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TOPIC OF THIS EDITION

"LEGAL IMPACT OF GEOPOLITICAL TENSIONS ON INTERNATIONAL TRADE AGREEMENTS" AND "BUSINESS AND HUMAN RIGHTS NATIONAL STRATEGY IN RELATION WITH BUSINESS AND INVESTMENT POLIC"

NATIONAL LAW DEVELOPMENT AGENCY

MINISTRY OF LAW AND HUMAN RIGHTS OF RI

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EDITORIAL BOARD

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FROM EDITOR'S DESK

The Indonesian Law Journal is pleased to present Volume 17, Number 2, which focuses on two significant and timely themes: **The Legal Impact of Geopolitical Tensions on International Trade Agreements** and **Business and Human Rights National Strategy in Relation to Business and Investment Policy**. These themes are particularly relevant in the current global landscape, where shifting geopolitical dynamics and evolving human rights considerations profoundly influence international trade and economic development.

The articles featured in this volume provide valuable insights into how legal frameworks can address the challenges posed by geopolitical tensions and promote a human rights-based approach to business and investment. By examining these issues from legal, economic, and policy perspectives, this edition seeks to contribute to ongoing efforts to strengthen international cooperation, economic resilience, and human rights protections.

This edition collected 6 (six) articles from various writer's backgrounds in law field. First, Fahrurozi Muhammad presented "The Intersection Between Investment and Human Rights: Business and Human Rights National Strategy and the Business Ready Program in Indonesia'' which finds that the Regulation lacks of mandate for human rights due diligence. Additionally, it notes that the B-Ready initiative primarily emphasizes economics, labor, and consumer protection rights, without comprehensively addressing broader human rights enforcement. The Second article is written by Wisnu Widayat and team with the title of "Legal Implication of US-China Trade War on Indonesia's Policy Relating to Palm Oil Industry". This article shows that the reasons of the decline in Indonesian CPO exports are the rejection of several European Union countries, which prevented the entry of Indonesian CPO and the influence of the China and United States trade war where soybean and sunflower oil are abundant as boycott between China and the US. Next article is "Guaranteeing Adherence to Human Rights Standards in Infrastructure Projects: A Legal Examination of The National Strategy for Business and Human Rights in Indonesia's Public-Private Partnership Legal Framework" by Putrida Sihombing which discuss the integration of human rights principles into Indonesia Public-Private Partnership (PPP) Legal Framework with focusing on the implementation of Presidential Regulation No. 60 of 2023. The fourth article is written by Liza Hafidzah Yusuf Rangkuti and her team with their article's tittle related to "Indigenous Forests and Carbon Trading: Assessing the Potential for Human Rights Violations". The fourth article is "Assessment of Indonesia's Legal Framework for Human Rights in Corporate Settings" by Edgar Soonpeel Chang. And last article is "The Justice Erosion of the Imposition of Economic Sanctions in International Law Enforcement" written by Marcellino Gonzales.

The Indonesian Law Journal remains committed to supporting legal scholarship and encouraging critical discussions on issues of national and international importance. We extend our appreciation to the authors, reviewers, and editorial team whose hard work and dedication have made this publication possible.

We hope this volume inspires further research and dialogue among policymakers, legal practitioners, scholars, and students, fostering solutions to complex global challenges.

Editor of Indonesian Law Journal

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THE INTERSECTION BETWEEN INVESTMENT AND HUMAN RIGHTS: BUSINESS AND HUMAN RIGHTS NATIONAL STRATEGY AND THE BUSINESS READY PROGRAM IN INDONESIA

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ABSTRACT

Indonesia has enacted Presidential Regulation No. 60 of 2023 on Business and Human Rights National Strategy. This regulation is intended to enhance efforts of human rights protection in business practices inspired by United Nations Guiding Principles on Business and Human Rights. In the same year, the World Bank also introduced Business Ready, which serves as Indonesia's primary policy for investment. Through the utilization of the normative juridical method and secondary data analysis, this study examines the substance of the Presidential regulation and the World Bank's initiative. This research is aimed to find the intersection between Indonesia's concern for protecting human rights and boosting the economy through its Presidential Regulation and its national investment policy. It finds that the Regulation lacks of mandate for human rights due diligence. Additionally, it notes that the B-Ready initiative primarily emphasizes economic, labor, and consumer protection rights, without comprehensively addressing broader human rights enforcement.
Keywords: Business, Investment, Human Rights.

