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## Legal Smoke and Mirrors: Unmasking Indonesia's Climate Crisis Policies and Regulations

*Kebijakan Asap dan Cermin Hukum: Membongkar  
Kebijakan dan Regulasi Krisis Iklim di Indonesia*

Daffa Prangsi Rakisa Wijaya Kusuma<sup>1</sup>, Yustika Ardhany<sup>2</sup>, Ahmed Mustafa<sup>3</sup>

<sup>1</sup> Universitas Islam Indonesia, Yogyakarta, Indonesia

<sup>2</sup> Universitas Islam Indonesia, Yogyakarta, Indonesia

<sup>3</sup> Universiti Teknologi MARA, Selangor, Malaysia

Corresponding Email: [daffaprangsi@gmail.com](mailto:daffaprangsi@gmail.com)

**Abstract** This study critically examines Indonesia's climate crisis policies and regulations, aiming to unveil the obscured intricacies within the existing legal framework. The metaphorical *smoke and mirrors* represent the complex and potentially deceptive nature of the country's approach to addressing the climate crisis. Employing a meticulous analysis, the research dissects the substance and

effectiveness of current policies, seeking to unmask potential gaps and contradictions. The study scrutinizes the alignment between stated objectives and practical outcomes, aiming to expose any discrepancies and provide a comprehensive understanding of Indonesia's climate governance. As climate change becomes an increasingly urgent global concern, understanding the efficacy of national policies becomes paramount. By unraveling the layers of Indonesia's climate crisis policies, this research offers valuable insights for policymakers, scholars, and activists engaged in environmental advocacy. The findings aim to inform future legislative efforts, encouraging a more transparent, effective, and integrated approach to climate crisis mitigation and adaptation. Ultimately, the study serves as a critical resource for those navigating the complex landscape of climate governance, fostering awareness and facilitating informed decision-making in the pursuit of sustainable solutions.

**Keywords** Politic of Law, Environmental Protection, Formulating Laws and Regulation, Climate Change, Climate Crisis

**Abstrak** Penelitian ini secara kritis mengkaji kebijakan dan regulasi krisis iklim di Indonesia, dengan tujuan mengungkap kompleksitas tersembunyi dalam kerangka hukum yang ada. Metafora *smoke and mirrors* menggambarkan sifat kompleks dan berpotensi menyesatkan dari pendekatan Indonesia dalam mengatasi krisis iklim. Dengan menggunakan analisis yang komprehensif, penelitian ini menganalisis substansi dan efektivitas kebijakan saat ini, berupaya mengungkap potensi celah dan kontradiksi. Penelitian ini meneliti keselarasan antara tujuan yang dinyatakan dan hasil dalam praktiknya, bertujuan untuk mengekspos setiap ketidaksesuaian dan memberikan pemahaman komprehensif tentang tata kelola iklim Indonesia. Seiring dengan meningkatnya kekhawatiran global terhadap perubahan iklim, memahami efektivitas kebijakan nasional menjadi sangat penting. Dengan mengupas lapisan kebijakan krisis iklim di Indonesia, penelitian ini memberikan wawasan berharga bagi pembuat kebijakan, ilmuwan, dan aktivis yang terlibat dalam advokasi lingkungan. Temuan penelitian ini bertujuan untuk memberikan informasi bagi upaya perumusan peraturan perundang-undangan yang akan datang, mendorong pendekatan yang lebih transparan, efektif, dan terpadu dalam mitigasi dan adaptasi terhadap krisis iklim. Pada akhirnya, penelitian ini menjadi sumber penting bagi mereka yang meneliti kompleksitas tata kelola iklim, meningkatkan kesadaran, dan memfasilitasi pengambilan keputusan yang berbasis informasi dalam upaya menuju solusi yang berkelanjutan.

**Kata kunci** Politik Hukum, Perlindungan Lingkungan, Pembentukan Undang-undang dan Regulasi, Perubahan Iklim, Krisis Iklim

## A. Introduction

The perennial occurrence of environmental crises poses a persistent challenge to the sustainability of Earth's ecosystems. This issue extends beyond its impact on human life, affecting every facet of existence on the planet. The escalation in global temperatures has demonstrated a consistent upward trajectory since 1880, with 2020 marking the second-highest temperature increase since the pre-industrial period (1880-1990).<sup>1</sup> The repercussions of this temperature surge permeate various sectors, leading to environmental degradation, economic setbacks, and social losses. The consequences of heightened global temperatures manifest in a spectrum of adverse effects, including an elevated risk of forest fires, drastic shifts in climate patterns, rising sea levels, prolonged droughts, and the specter of famine in diverse regions across the globe. The urgency to address these environmental challenges has become increasingly apparent, necessitating comprehensive and coordinated efforts to mitigate their multifaceted impacts and ensure the resilience of ecosystems and societies worldwide.<sup>2</sup>

