

## Role of Paris Agreement in the Application of the Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) Principle

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### **Abstract**

*The Paris Agreement is one of the climate change agreements that formed on the basis of voluntary contributions and uses the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) as the ground norm of its implementation. The principle allows state parties to determine their own targets and efforts to reduce emissions on a national and global level. However, the principle poses a challenge to the Agreement because it could lead to non-compliance by the state parties and reduce their ambition to achieve net-zero emission targets. In addition, the question arises as to how international law can encourage compliance with the CBDR-RC principle and what efforts are made to achieve an effective implementation. This article provides an understanding of the role of international law in accommodating the dynamics of the CBDR-RC principle in the context of climate change. It also discusses the role of international law in the compliance process and its relation to compliance mechanisms as an effort to encourage the implementation of CBDR-RC principle. The result indicates that international law through the principle can encourage state parties to comply by filling the gap in the Agreement which is the soft rules. Therefore, a good compliance committee and rules that consist of an easy way for state parties to comply are needed to achieve an effective implementation of the principles.*

**Key Words:** Compliance Mechanism, Paris Agreement, Principle of CBDR-RC.

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## A. Introduction

Climate change is currently a phenomenon that concerns the international community. This phenomenon is increasing public attention since it significantly affects all components and aspects of life.<sup>45</sup> Climate change occurs due to an increase in greenhouse gas (“GHG”) emissions in line with the increasing amount of carbon dioxide (CO<sub>2</sub>) levels. Most of the emissions come from human activities either by burning fossil fuels, land use change activities by burning the forests (deforestation), or other activities that are not environmentally friendly.<sup>6</sup> Climate change causes many negative impacts such as excessive temperature rise, increasing frequency of storms, drought, sea level rise, loss of species and the natural resources.<sup>7</sup> For instance, Solomon Islands is one of the Small Island Development States (“SIDS”) in the Pacific region that is affected by climate change due to their low territory which is only a few meters above the sea.<sup>8</sup> The phenomenon of five sinking islands in the Solomon Islands has become one of the proofs that show the real climate change threat.<sup>9</sup>

<sup>4</sup> Arum Siviendrayanti, “Perubahan Iklim dan Pengaruhnya terhadap Sektor Kesehatan”, *Jurnal Kesehatan Masyarakat*, Volume 3 Nomor 1, 2007, at 26.

<sup>5</sup> M. Mustangin, “Perubahan Iklim dan Aksi Menghadapi Dampaknya: Ditinjau dari Peran Serta Perempuan Desa Pagerwangi”, *Jurnal Pendidikan dan Pemberdayaan Masyarakat*, 4 (1), 2017, at 81.

<sup>6</sup> Dana Desonie, Ph.D., *Climate Causes and Effects of Climate Change*, USA: Chelsea House Publishers, 2008, at 38.

<sup>7</sup> UN, “Causes and Effects of Climate Change”, *un.org*, <https://www.un.org/en/climatechange/science/causes-effect-s-climate-change#:~:text=Causes%20of%20Climate%20Change&text=Generating%20electricity%20and%20heat%20by,an d%20trap%20the%20sun's%20heat>, accessed on 10 August 2022.

<sup>8</sup> ADB, “An Existential Threat: How Climate Change is Impacting the atoll Countries”, *The Asian Development Bank*, 2019, [adb.org, https://www.adb.org/news/videos/existential-threat-how-climate-change-impacting-atoll-countries](https://www.adb.org/news/videos/existential-threat-how-climate-change-impacting-atoll-countries), accessed on 6 August 2022.

<sup>9</sup> Michael Edison Hayden, “Five Solomon Islands Disappear Into the Pacific Ocean as a Result of Climate Change”, 2016, *abcnews.go.com*, <https://abcnews.go.com/International/solomon-islands-disappear-pacific-ocean-result-climate-change/story?id=38985462>, accessed on 6 August 2022.

Although various countries have been impacted by climate change, it is undeniable that the dissimilarities in views from each country still exist. This happens because each country has a different perspective on climate change, especially in terms of determining its scale of priority.<sup>10</sup> The high level of emissions produced by most states is proving that there are still several states that have not placed climate change as their priority issue. In fact, most of the states which are located in the Middle East region are still the highest GreenHouse Gases (“GHG”) emitters, especially from the fossil fuel sector.<sup>11</sup> On the other hand, Indonesia and Brazil also take the lead in producing GHG emissions from the Land Use, Land-Use Change and Forestry (LULUCF) sector.<sup>12</sup>

In fact, it is difficult to determine whether a country is violating its obligation to protect the environment under general international law in causing damage to the environment.<sup>13</sup> This is due to the fact that climate change is caused by a situation where the violation of obligations in terms of protecting the environment can affect or directly impact not only one country but also all countries.<sup>14</sup> So, it is difficult to use the theory of state responsibilities in terms of climate change issues..

Therefore, various regulations have been made in order to protect the states from climate change impacts. It started with the formation of the United Nations Framework Convention on Climate Change

<sup>10</sup> Climate Watch, “Global Historical Emissions”, *climatewatchdata.org*, <https://www.climatewatchdata.org/ghg-emissions?regions=TOP&sectors=total-including-lucf&source=CAIT>, accessed on 8 September 2022.

<sup>11</sup> Lea PFEFFER, “The Position of the Gulf Cooperation Council Countries in Regards to the COP 21”, *SciencesPO*, 2015.

<sup>12</sup> Climate Watch, “Global Historical Emissions”, *Op. Cit.*

<sup>13</sup> Benoit Mayer, “State Responsibility and Climate Change Governance: A light through the Storm”, *Chinese Journal of International Law*, Vol 13(3), 2014, at 539-575.

<sup>14</sup> Benoit Mayer, “Construing International Climate Change Law as a Compliance Regime”, *Transnational Environmental Law*, 7:1, 2018, at 117.

("UNFCCC"), then continued with the 1997 Kyoto Protocol and the 2015 Paris Agreement ("the Agreement"). Furthermore, this article will particularly discuss the Paris Agreement.