A. Introduction

In 2023, The Government of Indonesia launched Presidential Regulation No. 60 of 2023 on Business and Human Rights National Strategy (Presidential Regulation on Business and Human Rights). This regulation aims to strengthen the human rights aspect within the business sector.[1] In the same year, The World Bank initiated the Business Ready (B-Ready) program. B-Ready serves as the World Bank's latest flagship report evaluating the business environment and investment climate across various global economies.[2]

1 The Ministry of Law and Human Rights, "Pemerintah Luncudkan Perpres Tentang Stranas Bisnis dan HAM," The Ministry of Law and Human Rights, https://www.kemenkumham.go.id/berita-utama/pemerintah-luncurkan-perpres-tentang-stranas-bisnis-dan-ham (accessed 7 March 2024).

2 The World Bank, "Business Ready," The World Bank, https://www.worldbank.org/en/businessready (accessed 7 March 2024).

Ideally, these two programs should be aligned and synchronized. Additionally, investment should strengthen and not undermine human rights.[3] To put it simply, investors ought to uphold human rights, whether it pertains to their employees, clients, beneficiaries, or society at large.[4] However, the interaction between human rights and investment often shares a complex relationship. It is no secret that investors and businessmen keep violating human rights while doing their business.[5] One of the major examples of the negative effect of investment in human rights perspective in Indonesia's history was the ExxonMobil case. In the late 1990s and early 2000s, The company was accused of assaults, torture, and extrajudicial killings of local villagers in its gas field.[6]

Amnesty International has exposed numerous cases where corporations exploit weak regulations with devastating effects on people and communities.[7] These include incidents such as oil spills that infect the cleanliness of water supplies, land contamination from mining waste, and polluted air thanks to industrial facilities.[8] The ramifications of pollution resulting from corporate activities can significantly affect indigenous peoples, as their way of life and identity are frequently intertwined with their land.[9] Communities impacted by this pollution are often deprived of information regarding the consequences of company operations, leading to their exclusion from decision-making processes that profoundly impact their lives.[10] Furthermore, they are sometimes subjected to forced evictions[11], exacerbating their vulnerability.

Communities' efforts to seek justice are hindered by inefficient legal systems, limited access to information, corruption, and influential alliances between the state and corporations.[12] Alarmingly, when impoverished individuals are unable to attain justice,

3 Columbia Center on Sustainable Investment, "Human Rights ad Investment," Columbia University, https://ccsi.columbia.edu/content/human-rights-and-investment (accessed 7 March 2024).

4 Principles for Responsible Investment, "Why and how investors should act on human rights," United Nations Environment Program, https://www.unpri.org/human-rights/why-and-how-investors-should-act-on-human-rights/6636.article (accessed 7 March 2024).

5 Rutgers Center for Corporate Law and Governance, "The Rise of Self-Expression in Investment," Rutgers Law School, https://cclg.rutgers.edu/wp-content/uploads/Rise_of_Self-Expression_in_Investment_materials_2019.09.27.pdf#page=59 (accessed 7 March 2024).

6 Business and Human Rights Resource Center, "Indonesia: After two decades, ExxonMobil settles case of alleged human rights abuses including torture brought by Aceh villagers", https://www.business-humanrights.org/en/latest-news/indonesia-after-two-decades-exxonmobil-settles-case-of-alleged-human-rights-abuses-including-torture-brought-by-aceh-villagers/?utm_source=chatgpt.com (accessed 20 November 2024).

7 Amnesty International, "Corporate Accountability," Amnesty International, https://www.amnesty.org/en/what-we-do/corporate-accountability/ (accessed 7 March 2024).

8 Ibid.

9 Ibid.

10 Ibid.

11 Forced eviction is "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 7 (1997) on the Right To Adequate Housing: Forced Evictions.

12 Amnesty International, "Corporate Accountability,"…

corporations perceive that they can exploit poverty with impunity.[13] Not to mention other important issues within corporations such as gender justice,[14] racial discrimination,[15] equal rights for diffable[16], and other critical issues as well. These situations undoubtedly infringe upon human rights and have severe repercussions on the livelihoods of thousands of individuals.

