

Implementation of Environmental Law in Indonesia Business Law Perspective

Flora Pricilla Kalalo¹
Faculty of Law, University of Sam Ratulangi

Abstract

Three main reasons Indonesia needs to deal with environmental problems that first realization that Indonesia is now facing environmental problems are quite serious-like symptoms followed by a flood of crop failures due to drought. Both need to bequeath to future generations the natural resources that can be processed continuously in the process of long-term development and third is ideal. Indonesia has started to impose eco-labeling program has been started from the products export of forestry industry, and developed for the export of consumer products and then proceed to the products that are consumed by domestic consumers. International business activity is basically subject to international civil law. Activities include cross-border business, including those conducted by non-state subjects / public. Indonesia does not impose legal obligations didactic environmental preservation against any company. Only a few companies that meet certain qualifications are required to investigate, prevent, manage and mitigate the effects of environmental degradation. The environmental impact arising from international business activities is the responsibility of all countries.

Keywords: Implementation, Environmental law, Indonesia business law

A. Introduction

The activities of development are rapidly increasing the risks of pollution and living environmental destruction as well as interrupting the functioning of basic ecosystem which is the supporter of life. The pollution and damage of living environment is a social burden that society and the government would eventually bear the cost of its recovery. Development that integrates living environment and natural resources is a means to reach sustainable development and will ensure the welfare and quality of life for the present and future generations (Wyasa Putra, Ida Bagus, 2003).

Therefore, Indonesia's living environment should be managed with a harmonious and well-balanced principle for conserving the functions of living environment in order to support environmentally sound sustainable development for improving the well-being and quality of life for the sake of present and future generations.

The polluter pays principle was sparked by the Organization on Economic Cooperation and Development (OECD) in 1972 which reflected the acknowledgement regarding responsibility. The governments political will be the prime key in harmonizing environment with trade (development). Indonesia can no longer maintain the political will as is currently the case, where the provisions of laws in the field of environment is merely the general framework and do not regulate on how the laws should be implemented which results in the presence of discretion in its implementation.

Such Political will is the reflection of the National Development Policy that is also economic growth oriented by giving dispensations in environmental requirements will only make Indonesia as the paradise pollution (pollution heaven) industries / products that are not friendly to the environment, or become a dumping ground waste, as well as the utilization of natural resources exploitation.

Three main reasons Indonesia needs to deal with environmental problems that first realization that Indonesia is now facing environmental problems are quite serious-like symptoms followed by a flood of crop failures due to drought. Both need to bequeath to future generations the natural resources that can be processed continuously in the process of long-term development. Third is ideal.

Tri Legowo (1995) said that the provisions of the environment in trade liberalization can have value content, refer to the interest of environmental preservation reference is the awareness that it is the carrying capacity of the environment threatened by the development, a source of international law is Agenda 21, the rules of GATT / WTO where agreements contained safeguards against animals, plants and human health and environmental standards in the three developed countries.

Indonesia has started to impose eco-labeling program has been started from the products export of forestry industry, and developed for the export of consumer products and then proceed to the products that are consumed by domestic consumers. Ganis Ramadani and Hardjo Suwito (1988) suggested that the impact of trade policy on the environment is generally associated with the production, the pattern of natural resource

¹ The author is Associate Professor of the Faculty of Law, University of Sam Ratulangi. Completed undergraduate (S-1) at the Faculty of Law, University of Sam Ratulangi, postgraduate program (Master in Law) in Legal Studies at the University of Sam Ratulangi and Doctor in Legal Studies at Brawijaya University.

exploitation and products or goods trading which are categorized as the points of environment friendly or polluting.

This study aims to examine the implementation of international environmental law in the interest of international business.

B. Method

Method research is conducted by descriptive analysis. This is for collect and analyze the data obtained based on primary and secondary data.

C. Discussion

1. The Implementation of Global Environmental Law in the Activity of International Business.

International business is a trans-boundary business or business containing foreign elements. This activity covering the entire commercial activity which is oriented to profit, such as trade, inter-corporation, capital transaction, etc.

The foreign elements in this activity arise because the business is formed by two or more business people who have different nationalities and the place and the execution of their business is in the territory of another country, and they are subject to the laws and jurisdiction of that country, because the parties agree to do their business cooperation abiding by different laws of the respective business doers, or because the instruments used such as language and currency. The activity of this international business is basically subject to private international law.

According Friedman said although there have been international commercial transactions for decades and even for centuries, they were not until recently, considered as within the province of public international law. They took place entirely between private parties and were governed by private purpose and principles of private law. The choice of the system or applicable to a particular transaction was determined by the rule of conflict of law, and this applied also to commercial transaction between a government and private foreign party, notably private loans to foreign government.

The developing international business transactions are fully subject to public international law. Interstate transactions or transaction conducted by one country with another international organization. This kind of transaction is materialized in the form of barter of governmental agreements, loan, sales, services contract which in general are based on the general principles of law recognized by civilized nations in reference to Article 38 (1) of the Statute of The international Court of International Justice.