In general, the climate change agreements are focused on setting the states' commitments, targets, timelines for their emission reductions, financial mechanisms, technology transfer, and shared responsibilities among states that are reflected through the principles of Common But Differentiated Responsibilities and Respective Capabilities ("CBDR-RC") between developed and developing country.<sup>15</sup> This principle allows countries to have a different contribution in fulfilling obligations under the climate change agreements.<sup>16</sup>

The CBDR principle has been introduced since 1992 UNCED through the Principle 6 and 7 of Rio Declaration on Environment and Development.<sup>17</sup> Principle 6 of the 1992 Rio Declaration generally recognizes the special situation and needs of developing countries, especially countries that are not yet developed. Based on this principle, developing countries are most vulnerable to the environment problems therefore must be prioritized.<sup>18</sup>

Meanwhile, Principle 7 of the 1992 Rio Declaration also states that countries must work together to protect and restore the ecosystem through the different contributions to global environmental degradation. Based on this principle, developed countries should recognize that the responsibility they bear in sustainable development efforts has affected the global environment and the technology and financial resources they already have.<sup>19</sup>

Therefore, the CBDR-RC principle was created to balance between two things on the one hand to fill the need for all states to take responsibility for global environmental problems and on the other hand, to respect and recognize the wide differences in levels of economic development between states.

The CBDR-RC principle in its development raises a polemic that leads countries to have opinions about the pros and cons of the principle. As a result, this principle is not universally accepted, especially by some developed countries.<sup>20</sup> The United States ("The US") is one of the countries that showed their rejection of the idea of differences in terms of contributions and commitments between developed and developing countries by withdrawing from the Agreement in 2017. The CBDR-RC principle is considered unfair to industrialized countries such as the US, which must provide a greater contribution to reducing global emissions.<sup>21</sup> In addition, countries that are more vulnerable to the impacts of climate change and located in the Pacific region, such as Tuvalu, Kiribati, and Marshall Islands, tend to be pro towards the application of the principles.<sup>22</sup> However, these countries are still developing and have less capacity to reduce emissions. So, they need the role of the CBDR-RC principle in upgrading their efforts with the need for assistance from developed countries.

Despite the polemics, the principle of CBDR-RC is still used as a basic principle when it comes to implementing the Paris Agreement. Nonetheless, The Agreement still has various challenges that must be

<sup>15</sup> Benoit Mayer, "State Responsibility and Climate Change Governance: A light through the Storm", *Op Cit*.

<sup>16</sup> Lavanya Rajamani, "Understanding the 2015 Paris Agreement", *India in a Warming World: Integrating Climate Change and Development*, Delhi: Oxford Academic, 2019, at 211.

<sup>17</sup> UNGA, A/CONF.151/26 (Vol. I) Report of the United Nations Conference on Environment and Development.

<sup>18</sup> Principle 6 of Rio Declaration 1992.

<sup>19</sup> Principle 7 of Rio Declaration 1992.

<sup>20</sup> Charlotte Epstein, "common but differentiated responsibilities", *Britannica.com*, <https://www.britannica.com/topic/asylum>, accessed on 2 May 2023.

<sup>21</sup> ZHANG Hai-Bin, et. al, "U.S. Withdrawal from the Paris Agreement: Reasons, impacts, and China's response", *Advances in Climate Change Research*, Vol 8, 2017, at 221.

<sup>22</sup> G. Wyeth, "For Pacific Island States, Climate Change is an Existential Threat. *The Diplomat*", *thediplomat.com*, <https://thediplomat.com/2017/06/for-pacific-island-states-climate-change-is-an-existential-threat/>, accessed on 2 May 2023.

resolved. The challenges begin with the state parties' misuse of the CBDR-RC principle. The concern arises because they might be sheltering themselves from their obligations and commitments to reduce the global emissions and it leads to the case of non-compliance.<sup>23</sup> This problem could arise as a result of the principle implementation, which allows state parties to initiate their own emission reduction targets.<sup>24</sup>

The compliance mechanism, therefore, plays an important role in the compliance process of state parties since it can identify whether the implementation of the Paris Agreement is effective or not.<sup>25</sup> From the sense of legal perspective, compliance can only be enforced for provisions that are legally binding for the parties.<sup>26</sup>

However, the Paris Agreement has a hybrid architecture which means the provisions in the agreement consist of hard law and soft law provisions. Not all provisions contained in the Agreement create legal obligations.<sup>27</sup> Provisions regarding Nationally Determined Contribution (“NDC”) are one of the provisions that are not legally binding because the parties have no legal obligation to achieve their NDC.<sup>28</sup> This can be seen on Article 4 (19) of the Article which state,

*“All Parties should strive to formulate and communicate long-term low*

<sup>23</sup> Siti Sumartini, Suhaendi Salidja, “Penerapan Prinsip Common but Differentiated Responsibility Dihubungkan dengan Prinsip Tanggung Jawab Negara dalam Penegakan Hukum Lingkungan, *Gema Wiralodra*, Vol 13, No 1, April 2022, at 239.

<sup>24</sup> Amira Bilqis, *Op. Cit.*, at 405.

<sup>25</sup> J. Brunnée, “Promoting Compliance with Multilateral Environmental Agreement”, dalam: J. Brunnée, M. Doelle, L. Rajamani, *Promoting Compliance in an Evolving Climate Regime*, UK: Cambridge University Press, 2012, at 38.

<sup>26</sup> Christina Voight, “The Compliance and Implementation Mechanism of the Paris Agreement”, *RECIEL*, 25 (2), 2016, at 6.

<sup>27</sup> Daniel Bodansky, “Paris Agreement”, *United Nations Audiovisual Library of International Law*, [https://legal.un.org/avl/pdf/ha/pa/pa\\_e.pdf](https://legal.un.org/avl/pdf/ha/pa/pa_e.pdf), accessed on 16 December 2022, at 4.

<sup>28</sup> *Ibid.*

*greenhouse gas emission development strategies, mindful of Article 2 taking into account their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”<sup>29</sup>*

The use of several terms in the Article shows that in making efforts to reduce emissions, there is no obligation for state parties to communicate their emission reduction strategies, instead the Article is only encouraging state parties to try and consider the CBDR-RC principles in their efforts to reduce their emissions. Moreover, the agreement does not have a certain consequence in terms of non-compliance by state parties, such as suspension of trade, and revocation of rights and privileges. Still, the hybrid architecture has increased the level of states' participation over time.

Thus, the question arises about how the compliance mechanism can influence a significant change that could create an optimal compliance.<sup>30</sup> Neglect of responsibility by state parties is feared to worsen the impact of climate change in each country. Therefore, this article will discuss how international law plays a role in ensuring State Parties' compliance with the CBDR-RC principle in the Paris Agreement. As a matter of fact, this article will also discuss the dynamics of the CBDR-RC principle implementation process through the view of the Agreement's compliance mechanism. Finally, this article will analyze the prospects of the Paris Agreement's compliance mechanism in the future.