George G. Brenkert believes that this condition is hindered by the general reluctance of most businesses to address human rights concerns and the numerous challenges businesses face in assuming human rights responsibilities.[17] That said, the conflict between prioritizing human rights or investment is evident on a global scale, including in Indonesia. Following the enactment of Law No. 11 of 2020 on Job Creation[18] (Law on Job Creation), doubts have emerged regarding the government's genuine concern for human rights issues. It appears that the government prioritizes commercial benefits, a perception fueled by its tendency to prioritize economic interests over addressing human rights, environmental issues, and other development objectives.[19]

This concern is valid since Law on Job Creation has sparked controversy across various sectors of society, particularly within the labor rights.[20] Tobing, Ginting, and Melayu suggested that numerous provisions within the law curtail workers' rights, emphasizing a more adaptable employment structure that heavily favors employers' interests.[21] Consequently, there are concerns about the potential legalization of modern forms of slavery, which contradicts fundamental human rights principles.[22]

Regarding Law on Job Creation, Marsudi Triatmodjo worries that beneath the pursuit of economic expansion, apprehensions arose regarding the potential trade-off: sacrificing

13 Ibid.

14 Uli Parulian Sihombing, "Perlindungan Hukum Terhadap Buruh Perempuan Di Tempat Kerja." *Jurnal Hukum Dan Bisnis (Selisik)* 2, no. 1 (2016): 66-78.

15 Ashly Williams, "Modern-Day racism in the workplace: Symbolic diversity or real change?." *From Science to Practice: Organizational Psychology Bulletin* 1, no. 1 (2015): 6-10.

16 Khofifah Mulyani, Muhammad Sahrul, and Alfan Ramdoni. "Ragam diskriminasi penyandang disabilitas fisik tunggal dalam dunia kerja." *KHIDMAT SOSIAL: Journal of Social Work and Social Services* 3, no. 1 (2022): 11-20.

17 George G. Brenkert, "Business Ethics and Human Rights: An Overview." *Business and Human Rights Journal 1,* no. 2 (2016): 277–306. https://doi.org/10.1017/bhj.2016.1.

18 Constitutional Court Decree No. 91/PUU-XVIII/2020 later declared this Law unconstitutional. In response, the Government enacted Government Regulation In Lieu of Law No. 2 of 2022 on Job Creation, which was subsequently ratified as Law under Law No. 6 of 2023.

19 Office of the Hight Commisioner of Human Rights (OHCHR), "Trade and Investment," United Nations, https://www.ohchr.org/en/development/trade-and-investment (accessed 7 March 2024).

20 Christina N.M. Tobing, Sryani Br. Ginting, and Hasnul Arifin Melayu. "Analysis Of Labor Rights After The Job Creation Law In Perspective Of Human Rights." *Jurnal Hukum Dan Peradilan* 12, no. 1 (March 31, 2023): 97. https://doi.org/10.25216/jhp.12.1.2023.97-128.

21 Marsudi Triatmodjo and Istiqomatussalma, "The Possible Impacts of the Law on Job Creation in Respect of the United Nations Declaration on the Rights of Indigenous Peoples," Universitas Gadjah Mada, https://etd.repository.ugm.ac.id/penelitian/detail/201650. (accessed 7 March 2024).

22 Ibid.

the environment and the rights of indigenous communities governed by adat law.[23] These communities may find themselves in competition with businesses for the resources on their land, crucial for their sustenance.[24] This prompts inquiry into whether the Indonesian government considered the interests of indigenous peoples during the drafting of the Job Creation law.[25]

In order to address those concerns, the Government has enacted Presidential Regulation on Business and Human Rights. The regulation outlines policy directions and national strategies to promote human rights-friendly business practices. It is developed with principles of non-discrimination, equality, participation, accountability, and transparency.[26] Moreover, the government highlighted another aspect to consider in fulfilling human rights in this regulation, which is the provision of public services to the community. Especially vulnerable groups such as the elderly, people with disabilities, children, and pregnant and lactating women.[27]

While this regulation instills optimism by indicating the government's attention to human rights in business operations, it does not immediately dispel skepticism regarding the government's prioritization of profit over human rights.[28] Particularly with the B-Ready program looming, which implies that Indonesia might prioritize enhancing its B-Ready score over human rights concerns. This study aims to explore the intersection between business and human rights, assessing whether the regulation genuinely tackles human rights issues within the business sector, especially with the impending implementation of the B-Ready program.