In Indonesian context, according to a report from the National Disaster Management Agency (BNPB), the total number of recorded disasters in 2020 amounted to 2,952 cases.<sup>3</sup> In the subsequent year, 2021, the number escalated to 5,402 cases, with 584 incidents attributed to forest and land fires (*Karhutla*) and drought.<sup>4</sup> Additional data reveals that between 2015 and 2019, forest and land fires (*Karhutla*) affected a vast expanse, reaching 4.4 million hectares, surpassing the land area of the Netherlands. Notably, 789,000 hectares, equivalent to 18% of the total affected area, experienced recurrent incidents of burning during this period.<sup>5</sup>

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<sup>1</sup> Rebecca Lindsey and Luann Dahlman, 'Climate Change: Global Temperature', <https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature#:~:text=earth's%20temperature%20has%20risen%20by,land%20areas%20were%20record%20warm.>, 2022.

<sup>2</sup> Klinenberg, Eric, Malcolm Araos, and Liz Koslov. "Sociology and the climate crisis." *Annual Review of Sociology* 46 (2020): 649-669; Crist, Eileen. "Beyond the climate crisis: A critique of climate change discourse." *Telos* 141, no. Winter (2007): 29-55.

<sup>3</sup> Sri Widayani, *Laporan Kinerja Badan Nasional Penanggulangan Bencana*, 2020.

<sup>4</sup> Data Superadmin, 'Kejadian Bencana Tahun 2020', <https://www.bnpb.go.id/infografis/kejadian-bencana-tahun-2020>, 2020.

<sup>5</sup> Greenpeace Nasional Penanggulangan Bencana, 'Karhutla Dalam Lima Tahun Terakhir: Omnibus Law Hadiah Impunitas Bagi Pembakaran Di Sektor Perkebunan Terbesar', <https://www.greenpeace.org/static/planet4-indonesia-stateless/2020/10/888d60e2-lima-tahun-karhutla-261020.pdf>, 2020. *See also* Budiningsih, Kushartati. "Implementasi kebijakan pengendalian kebakaran hutan dan lahan di Provinsi Sumatera Selatan." *Jurnal Analisis Kebijakan Kehutanan* 14, no. 2 (2017): 165-186; Saputro, Aditya Wahyu, Rayhan Andyara Milono, and Shafira Anna Medina. "Pertanggungjawaban Pidana Korporasi oleh Pengurus dalam Kasus Karhutla Karena Unknown Cause: Perspektif Ekonomi dan Lingkungan." *Jurnal Hukum Lex Generalis* 2, no. 12 (2021): 1077-1099; Pasai, Miswar. "Dampak kebakaran hutan dan penegakan hukum." *Jurnal Pahlawan* 3, no. 1 (2020): 36-46; Wijayanto, Adi, Hatta Acarya Wiraraja, and Siti Aminah Idris. "Forest Fire and Environmental Damage: The Indonesian Legal Policy and Law Enforcement." *Unnes Law Journal* 8, no. 1 (2022): 105-132; Agus, Riyanto Indra, et al. "Understanding forest fire management in Indonesia from a global perspective." *ASEAN Journal on Science and Technology for Development* 37, no. 1 (2020): 1-6.

The terms climate change, global warming to the climate crisis are common terminology to describe that there has been a change that is not okay with the condition of this earth. Although the three actually have different meanings, for example, climate change refers to changes in warming the earth's temperature and its impacts. While global warming only refers to the increase in the Earth's surface temperature globally in the long term.<sup>6</sup> On the other hand, climate crisis is a term that has begun to be used by activists and environmentalists to describe the current condition of the environmental sustainability crisis.

The impact of the climate crisis today is a real condition that must be taken seriously. In a report *Climate Change 2022: Impacts, Adaptation and Vulnerability* released by the *Intergovernmental Panel on Climate Change* (2022), it was confirmed that the increase in the earth's surface temperature is expected to continue to rise beyond 1.5 degrees Celsius as a stable standard within the next two decades.<sup>7</sup> Seeing how complicated the problem of the climate crisis is, in 2016 the world community agreed to reduce the rate of increase in the earth's surface temperature through *the Paris Agreement* at the Paris Summit signed by 171 countries, one of which is Indonesia. The agreement was an extension of the Kyoto Protokol in 1997.