The general principles that can be concluded from the comparative study between the major principles of commercial contracts which most of them are applied in the world leading legal system.

Public transactions that are done by state-owned enterprises (SOEs) are semiautonomous in nature, such as the companies of airline, shipping, oil, iron ore mining, coal, and so forth, posses dual nature, that is, first, if seen from the point of view of the objective/purpose, capital resource, and various levels of supervision, they are public companies in nature, and second, if seen from the management and their orientation to profit, they are private companies.

Transactions arising from the presence of Public International Agencies, International Bank for Reconstruction, Finance Corporation, and International Development Association, Inter-American Development Bank, European Investment Bank of European Economic Community and other finance in particular, transactions in the form of loan with states international organization and institutions as in the case of states, the non-state subjects of international business are also bound by obligations and stipulations set forth in international environmental law. The binding is morally and legally in nature.

The binding which is morally and directly starts from the awareness of business subjects to implement general obligations containing in the international stipulations. This binding can also be formed based on condition and situation in the society which causes business subjects to have no other choice except to abide by the prevailing stipulations. For example, the obedience of business subjects to fulfill international obligations caused by the forming of international opinions as the consequence of general policies of protecting environments, such as the formed of consumer's fanaticism who merely wants to consume goods/products which are produced not by using polluting material or environment unfriendly material.

The second attachment is indirect, that is based on a legal mechanism. To arrive at a binding force that is directed against legal subject non-state / non-public, a provision must go through the process initially a country becomes party to a treaty (international); second, the country ratified the treaty into international provisions. Through such a mechanism, an international obligation are charged or created directly binding to the subjects of non-public businesses that are part of or under the supervision of the country concerned. Principle 1 of the Declaration of the United Nations Conference on the Human Environment in 1972 determined that :

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and

improve the environment for present and future generation.

Similar provisions can also be seen in the UN General Assembly Resolution on the World Charter for Nature, 1982. This resolution, in considerations, among other states:

Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensures the supply of energy and nutrients.

In its stipulation, part II (Functions). No. II states that :

Activities which might have an impact on nature shall be controlled and the best available technologies that minimize significant risk to nature or other adverse effects shall be used; in particular : (a) Activities which are to cause irreversible damage to nature shall be avoided.

Activity in question would include cross-border business activities, including those conducted by non-state subjects / public. Although these provisions establish the position and certain obligations to humans, or any actor activities, including in its capacity as a business subject, but such obligations are binding indirectly.

In fact so rare binding obligations subject non-public business, or rarely adhered to consciously by the subject of non-public business. Thus obedience done if a country in possession of citizenship is internationally responsible for overseeing their activities or the activities of their legal obligations set by domestic law and requires performing an action relating to environmental protection, national, regional and global. (For example, see Law No. 23 of 1997 on Environmental Management).

2. Implementation of International Obligations in International Business Activities

The entire international regulations in the form of treaty, convention or agreement, determine that which is seen as a subject of international law (public), or bound directly by such a provision, it is the state. Principle 21 of the Stockholm Declaration 1972 determines;

State have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.

The principle shows that can be attached directly, supports international rights and obligations directly by the state. International law authorizes the state to exploit the natural resources in its territory, as well as their obligation to be responsible for all activities undertaken within its territory or under its control, including in business activities, so that these activities do not damage the environment which become part of the a country, or who were not part of the country.

State by declaration obligations required to:

- (1) take any form of precaution to prevent pollution of the environment (Principle 7);
- (2) planning activities (Principle 4);
- (3) establish an institution that is responsible for the establishment and supervision of the implementation of the plan (Principle 17);
- (4) form international cooperation, multilateral or bilateral, for the purposes of effective monitoring, prevention, reduction and cessation at all the environmental impacts that may arise from the effects of the activity level.

Responsible internationally to environmental impacts arising from the effects of international business activities does not rest on the subjects of international business (non public) but on the states. For international business carried on by non-public subjects are the activities belonging to the qualification of activities within the control of states.

For example, it can be seen the provisions of Article VI and VII Treaty (Treaty on Principles Concerning The Activities The Moon and Other Celestial Bodies - 1967), also known as Space Treaty of 1967, which among other things determines:

State parties to the Treaty shall bear international responsibility for national activities in outer space ..., whether such activities are carried on by governmental agencies or by non-governmental entities,... The activities of nongovernmental entities in outer space, ... shall require authorization and continuing supervision by the appropriate ... (Article VI).

Provisions indicate that that would be responsible for the consequences of business activities outer space is the state, and the mechanism of setting the relationship between the states as a source of international law, should be held responsible internationally, with subjects outer space non-governmental business is the licensing system.