B. Research Method

This paper employs the normative juridical method, which relies on secondary data.[29] The main sources of data include regulations, particularly the Presidential Regulation on Business and Human Rights, as well as other scholarly research. The research methodology adopted is qualitative, with a descriptive approach.[30] Library research is utilized in this study

23 Ibid.
24 Ibid.
25 Ibid.
26 Press Release, "Menko Airlangga: Strategi Nasional Bisnis dan HAM Menjadi Alat Efektif dalam Mendukung Iklim Bisnis dan Investasi yang Mengedepankan HAM di Indonesia," The Coordinating Ministry of Economic Affairs, https://ekon.go.id/publikasi/detail/5467/menko-airlangga-strategi-nasional-bisnis-dan-ham-menjadi-alat-efektif-dalam-mendukung-iklim-bisnis-dan-investasi-yang-mengedepankan-ham-di-indonesia (accessed 8 March 2024).
27 Ibid.
28 RMBOL Bisnis, "Stranas BHAM Belum Sentuh Pekerja Industri Kelautan dan Perikanan," Republika https://rmol.id/bisnis/read/2023/10/11/592692/stranas-bham-belum-sentuh-pekerja-industri-kelautan-dan-perikanan (accessed 9 March 2024).
29 Sri Mamudji *et al.*, *Metode Penelitian dan Penulisan Hukum*, (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005), Page 6.
30 *Ibid*, Page 4.

due both of Presidential Regulation on Business and Human Rights and B-Ready program just introduced recently, therefore we can not see their impact at the moment just yet.

Additionally, secondary legal materials such as books, journals, news articles, and official statements are also utilized. Hence, to comprehend the relationship between business and human rights, this study will examine viewpoints from scholars such as Aristotle and Amartya Sen to explore the connection between business and investment. Furthermore, it aims to grasp the fundamental principles outlined in the Presidential Regulation on Business and Human Rights as well as the B-Ready program.

C. Discussion

This chapter is divided into four sections. Firstly, we will assess the importance of investment and human rights from an ethical perspective. Secondly, we will scrutinize the United Nations Guiding Principles on Business and Human Rights (UNGPs). Thirdly, we will examine the relevance of the Presidential Regulation on Business and Human Rights and how it may affect the B-Ready program. Lastly, we will assess the B-Ready Program and how it concerns human rights within its scope.

1. Investment and Human Rights on Ethical Perspective

When addressing matters of human rights, it is inevitable to also consider ethical perspective. Ethics and human rights are closely intertwined, as they both revolve around principles of fairness, justice, and respect for the dignity of individuals. John Dewey stated that Ethics refers to the moral principles that guide behavior and decision-making,[31] while James Griffin labeled human rights as the inherent entitlements and protections afforded to every individual, regardless of their background or circumstances.[32] In essence, ethics and human rights are mutually reinforcing, with ethical principles informing the development and implementation of human rights norms, and human rights providing a moral compass for ethical behavior and decision-making.

When talking about ethics, we can't escape from Aristotle's perspective. Aristotle explores the nature of ethics, morality, and virtue. His perspective on ethics offers a rich and nuanced framework for understanding the nature of morality and the good life. Indeed, Aristotle's perspective on ethics is often considered fundamental in ethical discourse due to the depth and breadth of his insights.[33] Even though ethical theories have evolved and diversified over time, Aristotle's ideas continue to inform contemporary discussions on morality and virtue.[34]

31 John Dewey and James Hayden Tufts, *Ethics*. (New York: H. Holt and Company, 1906).
32 James Griffin, *On human rights*. (New York, Oxford University Press, 2009).
33 See his work as translated in Terence Irwin, *Nicomachean ethics*. (Cambridge: Hackett Publishing, 2019).
34 Enrico Berti, "The Contemporary Relevance of Aristotle's Thought." *Iris: European Journal of Philosophy & Public Debate* 3, no. 6 (2011): 12.

Aristotle also has ideas about the relationship between ethics and business. From Aristotelian perspective, the primary ethical obligation for businesses is to provide individuals with opportunities to actively engage in the management of company matters and to reflect on the deeper significance of life's pursuits.[35] Through an in-depth exploration of the writings of Aristotle, George Bragues found that business and ethics centers on the pursuit of happiness or human flourishing.[36] Acting morally in the business realm is synonymous with behaviors that promote genuine well-being.[37] Aristotle determines that happiness entails engaging in activities guided by reason and a life dedicated to cultivating moral and intellectual virtues.[38] Thus, the pursuit of wealth inherent in business endeavors is deemed appropriate only to the extent necessary to sustain these virtues materially.[39]