The *Paris Agreement* has three main objectives, namely; *First*, holding the rate of global temperature increase below 2 degrees Celsius and achieving efforts to limit temperature change to at least 1.5 degrees Celsius; *Second*, increase the ability to adapt to the impacts of climate change, increase climate resilience, and implement development that is low in greenhouse gas emissions without threatening food production; and *third*, create a consistent financial supply to achieve low-emission and climate-resilient development.<sup>8</sup> Along the way, the world community was unable to achieve the targets agreed in the *Paris Agreement*. So the 26th UN Climate Change Summit or *Conference of the Parties* (COP26) was held in Glasgow, Scotland in November last year.

The COP26 summit gave birth to the *Glasgow Climate Pact* which contained eight important points of agreement including; *first*, science and urgency (regarding the recognition of the importance of science for effective action and policymaking); *second*, adaptation; *third*, financial adaptation; *fourth*, mitigation; *fifth*, finance, technology transfer and capacity building for mitigation and adaptation; *sixth*, loss and damage; *seventh*, implementation; and *eighth*, collaboration.<sup>9</sup> Indonesia itself was represented directly by President Joko Widodo to agree on the Glasgow Climate

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<sup>6</sup> Hassan M. Heshmati, *Impact of Climate Change on Life, Book Chapter on Environmental Change and Sustainability*, ed. by Silvern S. and S. Young (<https://www.intechopen.com/books/3364>, 2013).

<sup>7</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation, and Vulnerability*, 2022.

<sup>8</sup> *Paris Agreement*, 2016.

<sup>9</sup> United Nations Climate Change, *COP26 The Glasgow Climate Pact* (UK, 2021).

Pact and completed *the Paris Rule Book* which will guide the implementation of the *Paris Agreement*.<sup>10</sup>

Based on the description of the commitment of the world community, including Indonesia in anticipating, adapting, and implementing various agreements in terms of handling the climate crisis. The commitment of the Government of Indonesia is also seen with its participation in the signing of the *Kyoto Protocol in 2014 and the signing of the Paris Agreement in 2016*, all of which were later ratified in law. Various forms of business in the context of the formation of laws that have been carried out by Indonesia should be appreciated because they are formal legal evidence that they have an understanding and commitment in handling the climate crisis.

Nevertheless, a more nuanced examination is essential to ascertain the tangible commitment of Indonesia in addressing the climate crisis through the enactment of laws and policies, especially considering the palpable impact of the crisis on the nation. Given the undeniable urgency of the climate crisis both in Indonesia and globally, this study serves as a scientific exploration into Indonesia's commitment to managing the crisis through legal measures. The study's focus is restricted to the legal realm, concentrating on laws and regulations as the primary objects of analysis.

In light of the aforementioned context, the research poses two problem formulations, to be answered through a descriptive-analytical approach. The first formulation seeks to elucidate the current landscape of legal politics regarding the formation of laws and regulations in Indonesia. The second formulation delves into the prospective direction of legal politics concerning the formulation of laws and regulations specifically aimed at addressing the climate crisis in Indonesia.

## **B. Method**

This study adopts a normative research methodology aimed at constructing juridical arguments concerning the policy trajectory of formulating laws and regulations addressing the climate crisis in Indonesia. The research employs a dual approach, utilizing a statute approach to comprehensively review existing regulations related to the subject matter and a *conceptual* approach to delineate potential policy directions for the future. The data sources encompass secondary data, incorporating primary legal materials such as laws and regulations, and secondary legal materials, including expert opinions, scientific journals, and pertinent books germane to the examined issues.

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<sup>10</sup> Kementerian Luar Negeri Republik Indonesia, 'Glasgow Climate Pact, Langkah Maju Yang Perlu Dikawal Bersama', <https://kemlu.go.id/portal/id/read/3185/berita/glasgow-climate-pact-langkah-maju-yang-perlu-dikawal-bersama>, 2021.

## C. Results and Discussion

### 1. Political Configuration and Its Relevance to Climate Crisis Management

The study of legal politics is closely related to what interests are to be accommodated as well as to be achieved. It is based on the essence of the definition of politics, which is an effort to achieve a good life. In the thought of ancient Greeks such as Plato and Aristotle named it *en dam onia* or *the good life*.<sup>11</sup> Politics contextually in terms of its relation to a country is closely related to issues of *power*, decision making, *public policy*, and allocation or distribution.<sup>12</sup> In the context of law, the political element is very relevant in terms of discussion of decision-making issues and public policy making.

Therefore, it becomes relevant in various literature on legal politics to explain that there is causality between law and politics. Causality is conceptualized in three forms, namely: *first* Determinant Law over Politics. *Second* political determinants of law. *Third* Politics and law as subsystems are in a position of balanced determination.<sup>13</sup> Satjipto Rahardjo provides a definition of legal politics as an effort to choose and how to be used to achieve a social goal with certain laws in society which includes answers to several basic questions, including:<sup>14</sup>

- a. What goals are to be achieved through the existing system;
- b. What are the best ways to be headed in achieving the goals to be achieved;
- c. When and through which means the law needs to be changed;
- d. Could a standard and established pattern be formulated to help in deciding the process of choosing goals and ways to achieve them well.