## **B. The Role of International Law in Rising the Compliance of State Parties with the Paris Agreement**

<sup>29</sup> Article 4 (19) of the Paris Agreement 2015.

<sup>30</sup> Anna Huggins, “Shifting Traction: Differential Treatment and Substantive and Procedural Regard in the International Climate Change Regime”, *Transnational Environmental Law*, 5:2, 2016, at 442.

### 1. The Role of International Law in Encouraging State Parties to Comply with the Paris Agreement

The Paris Agreement, as a climate change agreement and one of the Multilateral Environmental Agreements (“MEAs”), can be considered as a *sui generis* agreement. *Sui generis*, according to the Oxford dictionary, is something different from the general, unique, and can be known to have its own classification. Although often referred to as a legally binding agreement or a hard law, the Paris Agreement is actually an agreement that contains some softer obligations or known as soft law. The soft law can be found in the provisions regarding emission reduction targets that are not imposed, directly determined by the State Parties, and adapted to the circumstances of all State Parties.

Article 4 (19) of the Agreement can be one of the examples. The use of several terms in the Article shows that there is no obligation for state parties to communicate their emission reduction strategies. Instead, the Article consists of two terms “should strive” and “taking into account” which means that state parties are only encouraged to try and consider the CBDR-RC principles in their efforts to reduce their emissions. Therefore, the soft rules will essentially affect the legal character of the Agreement.<sup>31</sup>

Due to the soft form of the provisions, the Paris Agreement is known as the most effective climate change agreement in terms of high levels of participation, object determination, and target setting. Furthermore, as mentioned above, the hybrid character has raised the attention of various countries, which leads to a high level of participation, and it is continuously increasing, which

<sup>31</sup> McNair, A.D., “The Functions and Differing Legal Character of Treaties”, *British Yearbook of International Law (BYIL)*, Vol. 11, 1930, at 100.

indicates that the countries are more desirable to reduce the global emission. Regardless of the binding or the non-binding nature of the obligations contained in the Paris Agreement, the instrument will still reflect the needs behavior of countries by consensus.<sup>32</sup>

However, this hybrid characteristic of the Agreement is also one of the sources of challenges that the Paris Agreement should face. It became a challenge because it made the Agreement unable to be fully binding and coercive. As a result, this leads to concerns about the legal gaps in the Agreement, such as dissimilarity in ambitions and efforts to reduce the global emissions. Moreover, this has the potential to make the State Parties fail to achieve the fundamental goals of the Agreement and leads to state non-compliance with the provisions of the agreement.<sup>33</sup>

However, the legal nature of an agreement cannot just simply disappear. International law in effect has an important role in ensuring that all the provisions in any legal form can be complied. Primarily, the legal gap is often known as a condition where the law cannot be fully sufficient, very unclear, or imperfect to be enforced.<sup>34</sup> Therefore, when the rules of law cannot be found to be a solution to such problems, the legal principles will play a role as a tool to fill the legal gap.<sup>35</sup>

<sup>32</sup> Bharat H. Desai, *Creeping Institutionalization Multilateral Environmental Agreements & Human Security*, Bonn: UNU-EHS, 2006, at 34.

<sup>33</sup> Carter A. Hanson, “Hard and soft law in the Paris Climate Agreement”, *Student Publications*, 925, [https://cupola.gettysburg.edu/student\\_scholarship/925](https://cupola.gettysburg.edu/student_scholarship/925), at 8.

<sup>34</sup> Neha Jain, “General Principles of Law as Gap-Fillers”, [https://conferences.law.stanford.edu/2014hsvirforum/wp-content/uploads/sites/6/2016/08/Jain\\_General\\_Principles\\_of\\_Law\\_6-15-14.pdf](https://conferences.law.stanford.edu/2014hsvirforum/wp-content/uploads/sites/6/2016/08/Jain_General_Principles_of_Law_6-15-14.pdf), 2016, at 4.

<sup>35</sup> Hersch Lauterpacht, *The Development of International Law by the International Court*, UK: Cambridge University Press, 1982. See also Malcolm Shaw, *International Law (Ninth Edition)*, UK: Cambridge University Press, 2021, at 370.

In essence, the formation of international treaties is influenced by several elements such as international custom and general principles. These elements are inseparable from the fact that both are sources of international law referring to Article 38 (1) of the Statute of the International Court of Justice.<sup>36</sup> In addition, principles also have an important role in the Paris Agreement. This is because it can be used when the law develops both vertically and horizontally.<sup>37</sup> In other words, the climate change problem is very dynamic. It always continues to develop from time to time. So, the principles can always be used when the Agreement has the same problem which is the gap that could appear at any time.

The Paris Agreement therefore has various principles that are used as gap fillers in every rule that is not hard law. The principles also used as the basis for the Agreement's implementation as well. One of these principles is the principle of CBDR-RC. Therefore, although not all of its rules are legally binding, it does not mean the Paris Agreement loses its legal nature and is still referred to as a binding legal instrument. For instance, the Paris Agreement does not obligate the State Parties to achieve their emission reduction targets within a certain time, but the Agreement only obligates the State Parties to communicate their mitigation, adaptation, and financial efforts through their NDCs.<sup>38</sup> However, with the role of the CBDR-RC principle, the State Parties can at least be more ambitious in making efforts to fulfill their emission reduction targets. This happens because the principles provide

some space for each country to determine their own steps in efforts to tackle climate change, but still compensate with the obligation to fulfill its responsibilities as a State Party to reduce the global emissions.

A reflection that international law through the principles has a role in creating State Parties' compliance with the Paris Agreement in fact can be seen from how the State Parties have taken a number of actions to achieve the emission reduction targets included in their NDCs. Developing countries such as Indonesia have reported through its Enhanced NDC in 2021 on some of the steps they are taking to reduce the global emissions with a particular focus on the land use sector.<sup>39</sup> In addition, the Solomon Islands, a vulnerable country with similar conditions which has less capacity, is still making efforts to reduce global emissions through some actions. They are increasing the use of renewable energy technologies, improving energy resistance, and reducing greenhouse gas emissions with the use of hydropower and solar photovoltaic farming.<sup>40</sup>

This proves that the principle of CBDR-RC has encouraged and facilitated the State Parties to comply with the provisions of the Paris Agreement. Owing to this principle, the State Parties can contribute to reducing their own circumstances and conditions without hindering the Paris Agreement's obligations to implement the Agreement's provisions as it should be. Thus, the enforcement of the Paris Agreement's provisions can be

<sup>36</sup> Article 38 (1) Statute of the International Court of Justice.