The importance of the correlation between business and ethics is also echoed by Amartya Sen. He considers business ethics to be important since there are many aspects of the economy where ethics matter.[40] According to Amartya Sen, ethics are crucial for how businesses are organized and how people behave, not just for why they trade in the first place.[41] In his "Ethics and Economics" book, Amartya Sen offers a rich and thought-provoking exploration of the ethical dimensions of economic analysis. Sen's work challenges economists to broaden their perspectives and consider the ethical implications of their theories and policies.[42] Amartya Sen wrote argues that ethical values inevitably influence economic choices and outcomes and that economists should explicitly engage with ethical questions in their analyses.[43]

Amartya Sen explores business principles and moral values contribute to economic prosperity. He also investigates how cultural influences shape norms in business conduct.[44] Amartya Sen also challenges two common assumptions in traditional economic analysis: first, the idea that business principles are primarily focused on profit maximization, and second, the belief that moral sentiments have limited relevance in business and economics.[45]

35 George Bragues, *Seek the Good Life, not Money: The Aristotelian Approach to Business Ethics. J Bus Ethics 67*, 341–357 (2006). https://doi.org/10.1007/s10551-006-9026-4

36 George Bragues, "Aristotelian Business Ethics: Core Concepts and Theoretical Foundations". *In: Luetge, C. (eds) Handbook of the Philosophical Foundations of Business Ethics. Springer, Dordrecht*. (2013): 2-4. https://doi.org/10.1007/978-94-007-1494-6_44

37 Ibid.

38 Ibid.

39 Ibid.

40 Amartya Sen, "Does Business Ethics Make Economic Sense?" *Business Ethics Quarterly* 3, no. 1 (1993): 45–54. https://doi.org/10.2307/3857381.

41 Ibid.

42 Amartya Sen, *On Ethics and Economics.* (New York: Basil Blackwell, 1987). Page 18-32.

43 Ibid.

44 Amartya Sen, "Economics, Business Principles and Moral Sentiments." *Business Ethics Quarterly* 7, no. 3 (1997): 5–15. https://doi.org/10.2307/3857309.

45 Ibid.

In conclusion, the significance of the relationship between business and ethics is underscored by both Aristotle and Amarya Sen's insights. With ethics are closely connected with human rights, it is safe to say that business at large and investment in particular, has to consider human rights issue. I believe this view since the commitment to upholding human rights not only boosting sustainable economy, but also aligns with ethical principles that protects human's dignity.

2. United Nations Guiding Principles on Business and Human Rights

Companies have the potential to significantly influence the human rights of their employees, customers, and surrounding communities in any location they operate.[46] These influences can manifest in either beneficial ways, such as creating job opportunities or enhancing public services, or detrimental ways, such as environmental pollution, labor exploitation, or forced displacement of communities.[47]

The issue of corporate responsibility in addressing these negative impacts and the government's role in mitigating them has been a subject of discussion among local communities, national authorities, and global organizations for many years.[48] Acknowledging this imperative, the United Nations (UN) formulated the Guiding Principles on Business and Human Rights, serving as a framework for businesses to honor their obligation to respect human rights during their operations.[49]

Established in 2011, the UNGPs on Business and Human Rights rest upon three fundamental pillars: the state's obligation to protect human rights, the corporate responsibility to respect human rights, and the imperative of ensuring accessible remedies for victims of human rights violations.[50] These principles play a pivotal role in ensuring that businesses uphold human dignity, foster social equity, and contribute to sustainable progress.[51]

Firstly, UNGPs furnish a universally applicable standard for businesses to adhere to, irrespective of their size, sector, or geographical location.[52] By delineating explicit expectations, they incentivize companies to embed human rights considerations into their core operations, supply chains, and business strategies.

46 United Nations Working Group on Business and Human Rights, " The UN Guiding Principles on Business and Human Rights: An Introduction," United Nations, https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf (accessed 12 March 2024).
47 Ibid.
48 Ibid.
49 Ibid.
50 Ibid.
51 United Nations Development Program, "United Nations Guiding Principles on Business and Human Rights," United Nations, https://www.undp.org/sites/g/files/zskgke326/files/migration/in/UNGP-Brochure.pdf (accessed 12 March 2024).
52 United Nations Office of The High Commisioner of Human Rights, "Guiding Principles on Business and Human Rights," United Nations, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed 12 March 2024).