Mahfud MD also gave a definition of legal politics, namely as a legal policy direction made officially by the state about the laws that will be enforced or will not be enforced to achieve a goal of the nation and state.<sup>15</sup> Mahfud MD concluded that a certain political configuration will give birth to the character of certain legal products as well. Furthermore, political configuration is referred to as the independent variable and the character of the legal product is referred to as the affected variable.<sup>16</sup> In this case, a democratic political configuration will give birth to responsive or autonomous legal products. On the other hand, an authoritarian political configuration will give birth to conservative or orthodox legal products.<sup>17</sup> The context of democratic political configuration opens opportunities for its people to be active in determining state policies, so that the legal products born in character

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<sup>11</sup> Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: PT Gramedia Pustaka Utama, 2008).

<sup>12</sup> Budiardjo, pp. 14-15.

<sup>13</sup> Ni'matul Huda, *Negara Hukum, Demokrasi, Dan Judicial Review* (Yogyakarta: UII Press, 2005).

<sup>14</sup> Moh. Mahfud MD., *Politik Hukum Di Indonesia* (Jakarta: Raja Grafindo Persada, 2017).

<sup>15</sup> Moh. Mahfud MD., *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi* (Jakarta: Rajawali Pers, 2010).

<sup>16</sup> Moh. Mahfud MD., *Hukum Dan Pilar-Pilar Demokrasi* (Yogyakarta: Gama Media, 1999).

<sup>17</sup> Mahfud MD., *Hukum Dan Pilar-Pilar Demokrasi*.

reflect the fulfillment of the needs of the wider community. Meanwhile, the authoritarian political configuration that places the government position very dominantly is interventionist. So that the legal products that are born in character only reflect the political vision of power holders.<sup>18</sup>

With regard to the public policies needed in dealing with the climate crisis, it is inevitable that the legal products formed must be responsive so that a democratic political configuration is needed in realizing it. The concept of authoritarian political configuration itself can be identified based on three indicators, among them: *first*, the party system and the role of parliament. *Second*, the executive role. *Third*, freedom of the press. On the other hand, the concept of democratic political configuration can be identified based on three indicators, namely: *first*, the law-making process. *Second*, the provision of legal functions. *Third*, the authority to interpret the law.<sup>19</sup> If you look at the current conditions, the government regime, both executive and legislative, is not included in the authoritarian political configuration. Because currently, Indonesia still adheres to a multi-party system. On the other hand, the role of the executive in the context of law formation is still considered proportional. And the role of the press is still quite significant.

If examined further, there are a number of criticisms of the practice of democratic politics that take place today cannot be separated from shortcomings. With regard to the practice of the multi-party system today which is more towards the strength of the majority coalition between parliament and government.<sup>20</sup> As if to give the impression that both the executive and parliamentary roles only accommodate the same interests. The author himself sees that although conceptually the current regime looks wrapped in a democratic political configuration. But in reality it is more suggestive of authoritarian practices that are enforced by law. This can be seen from various controversial actions between the parliament and the executive, ranging from the revision of the KPK Law, the establishment of the Job Creation Law to the IKN Law.

This practice, according to Kim Lane Scheppele, is referred to as *autocratic legalism* or a state in which leaders elected through democratic elections make a number of policies and even attacks that are continuously directed at certain institutions or interests wrapped in the legitimacy of the law they have obtained.<sup>21</sup> Various practices that seem to show that Indonesia is currently at the lowest point of democracy. Based on the conditions of such a democratic political configuration,

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<sup>18</sup> Mahfud MD., *Hukum Dan Pilar-Pilar Demokrasi*.

<sup>19</sup> Mahfud MD., *Hukum Dan Pilar-Pilar Demokrasi*.

<sup>20</sup> Rahmat Nur Hakim, 'Menakar Kekuatan Politik Partai Koalisi Pemerintah Di Tengah Menguatnya Wacana Amendemen UUD 1945', <https://nasional.kompas.com/read/2021/09/01/19461631/menakar-kekuatan-politik-partai-koalisi-pemerintah-di-tengah-menguatnya?page=all>, 2021.

<sup>21</sup> Kim Lane Scheppele, 'Autocratic Legalism', *The University of Chicago Law Review*, 85 (2018), 581-83.

an important question arises. Is the democratic political configuration in the style of *autocratic legalism* able to accommodate the need for responsive legal products as a form of decision making as well as the formation of strategic policies for handling the climate crisis?