<sup>37</sup> Wolfgang Friedmann, "The Uses of "General Principles" in the Development of International Law", *The American Journal of International Law*, Vol. 57, No. 2, 1963, at 286.

<sup>38</sup> Daniel Bodansky, "Paris Agreement", *Op. Cit.*, accessed on 16 December 2022, at 1.

<sup>39</sup> Indonesia, "Enhanced Nationally Determined Contribution Republic of Indonesia", *unfccc.int*, <https://unfccc.int/sites/default/files/NDC/2022-09/ENDC%20Indonesia.pdf>, at 2.

<sup>40</sup> Ministry of Environment, Climate Change, Disaster Management and Meteorology Honiara, Solomon Islands, *Solomon Islands 2021: Nationally Determined Contribution (NDC)*, *unfccc.int*, [https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Solomon%20Islands%20First/NDC%20Report%202021%20Final%20Solomon%20Islands%20\(1\).pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Solomon%20Islands%20First/NDC%20Report%202021%20Final%20Solomon%20Islands%20(1).pdf), at 1.

implemented effectively with the help of international law through its principle, which can be used to fill the gaps in any lack and weaknesses that exist in the Paris Agreement.

## 2. The Paris Agreement's Efforts in Ensuring State Parties to Apply the CBDR-RC Principles

As a matter of fact, based on the principle of *pacta sunt servanda*, there is an obligation for all the State Parties that are bound by a treaty to obey and comply with the provisions of the treaty.<sup>41</sup> This principle is the main principle that must be accepted and implemented by all the states which are subject of an international treaty. In fact, this principle has been applied by all treaties, such as the Vienna Convention on the Law of Treaties, through Article 26, as well as other international treaties, such as multilateral environmental treaties. Thus, states bound by a treaty should be able to comply with and implement the provisions that bind them in good faith on the basis of their willingness, not because a compliance mechanism exists in the treaty.

As mentioned earlier, the CBDR-RC principle has a central role and is used as one of the principles to underlie the implementation of the Paris Agreement. Therefore, member states of the Paris Agreement should also be able to comply with and implement the binding provisions such as the implementation of the CBDR-RC principle in good faith. Referring to the Paris Agreement, the existence of the principle can be found in the preamble of the Agreement and several articles. This shows that the principle of CBDR-RC is applied as the secondary rule that must be obeyed and implemented properly.

<sup>41</sup> Article 26 of Vienna Convention on the Law of Treaties 1969.

However, the Agreement's implementation is inseparable from non-compliance or ineffective implementation. Non-compliance primarily occurs due to several reasons, such as the ambiguity of the agreement, the lack of capacity of a state to be able to carry out its obligations, and the provisions of the Agreement that can cause significant changes to the social, economic, and political matters of member states.<sup>42</sup> Still, the non-compliance with climate change agreements generally occurs due to a lack of capacity and a reluctance of states to act to reduce the global emissions.<sup>43</sup>

In overcoming the non-compliance, a compliance mechanism is needed to ensure that the member states can properly comply with the principles of CBDR-RC. Fundamentally, the Paris Agreement tends to refer to several theories in shaping the compliance system. Based on the theory of regime compliance, the member states tend to comply with an agreement in which its legal framework is made by considering and protecting the national interests of each member state as a whole party.<sup>44</sup> In line with this theory, the Paris Agreement was formed based on the common interests of its member states which is to hold the pace of climate change. As a result, most of the Parties in the Agreement choose to comply with the provisions in the Agreement because there are national interests that must be protected from the climate change threat such as the loss of natural resources, rising

<sup>42</sup> The UNECE Committee on Environmental Policy, "Case Studies on Implementation of Environmental Policies in Countries Reviewed under the UNECE Performance Review Programme", ECE/BELGRADECONF/2007/1/Add.1, October 2007.

<sup>43</sup> Silvia Bacchetta, "Reasons for Agreeing, Reasons for Complying: The Paris Agreement and the Compliance Issue", <https://journals.openedition.org/estetica/7285>, 2020.

<sup>44</sup> Yingzhen Gong, et. al, "Study on Compliance, and Practice of International Law and Remedies", *ICPRSS*, 2022, at 1-3.

temperatures, and other disasters that threaten the national interests or state's integrity.

Moreover, based on the reputation theory, compliance can be achieved because there is a concern about a state's reputation triggered by a violation of law.<sup>45</sup> When a state has bound itself to the Agreement, the state is expected not to violate the Agreement. The reputation theory also applies to the Paris Agreement so that the member states will pay more attention to their reputation when complying or not complying with the Agreement's provisions.

Referring to these theories, the Paris Agreement forms a compliance system through a mechanism that is regulated by Article 15 of the Agreement. Through Article 15 (1), the Paris Agreement states that "A mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement is now established".<sup>46</sup> Therefore, to maintain the effective implementation of CBDR-RC principles, a committee was established under Article 15 (2) to evaluate the compliance of member states. The committee consists of twelve members with acknowledged competence in relevant scientific, technical, social - economic, and legal fields.<sup>47</sup> The compliance mechanism should be facilitative, transparent, non-adversarial, and non-punitive.<sup>48</sup> On top of that, the compliance process must also uphold the CBDR-RC principles.<sup>49</sup>

In practice, the compliance committee assesses compliance based on information that is reported by the

member states regarding the obligations listed in the Agreement. This refers to the obligations made by Article 4, which regulate member states to report the information transparently in a way to reduce global emissions. Under Article 4, the member states are required to prepare and communicate their NDCs, and ensure that the things listed in the NDCs, such as targets and efforts for mitigation, adaptation, and other contributions to reduce the global emissions can be implemented properly.<sup>50</sup> Moreover, Article 4 also stipulates that there is an application of the CBDR-RC principle by differentiating contributions between member states according to their respective capabilities.