Secondly, it also promotes accountability and transparency. The United Nations (UN) urge businesses to conduct human rights due diligence, encompassing the identification, prevention, mitigation, and redressal of adverse human rights impacts.[53] This necessitates companies to evaluate potential risks within their operations, engage with stakeholders, and take suitable measures to address any detrimental effects.

Thirdly, the UNGPs also foster collaboration among governments, businesses, civil society organizations, and other stakeholders.[54] By underscoring the collective responsibility to uphold human rights, they foster dialogue, cooperation, and concerted action to tackle systemic human rights challenges.

Comprising three primary domains – the state's duty to protect, corporate responsibility to respect, and access to remedy – the UNGPs distribute the roles and obligations of states and businesses in safeguarding human rights.[55] The state's duty to protect mandates governments to enact and enforce laws and regulations that safeguard human rights, encompassing labor rights, environmental safeguards, and social welfare standards.[56] Additionally, states are obligated to provide effective remedies for human rights violations perpetrated by businesses within their jurisdiction.

Corporate responsibility to respect necessitates businesses to uphold human rights across their operations, including supply chains and business relationships.[57] This entails conducting human rights due diligence, integrating human rights considerations into decision-making processes, and rectifying any adverse impacts they cause or contribute to.[58]

Access to remedy underscores the significance of granting victims of human rights abuses access to justice, redress, and reparations.[59] This encompasses both judicial and non-judicial mechanisms for addressing grievances and ensuring accountability for human rights violations.

In conclusion, the UNGPs on Business and Human Rights constitute a seminal framework for championing respect for human rights within the business sphere. By portraying explicit expectations, responsibilities, and avenues for accountability, these principles offer a blueprint for businesses to uphold human dignity, foster social justice, and advance sustainable development. Nonetheless, their effective implementation necessitates concerted efforts from governments, businesses, civil society organizations, and other stakeholders.

53 Ibid.
54 Ibid.
55 Ibid.
56 Ibid.
57 Ibid.
58 Ibid.
59 Ibid.

3. Presidential Regulation Number 60 of 2023 on Business and Human Rights National Strategy

George G. Brenkert contends that over the past few decades, a varied movement has arisen aiming to broaden the scope of accountability for human rights from solely governments and states to include businesses.[60] While the notion that businesses bear responsibility for human rights has garnered significant acclaim, it still encounters numerous reservations and unresolved inquiries.[61] Indeed, it is investors or corporations are obligated to guarantee human rights within their business operations.[62]

Indonesia demonstrates a clear dedication to promoting business and human rights, evident in various initiatives aimed at ensuring corporations fulfill their obligations, particularly regarding human rights protection.[63] However Indonesia cannot solely depend on investors to uphold human rights within their business operations.[64] As the corporations may misrepresent their compliance, prioritize profits over ethical considerations, or lack proper mechanisms to ensure human rights standards are consistently met. Instead, Indonesia must have regulations to integrate specific values to ensure corporations meet human rights standards.[65] This approach entails not only expecting ethical conduct from investors but also enforcing legal frameworks that mandate the incorporation of principles promoting human dignity, equality, and accountability throughout business operations.

As one of the member states of the UN, Indonesia has an obligation to implement various international instruments in the field of human rights that have been ratified by Indonesia.[66] In addition to legally binding international agreements, there are also non-binding international guidelines supported by Indonesia. Indonesia supported the endorsement of the UN Human Rights Council's document on the UNGPs on Business and Human Rights in 2011. These principles have now become the primary guidelines globally for efforts to protect human rights in the business sector.

Furthermore, in efforts to mainstream business and human rights at the national level, the Indonesian Government established the National Task Force on Business and Human Rights in 2021.[67] This aligns with the vision and mission of the President of the Republic

60 George G. Brenkert, "Business Ethics and Human Rights…
61 Ibid.
62 Friedrich Naumann Foundation Indonesia, "Harmonizing Prosperity and Humanity: A Blueprint for Advancing Business and Human Rights in Indonesia," Friedrich Naumann Foundation, https://www.freiheit.org/indonesia/harmonizing-prosperity-and-humanity-blueprint-advancing-business-and-human-rights (accessed 12 March 2024).
63 Republika, "Strategi Nasional Bisnis dan HAM Pemerintah Indonesia Dinilai Alami Kemajuan," Republika, https://news.republika.co.id/berita/s0z0sy456/strategi-nasional-bisnis-dan-ham-pemerintah-indonesia-dinilai-alami-kemajuan (accessed 12 March 2024).
64 Setara Institute, "Pemajuan Bisnis dan HAM di Indonesia," Setara Institute, https://setara-institute.org/pemajuan-bisnis-dan-ham-di-indonesia/ (accessed 12 March 2024).
65 Ibid.
66 Attachment of Presidential Regulation No. 60 of 2023 on Business and Human Rights National Strategy.
67 Ibid.

of Indonesia, which was then translated into five presidential directives and elaborated into seven development agendas to realize Indonesia as a sovereign, independent, and dignified nation. The vision and mission also encompass the President's policies in addressing human rights issues.