## 2. Politics of Law of the Establishment of Laws and Regulations related to Climate Crisis

The Glasgow Climate Pact was officially signed by most world countries, including Indonesia in November 2021. The eight important points of agreement in the pact can at least be condensed into four important objectives including:<sup>22</sup>

- a. *Mitigation, by reducing emissions.*
- b. *Adaptation, by helping those already impacted by climate change.*
- c. *Finance, by enabling countries to deliver on their climate goals.*
- d. *Collaboration, by working together to deliver even greater action.*

In a document titled "*COP26 The Glasgow Climate Pact*" released by the *United Nations Climate Change* in collaboration with Italy. These four goals have more technically provided an overview of the design of public policy making based on achievements in terms of climate crisis management. The first goal, mitigation, will focus on keeping the Earth's temperature at 1.5 degrees Celsius with a number of actions, namely accelerating action to reduce coal use, stop deforestation, accelerate the switch to electric vehicles, and reduce methane emissions.<sup>23</sup> The second goal, *adaptation, loss and damage*, will focus on accelerating efforts to deal with the impacts of climate change. Given that people around the world are living in the ravages of climate change, this is marked by the increasing frequency and impact of extreme weather. Sea level rise to changes in weather patterns threaten survival conditions.<sup>24</sup>

The third objective, finance, will focus on mobilizing the public and private sectors. This goal is based on the knowledge that the cost of preventing climate change will be much less than the cost of addressing its impacts. There are a number of economic opportunities based on the vision of a low-carbon transition such as the use of solar power, to zero-emission vehicles.<sup>25</sup> The last goal of *collaboration*, relates to international cooperation in several forms including: *first, power breakthrough* (making clean energy the most affordable option). *Second, road transport breakthrough* (zero emission vehicle accessibility). *Third, Steel breakthrough* (efficient and near-zero emission steel production). *Fourth, hydrogen breakthrough*

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<sup>22</sup> United Nations Climate Change, COP26 The Glasgow Climate Pact, on UN Climate Change Conference UK 2021, p. 6.

<sup>23</sup> United Nations Climate Change, pp. 7- 15.

<sup>24</sup> United Nations Climate Change., pp. 16-17.

<sup>25</sup> United Nations Climate Change., pp. 19-22.



(ensuring affordable, renewable, and low-carbon hydrogen). All of these goals are designed to be realized immediately and felt their impact in 2030.

At the COP26 summit, Glasgow agreed on a "phase-out" of coal and fossil fuels as the worst cause of greenhouse gas emissions. Despite some opposition due to worsening climate crisis conditions. The argument for phasing out is logical for developing countries that still have to solve the development agenda and poverty alleviation. President Joko Widodo at the COP26 Glasgow Summit, stated his commitment in the *Declaration on Forest and Land Use* which contains the main point, namely the acceleration of land restoration or restoration.<sup>26</sup>

Based on the overall framework of goals and achievement targets agreed at the COP26 Glasgow Summit in November 2021. The author tries to examine what concrete actions have been taken by the government and parliament in the context of the formation of laws and regulations related to the results of the Glasgow COP26 summit agreement. The author limits the study by looking at laws and regulations at the level of laws related to the Paris Agreement as *mentioned in the Explanation to Law No. 16 of 2016 concerning the Ratification of the Paris Agreement, as well as related laws and draft laws that are substantially relevant to the results of the Glasgow Climate Pact agreement*. The following is a table of results of tracking strategic laws and regulations related to handling the climate crisis after the *Paris Agreement*:<sup>27</sup>

**TABLE 1.** Legal Regulations Linked to *Paris Agreement*

No	Rules	About
1	Law No. 5 of 1960	Basic Rules of Agrarian Trees
2	Law No. 5 of 1990	Conservation of Biological Natural Resources and Their Ecosystems
3	Law No. 6 of 1994	Confirmation of the <i>United Nations Framework Convention on Climate Change (Convention of the United Nations Framework on Climate Change)</i> ;
4	Law No. 41 of 1999	Forestry
5	Law No. 22 of 2001	Oil and Gas
6	Law No. 17 of 2004	Ratification of the <i>Kyoto Protocol to the United Nations Framework Convention on Climate Change</i>
7	Law No. 30 of 2007	Energy
8	Law No. 18 of 2007	Waste Management
9	Law No. 4 of 2009 Law No. 31 of 2009	Mineral and Coal Mining Meteorology, Climatology, and Geophysics
10	Law No. 32 of 2009	Environmental Protection and Management
11	Law No. 18 of 2013	Prevention and Eradication of Forest Destruction

Source: Author, 2022.

<sup>26</sup> Inge Klara Safitri, 'Janji Dunia Membendung Malapetaka Perubahan Iklim', <https://interaktif.tempo.co/public/proyek/janji-janji-cop-26/>, 2021.