In addition, Article 13 requires member states to report some information related to their obligations in a transparent manner.<sup>51</sup> Through Article 13 (7), member states are also required to report information related to emission inventorization.<sup>52</sup> These obligations are made to monitor the progress that states have made in implementing the provisions of the agreement such as the implementation of the CBDR-RC principle. For instance, developed countries provide some reports related to financial assistance efforts, technology transfer, and capacity building. Meanwhile, the developing countries provide information on what kind of assistance is needed to achieve their national emission reduction targets. As a result, by providing a process related to the exchange of information and cooperation between developed and developing countries, the compliance committee can assess how the principles of CBDR-RC are implemented.

The committee's effort, however, can be seen through some processes,

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<sup>45</sup> *Ibid.*

<sup>46</sup> Article 15 (1) of the Paris Agreement 2015.

<sup>47</sup> UNFCCC, *Decision 1/CP.21, Adoption of the Paris Agreement*, FCCC/CP/2015/10/Add.1 (2015), para 102.

<sup>48</sup> Article 15 (2) of the Paris Agreement 2015.

<sup>49</sup> Alexander ZAHAR, "A Bottom-Up Compliance Mechanism for the Paris Agreement", *Chinese Journal of Environmental Law* 1, 2017, at 70.

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<sup>50</sup> Article 4 of the Paris Agreement 2015.

<sup>51</sup> Article 13 of the Paris Agreement 2015.

<sup>52</sup> Article 13 (7) of the Paris Agreement 2015.

starting from the stage of reporting information, reviewing the information, and responding to the information that has been reviewed before. The provisions contained in these articles are the main basis as well as a benchmark for the committee in carrying out its main task, which is promoting compliance and ensuring the effective implementation. The facilitative role of the committee can be way more effective if the committee can engage directly with member states in terms of exchanging information, identifying challenges that they have faced, and finding joint solutions to the non-compliance problems.

With the existence of a compliance mechanism in the Agreement, member states are expected to obey and comply with the provisions. Consequently, they have to realize that even though they are having some conveniences from applying the CBDR-RC principle, they are not entirely free in determining their actions and targets, including the non-compliance. Because it is important to keep in mind that in tackling the climate change problems, a good compliance mechanism will keep the member states on the path of compliance.

### **C. Implementation of the CBDR-RC Principle through the Paris Agreement's Compliance Mechanism**

#### **1. Challenges and Member States' Efforts to Enforce Compliance with CBDR-RC Principle**

As has been mentioned previously, in the process of implementing CBDR-RC principles, the Paris Agreement has faced various challenges. However, there are also efforts made in facing these challenges which will be described in the following sections.

##### **a. Challenges in the Process of Implementing the Principle of CBDR-RC**

The challenges faced in the implementation process between developed and developing countries are fundamentally different. These challenges become one of the inhibiting effects of the Agreement's implementation. As a matter of fact, the success of the Paris Agreement essentially depends on how member states can implement its provisions properly.

The non-compliance primarily can occur for several reasons. Generally, both the Paris Agreement as one of the climate change agreements and other agreements within the scope of the MEAs have the same causes of non-compliance. In the context of climate change problems that occur due to various activities both in the past and in the present, there is a gap between developed and developing countries in terms of the implementation process. Consequently, contributions to global emissions between countries also vary based on historical aspects.

In the past centuries, developed countries have contributed large emissions when they were still in the process of developing their countries. Meanwhile, developing countries contribute a large amount of emissions presently hence they are still in the process of developing their country and also in the process of economic transition as well. Consequently, they still depend on various activities that trigger an increase of global emissions. As has been mentioned in the previous paragraph, differences in conditions between countries lead to different mitigation efforts as well.

For instance, we can see the differences between the way Indonesia and Norway implement the CBDR-RC principle. Based on the historical aspect, Indonesia's

capability is still categorized as a developing country. Indonesia is still in the stage of the development process in various sectors. Indonesia's main focus is still on increasing economic growth for the welfare of people's lives and reducing the rate of poverty. To support its economy, Indonesia still relies on industries that are not yet environmentally friendly, such as coal mining and the production of fossil fuels.<sup>53</sup> There is still a need to increase its capacity and develop the quality of human resources, especially in remote areas. Therefore, as a developing country, Indonesia still has limitations in efforts to prevent, reduce and deal with the threat of climate change.

The CBDR-RC principle therefore respects Indonesia's sovereignty to determine the right steps in its efforts to achieve the targets set out in the Paris Agreement. In addition, this principle also makes every country including Indonesia to be able to respect each other's national situation. One of the advantages of applying the CBDR-RC principles is that Indonesia can determine mitigation, adaptation, financial strategies and so on by adjusting to the conditions of the country. Indonesia has so far taken several steps in terms of efforts to reduce emissions with a main focus on the land use sector.<sup>54</sup> This has received active participation by each province, the private sector, community organizations, and other parties. Indonesia also initiated an

ambitious target of restoring 2 million ha of peatlands and rehabilitating 12 million ha of degraded land by 2030. Furthermore, in line with Article 5 of the Paris Agreement, Indonesia will determine a clear political policy regarding REDD+.<sup>55</sup>

On the other hand, Norway is categorized as a developed country by exceeding USD 79,200 of GDP per capita based on purchasing power parities (PPP) with a population of only 5.5 million.<sup>56</sup> Based on its NDC and Norway's Climate Action Plan reports, it can be seen that Norway has made various efforts in order to comply with its obligations to reduce emissions. Norway also realizes that its role as a developed country is very important to reduce global emissions by providing some assistance to developing countries.

Norway uses 98% of renewable energy sources for its electricity. Because renewable energy is the main source of manufacturing, industrial and other main activities, the GHG emissions from the energy sector are quite low.<sup>57</sup> Norway has made climate finance activities as one of its contributions to global climate response to help developing countries achieve their targets. The scope of Norway's climate finance includes in the renewable energy sector, climate change adaptation

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<sup>53</sup> Climate Action Tracker, "Climate Governance Assessment of the government's ability and readiness to transform Indonesia into a zero emissions society", *climateactiontracker.org*, <http://climateactiontracker.org/publications/climate-governance>, at 8.

<sup>54</sup> Indonesia, "Enhanced Nationally Determined Contribution Republic of Indonesia", *unfccc.int*, <https://unfccc.int/sites/default/files/NDC/2022-09/ENDC%20Indonesia.pdf>, at 2.

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<sup>55</sup> *Ibid.*, at 6.