To ensure Indonesia's steadfast efforts to hold corporations accountable to their obligations, The Presidential Regulation on Business and Human Rights was finally ratified. The journey towards the enactment of this presidential regulation was quite lengthy and required significant effort, hence it has received appreciation from various parties, particularly human rights observers, civil societies, and even entrepreneurs.[68]

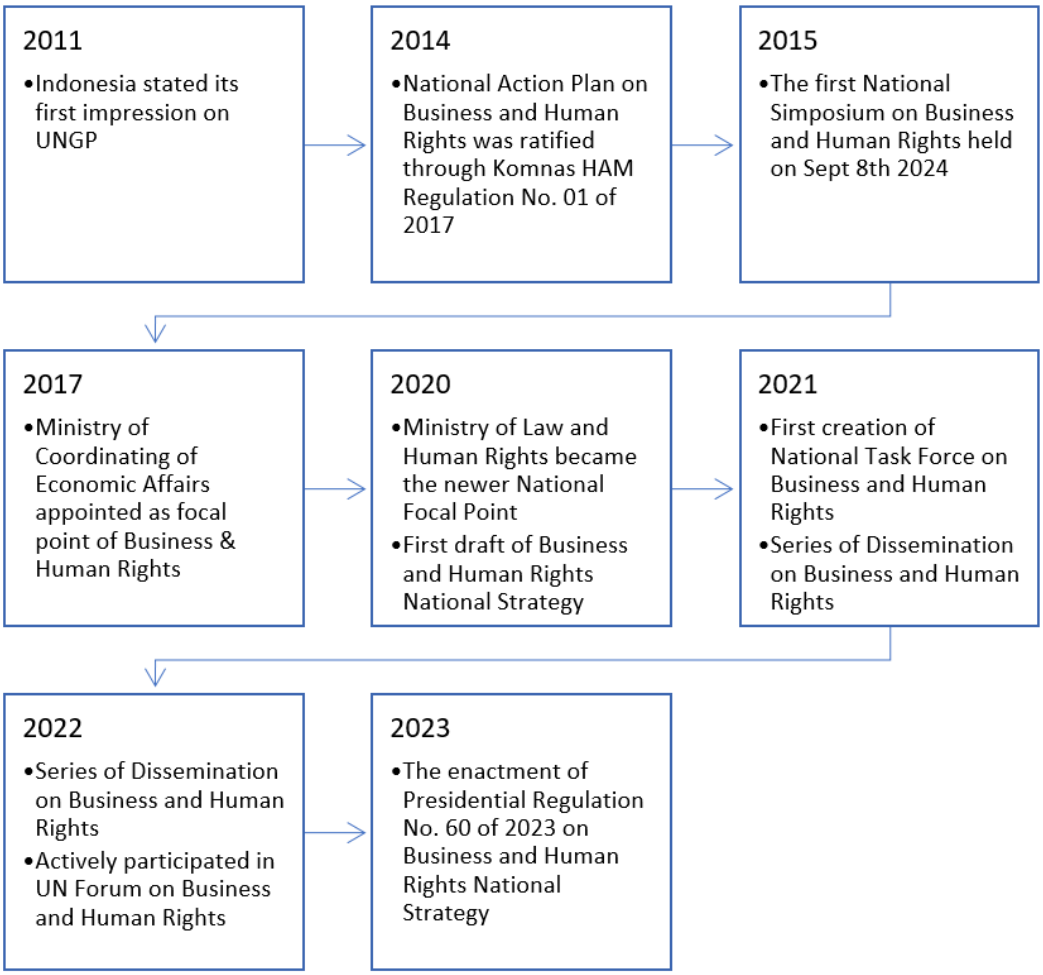

Figure 1 Indonesia's Chronological Milestone to Business and Human Rights Regulation

