of Mankind Principle”, Indonesia, provisions, energy, climate change

INTRODUCTION

Energy is the source of human daily life where is specifically related to economic either for production or consumption¹. Based on *Handbook of Energy and Economic Statistics of Indonesia* in 2012, it showed that there were five sectors that consumed energy more than the other sector; industrial sector, domestic sector, commercial sector,

¹ Tria Apriliana, Analisis Hubungan Konsumsi Energi dengan Pertumbuhan Ekonomi di Indonesia. 2011. p.1.

transportation sector, and other sectors. And also according to Pusat Data dan Informasi Energi dan Sumber Daya Mineral, Kementerian Energi dan Sumber Daya Mineral Republik Indonesia, Indonesia's energy condition is still dominated by the usage of fossil fuel which is around 50% out of total energy utilization in 2010 for petroleum (excluding coal, natural gas, water, geothermal)² and stay remained as the national main energy diffusion in 2011 at 46%-the number of consumption³. Strong stringency on environmental standards are needed in order to allocate and to organize the energy sufficiency⁴.

In the recent internationally New Policies scenario, the energy consumption will be risen in every year until 2020 and then steadily continued due to economic growth deceleration particularly countries whose implemented strong environmental policies and increased energy security and efficiency⁵.

Indonesia as a country where is located in South East Asia region is the biggest energy consumption with 36% from all total energy consumption state in ASEAN. The average number of energy consumption Per-Capita in ASEAN (in 2011) was 2.4 TOE and its getting higher approximately 2.4% per-year⁶.

The energy utilization specifically on energy resources which cause multiplier effect for national development will also bring multiplier effect into environmental and climate change issues. The climate change issue has strong relation with the sustainability of energy completion in present condition incorporating with energy resources control and availability for environment and future generations.

These difficulties are usually neglected by the government (Indonesian government) on what kind regulations or laws that should be made and its implementation that should not only consider about short term usage and sufficiency but also further consideration of long term impact. Furthermore, this writing is also specifically intended to analyze Act Number 30 of 2007 concerning Energy, is it already considered over climate change issue and in line with the international law principle "The Common Heritage of Mankind Principle" or not.

² Pusat Data dan Informasi Kementerian Energi dan Sumber Daya Mineral Republik Indonesia. Integrasi Kebijakan Regional dan Nasional. 2010. p.3.

³ Direktorat Jenderal Energi Baru Terbarukan dan Konservasi Energi. Kebijakan dan Program Konservasi Energi. Kementerian Energi dan Sumber Daya Mineral Republik Indonesia. 2013. p.4.

⁴ Dewan Energi Nasional. Outlook Energi Indonesia 2014. Jakarta. 2014. p.12.

⁵ Ibid. p.17.

⁶ South East Asia Energy Outlook. 2013. pp.16-18.

DISCUSSION

Indonesian Provisions on Energy

Act Number 30 of 2007 concerning Energy generally states that energy has great role in the form of improving economic activity and national security so that the energy management which included availability, utility and attainment has to be conducted in integrated, rational, justiciable and effective ways⁷.

The number of energy consumption specifically on fossil fuel drives Indonesian government to implement several principles of National Energy Policies based on Act Number 30 of 2007. These principles strongly focus on optimalization of energy resources that bring multiplier effect for national development incorporating the enhancement of renewable energy⁸. This is also clearly affirmed according to Article 3 Point d. Act Number 30 of 2007.

This national policy is taken due the acceleration of economic and population growth. Affordable and reliable access of energy are main conditions to escalate the living standards of society. Some challenges in providing energy sustainability for example : wider access to energy sufficiency, affordable facility of energy security, and impact to environmental aspect⁹.

Act Number 30 of 2007 is then followed with infrastructure policy for 2015-2019 issued by BAPPENAS¹⁰. This

⁷ vide Act Number 30 of 2007 concerning Energy, Consideration Part, Point b.

⁸ Pusat Data dan Informasi Kementerian Energi dan Sumber Daya Mineral Republik Indonesia. Integrasi Kebijakan Regional dan Nasional. 2010. p.6.

⁹ Kementerian Negara Riset dan Teknologi Republik Indonesia. Indonesia 2005-2025: Buku Putih Mengenai Penelitian, Pengembangan, dan Penerapan Ilmu Pengetahuan dan Teknologi di Bidang Sumber Energi Baru dan Terbarukan Untuk Mendukung Keamanan Ketersediaan Energi Tahun 2025. Jakarta. 2006. p.4.