<sup>56</sup> International Trade Administration, "Norway – Country Commercial Guide", *trade.gov*, [https://www.trade.gov/country-commercial-guides/norway-market-overview#:~:text=Norway%20is%20a%20modern%2C%20energy,\(PPP\)%20exceeding%20USD%2079%2C200.](https://www.trade.gov/country-commercial-guides/norway-market-overview#:~:text=Norway%20is%20a%20modern%2C%20energy,(PPP)%20exceeding%20USD%2079%2C200.), accessed on 26 February 2023.

<sup>57</sup> Norwegian Ministry of Climate and Environment, "Norway's Eight National Communication", December 2022, *unfccc.int*, [https://unfccc.int/sites/default/files/resource/Norway%20NC8\\_BR5.pdf](https://unfccc.int/sites/default/files/resource/Norway%20NC8_BR5.pdf), accessed on 25 February 2023, at 12.

efforts, and climate change threat and disaster risk reduction.<sup>58</sup>

From their differences in terms of implementing the CBDR-RC principle, the main factor causing the lack of implementation process in developing countries is mostly carried out by the less of their capacity to tackle the climate problems. This is caused by the condition of the country that is still in the process of building their economic growth. Meanwhile, for developed countries the challenges are how to maintain consistency to reduce the rate of climate change according to the targets they have set more ambitiously.

In general, the challenges faced by the Agreement has been divided in three forms, which are:<sup>59</sup>

1) Lack of Capacity

Although the CBDR-RC principle has made it easier for member states to deliver emission reductions in line with their capacity, the lack of capacity is still a potential problem in terms of state implementation. Besides that, it also triggers the non-compliance behavior of the member states. In general, negotiators in the Conference of the Parties (“COP”) forum said that the country they represent cannot ensure that compliance can continue due to the country's lack of capacity.<sup>60</sup>

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<sup>58</sup> Norway, “Update of Norway’s Nationally Determined Contributions (NDCs)”, *unfccc.int*, [https://unfccc.int/sites/default/files/NDC/2022-06/Norway\\_updatedNDC\\_2020%20%28Updated%20submission%29.pdf](https://unfccc.int/sites/default/files/NDC/2022-06/Norway_updatedNDC_2020%20%28Updated%20submission%29.pdf), at 1.

<sup>59</sup> Vegard H. Tørstad, “Participation, ambition and compliance: can the Paris Agreement solve the effectiveness trilemma?”, *Environmental Politics*, 2020, at 10–12.

<sup>60</sup> *Ibid.*, at 12.

Based on the member state’s obligation to submit their NDCs, it was found that lack of capacity has often been an issue that emerged in their practice and is frequently mentioned in their submitted NDCs. The lack of capacity experienced by developing countries generally consists of another issue which is the low quality of implementation programs, lack of technical feasibility such as technological deficiencies. This makes it difficult for those countries to make ambitious efforts to achieve the emission reduction targets. In contrast, developed countries have more capacity in terms of making efforts to reduce their emissions. As a result, they are able to make more concrete and ambitious efforts to reduce their emissions.

For instance, Indonesia’s challenges in increasing their capacity comes from the diversity of regional circumstances including the development progress of each region that requires a process in adjusting its implementation. In addition, weak coordination between authorities in mitigation efforts and inconsistencies in the data and information collection process also affect Indonesia’s lack of capacity.<sup>61</sup>

On the other hand, the member states of SIDS that have a higher level of

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<sup>61</sup> Indonesia, “Enhanced Nationally Determined Contribution Republic of Indonesia”, *unfccc.int*, <https://unfccc.int/sites/default/files/NDC/2022-09/ENDC%20Indonesia.pdf>, at 20.

vulnerability to climate change threat also face the same challenges. Natural resources that are affected by climate change are in fact the main source of their main income as well as supporting factors to reduce their poverty, improve the lives of their citizens, and maintain the integrity of these countries. These facts indeed make it difficult for them to maintain a good compliance.

## 2) Climate Finance

A country's lack of capacity in implementation efforts is also linked to the next compliance challenges which is a shortage in terms of climate finance. Financial reasons such as insufficient climate finance is a potential problem for developing countries. Besides that, for developed countries, climate finance can also be a challenge.

Through Article 9 of the Paris Agreement, it is regulated that developed countries are directed to be able to provide financial resources to assist developing countries in mitigation and adaptation efforts. However, the challenges faced by developed countries in providing financial assistance are often triggered by other problems that are currently occurring in countries that have the largest donors for climate funds. The withdrawal of the United States from the Agreement has in fact significantly affected the loss of climate

finance. This happened because the US became one of the largest donors to the Green Climate Fund (GCF) in 2016.

From the developing countries point of view, climate finance has a central role in strengthening their implementation and compliance with the Agreement. financial assistance is urgently needed by these countries to increase their capacity in mitigation and adaptation efforts. Moreover, climate finance can help developing countries to be more ambitious in setting their emission reduction targets.

## 3) Domestic Politics

Domestic politics is also one of the challenges that affects the implementation and compliance with the Agreement. The emergence of communities that oppose climate policies is an obstacle to the implementation of climate policies in the country. For example, in 2018 there was a movement called "the Yellow Vests movement" which aimed to encourage French President Macron to abolish the fuel tax because it was considered unfavorable to the middle and lower classes.<sup>62</sup> The interplay between a country's political conditions can easily influence the politics of other countries. Thus, the withdrawal of the United

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<sup>62</sup> Emmanuel Macron, "The 'yellow vest' movement explained", *aljazeera.com*, <https://www.aljazeera.com/news/2018/12/4/the-yellow-vest-movement-explained>, accessed on 1 May 2023.

States from the Agreement also has the potential to encourage other countries to refrain from complying with the Agreement or even more so to withdraw from the Agreement.

The domestic political policies of a country which are not in line with the provisions of the Agreement while in fact they are bound to the Agreement also pose a challenge to compliance. The problem generally arises because of the autocratization of the country. Autocratization generally arises due to weak accountability between political leaders and the public, which allows political leaders to avoid implementing ambitious emission reduction targets. This problem mostly arises in countries that have large populations and are still in the economic growth stage such as China, India and Indonesia.

For example, in China, approvals for coal mining activities have increased fivefold in 2019.<sup>63</sup> Meanwhile, Indonesia has also experienced the same thing. Although it has committed to be ambitious in using renewable energy as a mitigation effort, Indonesia still has many coal-friendly programs and policies. The Indonesian government, through Joko Widodo's leadership, is currently

building a green industrial area and plans to use a coal-fired power plant to drive the area.<sup>64</sup> This is indeed contrary to the contents regulated by the Paris Agreement.