<sup>27</sup> Explanation of Law Number 16 of 2016.

In table 1 it has been mentioned that there are eleven laws related to the results contained in the *Paris Agreement* which basically agree on actions to handle and mitigate climate change. More specifically, aim to limit global temperature rise to below 2°C from pre-industrialisation levels and make efforts to limit it to below 1.5°C.<sup>28</sup> In analyzing the legal politics of the formation of laws related to the *Paris Agreement*, the author is guided by the application of the definition of political legal theory as conveyed by Satjipto Rahardjo. He said that legal politics was applied to arrange ways to achieve goals through the existing system (legal system).<sup>29</sup> Similarly, Mahfud MD, said that legal politics is related to efforts to achieve a goal through legal policies made officially by the state.<sup>30</sup>

Based on the conception and definition of legal politics, law is seen as a dependent variable and politics as an independent *variable*.<sup>31</sup> The conception is concerned with the political configuration seen in a legal system. The author himself argues as mentioned earlier that currently Indonesia is still qualified in a democratic political configuration. Therefore, the political context of law and regulation must focus on action and mitigation in limiting global temperature rise below 2 degrees Celsius from pre-industrialization levels and making efforts to limit it to below 1.5 degrees Celsius.<sup>32</sup> Which is then implemented in public policy based on mitigation actions, adaptation to loss and damage, finance, and collaboration.<sup>33</sup>

The focus of the legal political objectives of the formation of these laws and regulations if contextualized with laws related to the *Paris Agreement*, then at least the author identifies the content of the substance of the law related to the needs of handling the climate crisis, especially regarding action and mitigation to limit the increase in Earth temperature. The author's search shows that of the eleven laws in table 1, there are five changes to the law including: Law No. 41 of 1999 concerning Forestry (Forestry Law), Law No. 22 of 2001 concerning Oil and Gas (Oil and Gas Law), Law No. 4 of 2009 concerning Mineral and Coal Mining (Mineral and Coal Law), Law No. 32 of 2009 concerning Environmental Protection and Management (PPLH Law), and Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction (PPPH Law).<sup>34</sup>

The five changes to the law, four of which were amended in the content of Law No. 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law) and one of them was Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining (which was later partially amended in the Job Creation Law). In terms of analyzing these various laws, the author chooses

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<sup>28</sup> Article 2 (1) a, Paris Agreement, 2016

<sup>29</sup> Mahfud MD, *Politik Hukum di Indonesia*.

<sup>30</sup> Mahfud MD, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*.

<sup>31</sup> Mahfud MD, *Politik Hukum di Indonesia*, p. 9.

<sup>32</sup> Article 2 (1) a, Paris Agreement, 2016.

<sup>33</sup> United Nations Climate Change, pp. 7-22.

<sup>34</sup> This data is aggregated based on searches on <https://peraturan.go.id/>

to analyze the changes to the Mining Law as amended in Law No. 3/2020 (Mineral and Coal Law) because it was published first. In the Academic Paper on Amendments to the Mineral and Coal Law, it was found that there was a discussion about climate change and its correlation with mining activities. However, the discussion has only been discussed once and is not accompanied by sufficient empirical data to show concern about climate change.

The same thing can be seen in the formulation of changes to the Mining Law which actually shows indifference to climate change. The author refers to an analysis that has been conducted by *the Indonesian Center for Environmental Law (ICEL)*, which concludes that there are a number of problems in this change in the Mining Law. For example, such as the determination and change of areas in the mining business that ignore the consideration of environmental carrying capacity<sup>35</sup>, the abolition of Article 43 which correlates with transparency and the coolness of overexploitation,<sup>36</sup> and the absence of regulations related to land restoration plans damaged and damaged by mining activities.<sup>37</sup> Based on this analysis, the author considers that the changes to the Mining Law as stated in Law No. 3/2020 are not based on legal politics that aim to deal with or at least mitigate the climate crisis.

Moving on to the other four laws that have been amended in the Job Creation Law. The author also found the same findings with changes to the Mineral and Coal Law, both in the Academic Paper of the Job Creation Law and the formulation of related laws and regulations did not discuss aspects of climate change at all. The climate aspect discussed is simply the "investment climate" without contextualizing it with the need for mitigation, damage and loss adaptation, finance and collaboration. In fact, changes in various kinds of related laws and regulations in the Job Creation Law substantially change the licensing aspect is a very important entrance in changing the governance of business licensing in Indonesia which is based on the interest of maintaining the increase in the Earth's temperature as agreed in the *Paris Agreement*.