¹⁰ Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional (BAPPENAS) Republik Indonesia. Arah Kebijakan dan Strategi Percepatan Pengembangan Kawasan Indonesia Timur. BAPPENAS. Manado. 2014. pp.11-21.

The Government must anticipate the high demand of national energy including shipping and distributing infrastructure. This is based on former research conducted by Riza Asmi dan Hidayat Amir, reviewed on Energy Security from Conceptual, Policy and Challenge Aspects in Indonesia.

policy is made based on the probability of Doomsday Scenario¹¹. Another analysis comes up due to resources disparity principally on energy availability and utility among islands in Indonesia (Java, Madura, Bali dan other islands)¹².

The Relation Between Indonesian Provisions on Energy and Climate Change”

Climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods¹³. This condition is happening more rapidly than had been anticipated¹⁴. According to above definition, Act Number 30 of 2007 states that any effort is needed to preserve the function of any environmental area and its function¹⁵. This regulation does not only control generally on environmental but also the energy conservation and management¹⁶. It means that any regulation specifically on energy when its regulation is interpreted and implemented should be accompanied with sustainable development. Another problem arises when insufficient and unrestricted regulation on energy, narrow interpretation and decline of law enforcement worsen the preventive and adaptive actions in minimizing the climate change sphere¹⁷.

¹¹ It is a situation where the energy availability is in critical point and gives great impact into social, political, economical and environmental aspects in Indonesia

¹² Kementerian Negara Riset dan Teknologi Republik Indonesia. Op.cit. p.5.

¹³ vide United Nations Framework Convention on Climate Change (UNFCCC) Article 1 Point 2

¹⁴ Peter Black. Climate Change and Agricultural Trade- Risks and Responses. World Bank Development Economics Research Group and the Standards and Trade Development Facility. Washington D. C. 2009. p.1.

¹⁵ vide Article 1 Point 11 Act Number 30 of 2007

¹⁶ vide Article 1 Point 17 Act Number 30 of 2007

¹⁷ Jonathan Zasloff, International Decision : U.S. Environmental Regulation Standing of U.S. State to petition Environmental Protection Agency for Rule Making *Parens Patriae*-Injury caused by Climate Change –EPAs Authority to Regulate Greenhouse Gases. The American Society of International Law American Journal of International Law. 102 A.J.I.L. 134. 2008. p.5.

From Act Number 30 of 2007, it can be perceived that in general already regulated the use of energy either non-renewable energy or renewable energy. There is clear statement that any national development should focus on sustainable development. Another technical regulations are made to boost the utilization of energy diversification and to apply energy conservation such as Government Regulation Number 70 of 2009 on Energy Conservation, Presidential Regulation Number 5 of 2006, Number 61 of 2011, Ministry of Mining and Energy Resources Regulation Number 12, 13, 14 of 2011, Ministry of Mining and Energy Resources Regulation Number 6, 14 of 2011 and Ministry of Mining and Energy Resources Regulation Number 10 of 2010 but contrary the law enforcement and implementation are still far from what should be conducted. The number of energy dependency on non-renewable energy (fossil fuel) is still high¹⁸ and causes the acceleration of climate change.

Does Indonesian Provisions on Energy in line with “The Common Heritage of Mankind Principle”?

Two topics mentioned above have interconnection to each other. The reason is that the sustainability of energy in present time (availability, utility, and attainment) would influence the existence of energy in the following time where its connected into certain international law principle-“The Common Heritage of Mankind Principle”. “The Common Heritage of Mankind Principle” is a concept of international law which provides to some extent for the non-appropriation, equitable benefit distribution, peaceful use, preservation and shared management of certain spatial areas that are currently not subject to territorial or sovereign control of any State¹⁹. This principle is originated from Seabed and Ocean Floor Regulation where then adopted into another sub-topic of international law.

This principle of “The Common Heritage of Mankind Principle” relates to EIA (Environment Impact Assessment). The EIA is a condition where Government officials, when required to

¹⁸ In 2010, this (all types of) fossil fuel supplies 95.2% out of total energy consumption with growth number of energy consumption 7% per-year. The data is taken from Kebijakan dan Program Konservasi Energi, Kementerian Energi dan Sumber Daya Mineral Republik Indonesia.