The Indonesian government is considered to be less ambitious in setting emission reduction targets because its policies are still focused on economic growth. As a country whose economy depends on coal industries, mitigation and adaptation efforts have not focused on reducing emissions from that sector.<sup>65</sup> Meanwhile, the largest emissions are generated from the energy sector. Therefore, a country's leadership also has an influence on its successful compliance with the Agreement.

The occurrence of non-compliance due to the many challenges faced by the Agreement certainly leads to how the compliance mechanism process in ensuring compliance can be carried out properly. However, in fact the mechanism of compliance in the Paris Agreement also has its own challenges, so it has not been able to run effectively.

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<sup>63</sup> Emmanuel Macron, "The 'yellow vest' movement explained", *aljazeera.com*, <https://www.aljazeera.com/news/2018/12/4/the-yellow-vest-movement-explained>, accessed on 1 May 2023.

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<sup>64</sup> Julia Simon, "Despite billions to get off coal, why is Indonesia still building new coal plants?", *npr.org*, <https://www.npr.org/2023/02/05/1152823939/despite-billions-to-get-off-coal-why-is-indonesia-still-building-new-coal-plants>, accessed on 2 May 2023.

<sup>65</sup> Hans Nicholas Jong, "Indonesian president slammed for wait and see proach on climate action", *news.mongabay.com*, <https://news.mongabay.com/2021/05/indonesian-president-joko-jokowi-widodo-slammed-for-wait-and-see-approach-on-climate-action/>, accessed on 2 May 2023.

One of the reasons is that the compliance committee as the authority that runs the compliance mechanism does not yet have a firm mandate. Unlike the Kyoto Protocol, where the compliance mechanism is indeed punitive, the Paris Agreement's less binding character makes the Agreement's compliance mechanism have not been fully effective. In the case of non-compliance, the compliance committee does not have more jurisdiction to determine the response to be given to the problem.

In example, the Kyoto Protocol has another organ which is The Expert Review Teams (ERT), whose task is to technically examine all information coming from Annex I countries and verify the implementation of the Protocol to be reported to the COP. These actions are carried out to determine the form of response to a non-compliance, generally in the form of economic sanctions.<sup>66</sup>

Apart from that, due to the non-punitive nature of the Agreement, the compliance committee in the Paris Agreement does not have such power. As a consequence, when non-compliance exists, for example when the state is not submitting their NDCs according to the required

time, all that can be done by the committee is to set another deadline for the submission.<sup>67</sup> This will potentially make the member states do the same thing because there are no sanctions imposed due to non-compliant behavior. Therefore, the compliance committee has not been fully maximized in enforcing compliance.

To conclude that, although the compliance mechanism is considered as one of the ways to enforce compliance and proper implementation of the Paris Agreement, it is still necessary to strengthen the compliance mechanism. This includes strengthening the mandate of the compliance committee. However, it aims to realize the effective implementation of CBDR-RC principles and to increase the ambition of each member state so that the provisions can be implemented properly. Most importantly, the effectiveness of future compliance mechanisms will continue to depend on the willingness of member states to honor their commitments to the Paris Agreement. However, it is incomplete without the high credibility of the compliance committee.

#### **b. Efforts Made to Enforce Compliance of CBDR-RC Principle**

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<sup>66</sup> UNEP, "Key concepts, procedures and mechanisms of legally binding multilateral agreements that may be relevant to furthering compliance under the future mercury instrument", UNEP(DTIE)/Hg/INC.1/1, 15 March 2010, para 31.

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<sup>67</sup> Alexander ZAHAR, "A Bottom-Up Compliance Mechanism for the Paris Agreement", *Op. Cit.*, at 78.

Generally, in refers to various compliance theories, the state can enforce compliance for a number of reasons. These reasons start from in the case of non-compliance the agreement has some binding provisions that includes certain sanctions.<sup>68</sup> Moreover, if a state has already agreed to be bound by these provisions they will also agree to comply. States will obey the agreement if the provisions are made through a good and correct process. On top of that, if the states gain some benefits when implementing the binding provision they will certainly comply with the agreement. Importantly, if the agreement was formed with a great framework and institution, the states will also obey the provisions of the agreement.

In the author's view the non-compliance can be overcome by the rules that constitute an easy way for member states to carry out implementation properly and the existence of competent institutions. As mentioned earlier, the efforts to enforce the compliance of the Agreement's provisions such as the CBDR-RC principle can be seen from the practices that have been carried out by each member state in implementing the principle. First, member states tend to comply with the provisions of the Treaty which provide benefits and facilitate them in various ways.<sup>69</sup> In terms of provisions, the CBDR-RC principle is loaded to make it easier for the member states to be able to make a maximum contribution to reducing their country's emissions by

adjusting their actions to the conditions of their country.

For instance, despite being a developed country Norway is still a huge producer and exporter of fossil fuels. However, Norway still strives to comply with the Agreement by trying to reduce its emissions in other sectors that fit its capacity. Norway is reducing its emission in the energy sector by using 98% of renewable energy sources for electricity.<sup>70</sup> Since renewable energy is the main source of manufacturing, industry, and other vital activities, the GHG emissions from the energy sector are quite low in the country.<sup>71</sup>

Besides that, based on compliance theory which is the regime theory, states tend to comply with agreements who have a well designed framework.<sup>72</sup> A good framework of an agreement can be seen from the level of effectiveness of its elements, one of which is through the good institutions. The better of the compliance committee in facilitating member states, the more compliance will be achieved. A good institution can be obtained from how this institution can monitor the behavior of member states and how they can ensure that non-compliance by any states can become the concern of other member states.<sup>73</sup>

Thus, the compliance committee who acts as one of the authorized institutions can encourage good compliance. Finally, in accordance with the duties

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<sup>68</sup> Andrew T. Guzman, "A Compliance-Based Theory of International Law", *California Law Review*, Vol. 90, No. 6, 2002, at 1830 – 1836.

<sup>69</sup> Yingzhen Gong, et. al, "Study on Compliance, and Practice of International Law and Remedies", *ICPRSS*, 2022, at 3.

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<sup>70</sup> WWF, "Norway: Some Way to Go", *panda.org*, [https://wwf.panda.org/discover/our\\_focus/climate\\_and\\_energy\\_practice/ndcs\\_we\\_want/reviewed\\_ndcs\\_norway/](https://wwf.panda.org/discover/our_focus/climate_and_energy_practice/ndcs_we_want/reviewed_ndcs_norway/), accessed on 25 February 2023.