Even the existence of Law No.16/2016 concerning the Ratification of the Paris Agreement is not mentioned at all as an important aspect of Indonesia's commitment to withstand the increase in Earth temperature which leads to handling the climate crisis. Examples of counterproductive actions in the Job Creation Law, as in the amendment of Law No. 41 of 1999 concerning Forestry, previously Article 18 paragraph (2) stated that the area of the huutan area that must be maintained is at least 30% of the watershed and / or island area with a proportional distribution. Then in the Job Creation Law as amended in Article 18 amending Law No. 41 of 1999, the provision was abolished which will affect the

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<sup>35</sup> ICEL, Some Legal Criticisms of the Amendment to Law No. 4 of 2009 on Minerals and Coal, *Analysis Series 1*, 2020, pp 11-18

<sup>36</sup> ICEL, p. 29.

<sup>37</sup> ICEL, pp. 30-31.

existence of forest areas as one of the strategic aspects in handling the climate crisis.<sup>38</sup>

### 3. Legal Politics of the Formation of Laws and Regulations Based on Handling the Climate Crisis in the Future

Based on the findings above, which show that the legal politics applied in formulating various related laws are irrelevant and tend to be counterproductive to the agreement in the *Paris Agreement*. So the author concludes that the framers of the law did not agree in terms of making the goals in the *Paris Agreement* as goals to be achieved through the legal system, and crystallized in state legal policy. Based on the eleven strategic laws as mentioned in table 1, the author considers that there are still a number of other laws that need substance adjustments to be in line with the goals of handling the climate crisis.

Therefore, there needs to be a more tangible effort in terms of responding and following up on the results of the agreement in the *Glasgow Climate Pact*. The author underlines that the framers of laws and regulations need to focus on the four aspects of the Glasgow COP26 summit agreement, namely *mitigation, adaptation, finance and collaboration*. In particular, there is a need for internalization of the substance of mitigation and adaptation in the formation of strategic laws in the future. Indonesia itself has actually committed to climate change mitigation and adaptation as stated in the 2018-2020 Climate Change Adaptation and Mitigation Budget Report. The Ministry of Finance has allocated budgets to all ministries (except the coordinating ministry) as well as a number of other institutions for climate change mitigation and adaptation purposes.

In addition to the realization of the adaptation budget which in 2019 was recorded at Rp. 33.39 T and the climate change mitigation budget of Rp. 46.46 T.<sup>39</sup> Although criticized by many parties because the number did not increase significantly from the previous year plus hydrometeorological disasters that continue to increase and other records of climate action actions.<sup>40</sup> However, the 2018-2020 Climate Change Mitigation and Budget Report also states that national development will focus on low-carbon development planning, greenhouse gas emission reduction targets per sector (agriculture, forestry, energy, transportation, waste and *Industrial Processes and Product Use*), as well as climate change control in the 2020-2024 National Medium-Term Development Plan as contained in Presidential Regulation No. 18 of 2020.

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<sup>38</sup> ICEL, Various Problems in the Environmental and Natural Resources Sector Job Creation Law, *Analysis Series* 3, October 2020, p 41

<sup>39</sup> Ministry of Finance, *Climate Change Mitigation and Adaptation Budget Report 2018-2020* (Jakarta, 2020).

<sup>40</sup> Stanislaus Risadi Apresian, 'Kesepakatan COP26 Glasgow Memuat 4 Poin Penting, Apakah Aksi Iklim Indonesia Sudah Sesuai Jalur?', <https://theconversation.com/kesepakatan-cop26-glasgow-memuat-4-poin-penting-apakah-aksi-iklim-indonesia-sudah-sesuai-jalur-172206>, 2021.

The author considers that various conceptions of climate change mitigation and adaptation need to be tested in the formation of legislation after the Glasgow COP26 summit. Therefore, the author tries to compile several laws that have been published after the Glasgow COP26 summit and several strategic bills to see the consistency of commitments and actions of lawmakers related to efforts to deal with the climate crisis in the future. The following is a table of the set of laws related to handling climate change in the future.

**TABLE 2.** Post-Brexit Legal Regulations COP26 Glasgow

No	Rules	About
1.	Law No. 6 of 2021	State Budget for Fiscal Year 2022
2.	Law No. 3 of 2022	National Capital
3.	Legal Plan <sup>41</sup>	Indigenous
4.	Legal Plan <sup>42</sup>	New and Renewable Energy
5.	Legal Plan <sup>43</sup>	Amendments to Law No. 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems
6.	Legal Plan <sup>44</sup>	Amendments to Law No. 24 of 2007 concerning Disaster Management

In Law No. 6 of 2021 concerning the 2022 State Budget, the author does not find any budget financing allocation for the development of alternative infrastructure for the use of new and renewable energy. A number of budget allocations still focus on accelerating the construction of coal-fired power plants, although it is not realistic to switch the supply of electricity resources directly to renewable energy. However, the authors consider that there should be a specific budget allocation for the development of renewable energy power plants. This is in line with Indonesia's target to reduce greenhouse gas emissions.