¹⁹ R. J. Lee. Law and Regulation of Commercial Mining of Minerals in Outer Space. Space Regulations Library. Springer Science + Business Media B.V. 2012. p.203.

make a decision that has potential consequences for the natural environment, are faced with the daunting task of having to integrate political, scientific and normative considerations into a unified decision-making process. Where the decision in question has the potential to impact the environment of another state, or where the possible impact is to a resource of global common concern, decision-makers may have to account for the political, scientific and normative views of affected states, affected persons within other states, and the wider international community, including international organizations and non-governmental actors. The employment of EIA processes in domestic decision-making processes to address environmental issues that have international dimensions²⁰.

According to “The Common Heritage of Mankind Principle”, Indonesian law on energy mainly Act Number 30 of 2007 has not fully considered and regulated this principle. It can be seen from Article 1 Point 25 and Article 2 that only concentrate over national energy security²¹ but contrary to Part I. General, Paragraph 4 Elucidation of Act Number 30 of 2007 it is stated that “*the Government to compose an energy management plan to fulfill the national energy needs which is based on the long term energy management policy*” and Article 1 Point 11 and Point 24 Act Number 30 of 2007²² implicitly reflect the usage of “The Common Heritage of Mankind Principle” which is should be, from my point of view, revised and then must be clearly and explicitly stated that this act (Act Number 30 of 2007) also considers the international law regime as part of its regulation content.

CONCLUSION

Indonesia as a state and subject of international law has obligation not only to their own national regulation but also to international law (and “The Common Heritage of Mankind Principle” is one of the law sources of international law). From above analysis, in conclusion, Indonesian current provisions on energy has not fully affirmed international law regime into national regulations. This is important because the utilization and dependancy on energy does not

²⁰ Neil Craik. *The International Law of Environmental Impact Assessment: Process, Substance, and Integrations*. Cambridge University Press. United Kingdom. 2008. p.3.

²¹ vide Article 1 Point 25 and Article 2 Act Number 30 of 2007

²² vide Article 1 Point 11 and Point 24 Act number 30 of 2007

only own and impact by its own country but also influences to another country for present and future time.

REFERENCES

- Act Number 30 of 2007 concerning Energy.
- Apriliana, Tri. (2011) Analisis Hubungan Konsumsi Energi dengan Pertumbuhan Ekonomi di Indonesia.
- Azmi, Riza and Amir, Hidayat. (2014) Ketahanan Energi : Konsep, Kebijakan, dan Tantangan bagi Indonesia. Buletin Info Risiko Fiskal Edisi 1.
- Dewan Energi Nasional. (.2014) *Outlook Energi Indonesia 2014*. Jakarta. Direktorat Jenderal Energi Baru Terbarukan dan Konservasi Energi.
- (2013) *Kebijakan dan Program Konservasi Energi*. Kementerian Energi dan Sumber Daya Mineral Republik Indonesia.
- Kementerian Negara Riset Dan Teknologi Republik Indonesia. Indonesia 2005-2025. (2006) *Buku Putih Mengenai Penelitian, Pengembangan, dan Penerapan Ilmu Pengetahuan dan Teknologi di Bidang Sumber Energi Baru dan Terbarukan Untuk Mendukung Keamanan Ketersediaan Energi Tahun 2025*. Jakarta.
- Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional (BAPPENAS) Republik Indonesia. (2014) *Arah Kebijakan dan Strategi Percepatan Pengembangan Kawasan Indonesia Timur*. Manado: BAPPENAS.
- Lee, R. J. (2012) *Law and Regulation of Commercial Mining of Minerals in Outer Space*. Space Regulations Library. Springer Science + Business Media B.V.
- Neil Craik. (2008) *The International Law of Environmental Impact Assessment: Process, Substance, and Integrations*. Cambridge University Press. United Kingdom.
- Peter Black. Climate Change and Agricultural Trade-Risks and Responses. (2009) *World Bank Development Economics Research Group and The Standards and Trade Development Facility*. Washington D.C.
- Pusat Data dan Informasi Kementerian Energi dan Sumber Daya Mineral Republik Indonesia. (2010) *Integrasi Kebijakan Regional dan Nasional*.
- South East Asia Energy Outlook. 2013
- United Nations Framework Convention on Climate Change (UNFCCC).
- Zasloff, Jonathan. International Decision : U.S. Environmental Regulation Standing of U.S. State to petition Environmental Protection Agency for Rule Making *Parents Patriae-Injury*

caused by Climate Change—EPAs Authority to Regulate Greenhouse Gases. *The American Society of International Law American Journal of International Law*. 102 A.J.I.L. 134. 2008.