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Letter to the Editor

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Robust Safeguards on Carbon Capture Needed Before Any Implementation

It is indeed deeply regrettable that the Dewan Rakyat quickly passed the Carbon Capture, Utilisation and Storage (CCUS) Bill on Thursday, 6 March, despite the raising of many critical issues by several Members of Parliament (MPs), especially from the opposition bench, which did not get meaningful responses. The MPs echoed the concerns raised by NGOs on the Bill's shortcomings, particularly in regard to issues of liability and efforts to address the long term environmental and social impacts arising from CCUS projects.

Economy Minister, Datuk Rafizi Ramli in his winding up speech on Thursday, rubbished the claim that the Bill was rushed, saying that prior consultations had been held and that all concerns had been addressed. Regrettably, these consultations did not involve the Bill in detail, but only covered general and vague elements, leaving more disclosure wanting. Hence, the public alarm when we saw the full Bill for the first time.

The Minister's perceived haste was clear when he revealed that "The government aims to gazette the bill by March 31, to secure long-term investment opportunities," adding that "the tender for carbon storage is currently ongoing. If Malaysia cannot enforce this (Bill) by March 31, we will be out — we cannot enter the bid."

The Minister's remarks relate to the country positioning itself as a regional carbon disposal hub, where foreign companies can dispose of their carbon in Malaysian waters and land, with the promise of large sums of revenue in return. Towards this end, PETRONAS together with Petroleum Sarawak Berhad (PETROS), have been inking agreements with several Japanese and South Korean companies and the government. These arrangements have gone on without transparency, despite the long-term implications of storing carbon for many hundreds of years, due to the long lifetime of carbon dioxide (CO₂).

Such ventures of storing carbon from other countries are certainly not efforts to reduce our own domestic carbon emissions, but in fact risk raising emissions nationally, should any leakage happen. This also passes the burden on maintaining these carbon storage sites on to our future generations for centuries to come.

The proposed CCUS law is not just to deal with foreign CO₂ wastes, but also to deal with emissions from domestic actors, particularly from the fossil fuel sector.

CO₂ in high concentrations, is a toxic gas and an asphyxiant, which can cause coma and death. Leakage to adjacent geological formations from carbon storage may also cause geochemical reactions, including stimulation of seismic activity, and the mobilisation of potentially polluting elements, such as heavy metals, which can contaminate drinking water and underground water, affect marine life, our fishery resources, as well as imperil surrounding local communities.

A scrutiny of the Bill shows that it is not robust enough to deal with all the hazards and risks in hand, and does not contain sufficient safeguards for environmental protection and public health. This must be urgently rectified before embarking on any bids for CCUS projects.

Under the CCUS Bill, carbon capture facilities must be registered, and operators are required to obtain permits for both offshore and onshore carbon storage sites. It is claimed that strict monitoring and safety protocols will be enforced to prevent leaks and environmental damage. However, these safety protocols remain to be elaborated.

The Bill refers to "prudent CCUS practices", which is to be construed as "any practice, method, measure and standard generally followed by the global CCUS industry", including "(a) any requirement as prescribed by the Minister after

consultation with the relevant competent technical entity (CTE); (b) any guideline issued by the relevant CTE; or (c) any standard issued by any recognised body at the national or international level.”

This definition of what are “prudent CCUS practices...generally followed by the global CCUS industry” is indeed the most concerning part of the Bill, which raises many questions. Firstly, what is the meaning of the “global CCUS industry”? Secondly, who is to decide what is prudent or not?

The Deputy Economy Minister, Hanifah Hajar Taib, informed Parliament on 5th March that the ministry had appointed the Global CCS Institute as a consultant to carry out a study on Malaysia’s CCUS Legal and Regulatory framework “in line with legislation and best practice at the international level”. The Minister also said that “this CCUS Bill has been drafted based on the best practices of CCUS at the international level, and has taken into account the need for efficient risk management”.

As disclosed on its website, the Global CCS Institute’s “mission is to accelerate the deployment of CCS”, and its membership includes many big fossil fuel corporations, whose business is in continuing fossil fuel production and expansion. They have a vested interest in promoting CCS technology and are not independent, or unbiased. They are not in the realm of public health and environmental protection.

Relying on the global CCUS industry for guidance on what are “prudent” practices, does not give any cause for comfort for the provision of effective safeguards, as this is akin to having the fox guard the chicken coop!

Further, it was explained that the proposed Act “is only intended to address regulatory gaps and will not propose new technical laws falling within the jurisdiction of other existing laws.” This gives rise to many questions.

There is no law yet to regulate greenhouse gases, including for CO₂. This is supposed to be addressed by the pending Climate Change law, which is still being drafted and is in the purview of the Ministry of Natural Resources and Environmental Sustainability. Pushing ahead with the CCUS law without waiting for the Climate Change Act appears to be jumping the gun, and is without proper policy and legislative coherence.

Further, as regards to managing environmental and social risks stemming from CCUS projects, existing laws are unclear and there are regulatory gaps which the proposed CCUS law does not address.

For instance, in respect of the need for Environmental Impact Assessments (EIA), the current guidelines do not make clear that CCS projects require EIAs, which should come under the Second Schedule, which make it mandatory for public display and public comment. The EIA guidelines must be amended to enable this requirement.

We fear that what happened in the case of the Kasawari project in Bintulu, Sarawak undertaken by PETRONAS will be repeated. The Kasawari project will be the largest offshore CCS venture in the world by volume of CO₂ captured, and its EIA was approved without any public display or public comment. It is to be noted that the proposed CCUS law does not extend to Sarawak and Sabah.

We also believe that given the environmental and social impacts of CCUS projects which can transcend state and national boundaries, such projects should be required to obtain planning approvals, including from the National Physical Planning Council (headed by the Prime Minister) under the Town and Country Planning Act (TCPA)1976. This is currently not provided for under the TCPA. Hence, this is a major lacuna.

Clearly, there are serious gaps in the current Bill that remain unaddressed. With the passage of the Bill in the lower house, it will now make its way to the Dewan Negara for debate and vote, which can be expected to approve the Bill in its current form, despite its deficiencies. This is so, given the push by the Economy Minister to have a law in place by the end of this month, so that the CCUS projects can take off as soon as possible.

Such a rush to bid and approve CCS projects without proper environmental and social safeguards in place would be a grave folly, where the commercial interests of big corporations will trump over the public interest and the environment. The government must balance all interests and not cave in to the powerful corporations and their lobbies.

There is still time to course correct, if there is the political will to do so. As the wise adage goes, it is better to be safe than sorry.

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