This is a point of criticism and is considered counterproductive by many parties with a focus on dealing with the climate crisis through low-carbon development and greenhouse gas emission reduction targets as conceptualized in the 2020-2024 RPJMN seen with the issuance of Law No. 3 of 2022 concerning the National Capital. Although legally, the formal transfer of the national capital to Kalimantan will be carried out based on the principle of low carbon emissions. Although there is no empirical data that can confirm the carbon emissions that will

<sup>41</sup> The Draft Law on Indigenous Peoples is included in the 2022 Priority National Legislation Program.

<sup>42</sup> The Draft Law on New and Renewable Energy is included in the 2022 Priority National Legislation Program.

<sup>43</sup> The Draft Law on Amendments to Law No. 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems is included in the 2022 Priority National Legislation Program.

<sup>44</sup> The Draft Law on Disaster Management is included in the 2022 Priority National Legislation Program.

be generated from the National Capital City development project in Kalimantan. The potential for carbon emission production is certainly a necessity. Therefore, there is a need for maximum supervision efforts so that the relocation of the national capital does not lead to catastrophe and become a byword for the world community for Indonesia's commitment to implement the *Glasgow Climate Pact*.

Finally, it relates to several bills that are considered strategic with future targets to fulfill the *Glasgow Climate Pact agreement*. The New and Renewable Energy Bill (RUU EBT) is expected to be able to present as an answer to the transition of conventional energy (fossil) to renewable energy (non-fossil). Nevertheless, the NRE Bill has also drawn criticism for including nuclear energy in new energy that will be used in the future. The substance related to nuclear energy is considered geographically incompatible with Indonesia because it has the potential to cause great damage if referring to the events that occurred at Japan's Fukushima nuclear power plant because it has geographical similarities.<sup>45</sup> And the use of nuclear energy is considered to only answer medium-term energy needs and is accompanied by a fairly high risk.

On the other hand, both the Indigenous Peoples Bill, the Bill on Amendments to the Law on the Conservation of Biological Natural Resources and their Ecosystems, the EBT Bill and the Disaster Management Bill, according to the author, have made progress quite slowly to be passed. Especially the Indigenous Peoples Bill which has not been passed for many years, this bill is important because it is a form of recognition of Indigenous Peoples who have an important role in handling the climate crisis in the future. The commitment to recognize the existence of Indigenous Peoples more strongly will correlate with integrated efforts to deal with the climate crisis in the future. The Conservation of Biological Natural Resources and Ecosystems Bill also has substance that is very relevant to the reality of climate change, but has not yet been passed. The Disaster Management Bill has not integrated aspects of disaster management with the climate crisis as one of the biggest factors causing natural disasters.

#### **D. Conclusion**

In conclusion, the politics of law in the formation of legislation serves as a crucial determinant, reflecting the intent, objectives, and character envisioned for the legal product in question. It also signifies the political orientation of regulation framers concerning a mutual agreement on the direction and expectations for the enactment of said legal product. In the context of legal politics centered on addressing the climate crisis, as analyzed across pertinent laws, it is evident that an

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<sup>45</sup> Luh De Suriyani, 'Keganjilan Di RUU Energi Baru Dan Terbarukan', <https://www.mongabay.co.id/2021/09/02/keganjilan-di-ruu-energi-baru-dan-terbarukan/>, 2021.

integrated and unified collective agreement is lacking, potentially contributing to the precarious state of life on Earth.

Examining key laws formulated in response to the Paris Agreement, it becomes apparent that they lack seriousness, failing to provide adequate space for discussion and study on climate crisis mitigation among various law framers. Similarly, post-COP26 laws and bills have faced criticism, particularly concerning their implications for the future sustainability of life. Despite the democratic configuration in the political landscape of Indonesian legal formation, the author contends that this alone is insufficient. Without accompanying paradigms, commitments, and tangible actions for sustainable climate crisis mitigation and adaptation, the resultant legal products fall short of addressing the existing challenges.

Acknowledging the limitations of this study, including a lack of in-depth analysis for each object of research and a failure to connect with various derivative regulations, the author recognizes the need for further exploration. Future studies should delve into the substantive aspects of diverse laws and regulations, extending beyond the legal level. This expansion would facilitate more comprehensive conclusions and concrete recommendations for the development of climate crisis-centric legal frameworks in Indonesia.

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*Climate change is a  
political choice.*

**Mike Smyth**

Chair of Energy4All

*speaking at the Community Energy Conference in the  
United Kingdom in 2015*