<sup>71</sup> Norwegian Ministry of Climate and Environment, "Norway's Eight National Communication", *Op. Cit.*

<sup>72</sup> Yingzhen Gong, et. al, "Study on Compliance, and Practice of International Law and Remedies", *Op. Cit.*

<sup>73</sup> Anu Bradford, "Regime theory", *Oxford Public International Law*, 2007, at 3.

mandated by the Agreement through Article 15, the compliance committee should be able to act to ensure that member states comply with the provisions of the Agreement. Therefore, the author highlights that a good institution will encourage the member states to willingly comply with the provisions of the Agreement such as the implementation of the CBDR-RC Principles.

## 2. The Future Prospect of Paris Agreement's Compliance Mechanism

The Paris Agreement chose the compliance mechanism as a way to ensure compliance and to uphold accountability for the implementation of its provisions, including the CBDR-RC principles. Therefore, the success of implementation is strongly dependent on how the compliance mechanism can work effectively. Through the work of the compliance committee, compliance can be carried out by identifying challenges, sharing some information, and making recommendations, including access to financial assistance, technology transfer, and supporting the need of capacity building. The facilitative character in the compliance committee is urgently needed in terms of fighting the issue of climate change. The architectural uniqueness of the Paris Agreement includes the form of compliance mechanism chosen to aim a balance between state participation and their commitments towards the provisions. However, issues related to accountability, implementation, and compliance have not been fully resolved.

For this reason, it is possible that the compliance committee in the future may have the power to provide some recommendations or final decisions regarding a non-compliance besides facilitating the assistance to

non-compliant states. Moreover, in this case, a technical or political approach by the committee might be needed to anticipate the non-compliance by the member states.<sup>74</sup> Aside from that, Article 15 of the Paris Agreement has indeed been regulated in such a way regarding the scope of the compliance mechanism including the mandate of the compliance committee. Nevertheless, this scope is considered to be too broad. Therefore, it is necessary to narrow the scope of the compliance committee's mandate.<sup>75</sup> Similar to the Kyoto Protocol, this can be done by emphasizing the committee's jurisdiction to determine how to respond to non-compliance issues.

Furthermore, expanding the scope of the compliance committee to improve the implementation of the CBDR-RC principles can be done in various alternative ways. These methods include an activity such as holding an open discussion between the member states, with the compliance committee, or with the other authorities when non-compliance occurs. Based on the reputation theory, state parties should mind their reputation in accordance with what has been done by and how they behave at certain times. This also can provide social sanction such as a huge reputational loss for non-compliant states'. On the other hand, it could encourage these states' to comply with the provisions.

On top of that, the role of the compliance committee also needs to be expanded. It can start with how the

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<sup>74</sup> Imad Antoine Ibrahim, et. al, "The Paris Agreement Compliance Mechanism: Preparing for COP 26 In Glasgow and Beyond", *11 WAKE FOREST L. REV. ONLINE \_ (2021 Forthcoming)*, University of Miami Legal Studies Research Paper No. 3958371, 2021, at 113.

<sup>75</sup> Jhalak Aggarwal, et. al, "Strengthening Climate Accountability: Improving Compliance and Delivery under the Paris Agreement", New Delhi: Council on Energy, Environment and Water, 2022, at 5.

authority can find out about the profile of each member state.<sup>76</sup> Therefore, the committee can assess and analyze the strength and the weakness of some states. For instance, a non-compliant state that relies on market mechanisms may be subject to some additional carbon access or certain fines. In terms of developing states, changing the ratio of assistance could be an option to punish the non-compliant states. An example of this is by reducing the level of grants for non-compliant states. In another way, restricting a state's participation in certain negotiations, conferences, or any meetings can also be an alternative way to push the state's compliance. Therefore, the member states will be encouraged to comply with the Agreement.

This method may have two possibilities. First of all, the member states may feel forced to comply with the Agreement. However, on the other hand, the states might wish to withdraw from the Agreement because of those consequences. Besides that, another way can still be done to overcome the compliance challenge. It can be by increasing incentives or assistance for states that are willing to comply with the provisions and for states that have major efforts or contributions to reducing the global emissions. However, when it comes to expanding the scope of the compliance committee, an effective role of the state is highly needed to be able to collaborate with others and to comply with the provisions. However, it might be more effective if other parties such as non-state parties also have an important role in a way to enforce compliance.

The role of non-state parties can also be strengthened in various ways.

For instance, it can be strengthened by making some formal provisions that could support or encourage their role in helping state parties to reduce the global emissions. Furthermore, at the national level, the making of national climate regulations can also help to boost the implementation and compliance of member states. In fact, the existence of domestic legal provisions can strengthen the accountability of the Agreement and at the same time it can anticipate the act of non-compliance. In this regard, these domestic provisions should also be in line with the mandatory provisions of the Paris Agreement.

After all, the compliance mechanism will not work properly and effectively if there is no desire from the member states to comply with all the provisions including the CBDR-RC principles that contained in the Agreement. Innovations can be carried out, but it must be in accordance with and in line with the objectives and the architecture of the Paris Agreement as an agreement that is made to address the climate change issues. In practice, both developed and developing countries each have their own challenges in making an effort to comply with the Agreement including the CBDR-RC principles. In a nutshell, even though each state is given the opportunity to determine their own targets to reduce the global emission according to its capabilities, they still have the obligation and responsibility to comply with the provisions of the agreement, which is to reduce the global emissions and to tackle climate change.

#### **D. Conclusion**

Although the Paris Agreement has a soft character, does not mean that the Agreement loses its legal character and cannot be enforced. International law through its principles of international law

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<sup>76</sup> *Ibid*, at 6.

have appeared as gap fillers to show that the Agreement still has a legal characteristic even though it has rules that are not fully binding. Therefore, compliance of the state parties can still be enforced. In order to ensure that the provisions of the Agreement can be implemented effectively, a good compliance mechanism is needed to make sure that the CBDR-RC principle is indeed implemented properly. Although lack of capacity, climate finance, and domestic political policies still be challenges that can obstruct the enforcement and states' compliance, these problems can be solved by provisions that could facilitate the state parties in terms of implementation and also supported by a good institutional compliance mechanism. As a matter of fact, the principle of CBDR-RC does not prevent state parties from fulfilling their responsibilities as parties who already agree to comply within the Agreement.

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