The implementation of international obligations on the subject of international non-governmental business is indirect. This implementation is done by the individual member states of a treaty through their respective national. Similar Implementation adopted by almost all international agreements relating to the setting of environmental protection, such as the 1985 Vienna Convention, the Montreal Protocol in 1987 and the Conventions generated by the Rio Conference of 1992. Article 2 Ozone Protection Convention, 1985 (Vienna Convention for the Protection of the Ozone Layer 1985) states:

... the Parties shall ...:

(b) adopt appropriate legislative or administrative measures and cooperate in harmonizing appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these activities have or likely to have adverse effects resulting from modification or likely modification of the ozone layer;

These provisions oblige member states agreement to conduct international cooperation in harmonizing the respective policies to control, reduce, limit and prevent the use of materials of ozone depleting substances are used in a variety of activities both inside or under state supervision. 1987 Montreal Protocol (the Montreal Protocol on Substances that Deplete the Ozone Layer) determines the obligations to be borne by the member countries of the agreement. Determined among other things that each member country agreements for the period July 1, 1998 until June 30, 1999, and on each of the next twelve months, should not use ingredients ozone depleting substances, as specified in Annex A Protocol, exceeds 50% of use in 1986 (Article 2 paragraph 4). Annex A protocol that contains ingredients that are prohibited, such as CFCs and halons. The application of such obligations undertaken in accordance with international legal mechanisms, namely:

- (A) the establishment of international regulations / determination of rights and obligations by states;
- (B) the ratification of the agreement by the countries concerned;
- (C) the casting material that agreement, those obligations, the national provisions of each country.

3. Format Global Environmental Law

Format global environmental law is a format that contains international environmental law, or environmental law in certain countries, have a range or power tie that is direct, regardless of nationality or boundaries of certain regions of the country. Common characteristics that provision is front universal humanism and global nature of the environment, provide special treatment for developing countries and promote increased cooperation to prevent and cope with the impact, improving the quality of protection and improvement of the environment.

Universal humanism embodied in the form of recognition of the environment as the common heritage of mankind (common heritage of mankind), some elements of the ecosystem and the environment as a common property of mankind (common property), the recognition of the basic rights of human beings to a decent natural environment, responsibility of the present generation towards future generations and the obligations of mankind in order to protect and maintain the quality of the environment for the survival and generation. Indifference to national boundaries in the fight for the right in order to rescue and environmental protection increased reactions and actions that are a direct reply to any acts that damage the environment by the state, certain groups and individuals.

The format has placed mankind as a major group of living things that stand apart with the constitutional system and the social system where he is a member. Human is seen as a human family who live in a container large ecosystem, the life and survival as well as generation is determined by the quality of the ecosystem habitat. The Mankind is continuation of the previous generation and responsibility towards future generations. Therefore, human beings will be hostile to any action, including those conducted by the community, the community and certain countries that threaten the survival of himself and his generation.

Weak range of power of the state against universal humanism format is shown in the schematic eco-labeling and cleaner production. Eco-labeling scheme and cleaner production are moving outside the scheme of inter-state relations. Although most developing countries have not yet ratified or adhered fully to eco-labeling scheme, but the scheme has directly binding on every businessperson domestic market-oriented foreign particular country. For examples are the UK and most European countries, the USA and Australia.

Consumer countries began to refuse foreign and domestic products that are not environmentally sustainable (environmentally sound), and only want to consume products that are environmentally sound. Their attitudes at all are outside the will of the government, meaning not engineered by the government to reject foreign products.

Indonesia does not impose legal obligations didactic environmental preservation against any company. Only a few companies that meet certain qualifications are required to investigate, prevent, manage and mitigate the effects of environmental degradation. And that's not memorable stringent and less supervision. The reaction of the responsible agency is often slow, emerging when a certain loss or damage has arisen.

The required technical steps in anticipation of the impact of the implications of this are:

- a. make adjustments by all parties, especially government and business;
- b. looking for the right business designs, alternative markets or product revision.

C. Conclusions

1. Subject International business non-state bound by the obligations contained in the provisions of international environmental law. To arrive at a binding force that is directed against legal subjects non-state / non-public, a provision must go through the process first became a state party to an international agreement which subsequently ratified the treaty in their national provisions. Through such a mechanism, an international

obligation are charged or created directly binding to the subjects of non-public businesses that are part of or under the supervision of the country concerned.

2. That which can be attached directly, supports international rights and obligations directly by the state. The law authorizes the state to exploit the natural resources in its territory, as well as their obligation to be responsible for any such activities. The environmental impact arising from international business activities is the responsibility of the country. The implementation of international obligations on the subject of international non-governmental business is indirect. This implementation is done by the individual member states of a treaty through their own national rules.

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2. Suggestions

Whatever the design, production and trade current government in the context of international business will ultimately lead to the necessity to implement the scheme ecolabeling because it is excellent for preparing anticipation and realistic steps towards the implementation of the scheme, including among others the construction business tradition in the traditions of business global standards development and ISO14001 environmental certification in accordance within the Indonesian legal system.

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