According to the Minister of Coordinating Economic Affairs, this regulation has three main strategies: enhancing understanding, capacity, and promotion of business and human rights; developing regulations, policies, and guidelines that support the protection

68 INFID, "INFID Inaugurated as Indonesia's National Business and Human Rights Task Force,"INFID" https://infid.org/en/infid-dikukuhkan-sebagai-gugus-tugas-nasional-bisnis-dan-ham-indonesia/ (accessed 12 March 2024).

and respect of human rights; and strengthening effective recovery mechanisms.[69] It is deemed as also holistic and comprehensive, not only focusing on the aspect of human rights protection in the context of business, but also encompassing economic development, environmental aspects, and business governance from a human rights perspective.[70]

This regulation is intended to enhance efforts for more effective and integrated respect, protection, fulfillment, enforcement, and promotion of human rights in business practices.[71] This overarching goal encompasses several elements aimed to be achieved:[72]

1. Providing guidance on strategic efforts and priorities needed by the government, businesses, and associations for the respect, protection, fulfillment, enforcement, and promotion of human rights.
2. Enhancing the understanding of ministries/agencies and society, including businesses and associations, regarding issues of Business and Human Rights.
3. Promoting the prevention, mitigation, and remediation of negative impacts of business activities on human rights with measurable outcomes.
4. Increasing synergy and coherence among programs, regulations, and/or policies both at the central level (including among ministries/agencies) and at the regional level related to Business and Human Rights.
5. Improving coordination between the central government and local governments in implementing policies related to Business and Human Rights.
6. Building sustainable and competitive businesses.
7. Enhancing active participation in achieving sustainable development goals related to Business and Human Rights.

While this Presidential Regulation claimed to be inspired by UNGP on Human Rights, this regulation does not completely copying the aforementioned UN documents. It also does not specify particular human rights in its substance. However, it offers a broad definition of human rights as innate rights linked to human dignity.[73] Nonetheless, the preamble to the Strategy acknowledges Indonesia's commitment to numerous human rights treaties and its endorsement of soft law standards like the UNGPs.[74] Additionally, the Strategy's preamble identifies concerns about labor rights violations, discrimination, child labor, land misuse, and environmental pollution.[75]

69 Press Release, "Menko Airlangga: Strategi Nasional…
70 Hukum Online, "Pemerintah Resmi Luncurkan Perpres Stranas Bisnis dan HAM," Hukum Online, https://www.hukumonline.com/berita/a/pemerintah-resmi-luncurkan-perpres-stranas-bisnis-dan-ham-lt6548cbe81e290/?page=3 (accessed 12 March 2024).
71 Attachment of Presidential Regulation No. 60 of 2023 on Business and Human Rights National Strategy.
72 Ibid.
73 Ibid.
74 Ibid.
75 Insight, "Indonesia's National Strategy on Business and Human Rights and expectations in relation to human rights due diligence," Herber Smith Freehills, https://www.herbertsmithfreehills.com/insights/2024-03/

One of the key aspects of business and human rights issue as mentioned often in UNGPs is human rights due diligence. Aligned with the UNGPs, human rights due diligence involves a continuous assessment of human rights risks by businesses and taking measures to prevent and mitigate adverse human rights impacts.[76]

Unfortunately, the regulation does not clearly elaborate what is human rights due diligence. As it only written once in the document, and the regulation itself focuses on building action plan and national strategy in implementing business and human rights. It is also does not mandate human rights due diligence for businesses.[77] Additionally, at first glance, the name of the presidential regulation may seem somewhat confusing because the term "business strategy" is commonly associated with corporate management.[78] Further, the Strategy encourages the adoption of the Human Rights and Business Risk Assessment Module (PRISMA) by businesses, a tool designed to facilitate human rights due diligence by providing indicators for assessing policies and practices related to human rights, the environment, indigenous peoples, and supply chains. [79]

Despite its shortcomings, the release of the Strategy by the Indonesian government marks a significant milestone for business and human rights in the country.[80] While it primarily focuses on Indonesian business entities and requires further detailed guidance, its introduction aligns with a heightened regulatory emphasis on responsible business conduct.[81] The International Labour Organization (ILO) commends Indonesia for its recent enactment of a regulation concerning business and human rights, which aligns with the core conventions of the ILO emphasizing the necessity of human rights due diligence.[82]

The National Commission on Human Rights has also pledged to ensure the effective implementation of this regulation.[83] Accordingly, they are dedicated to educating corporations on their responsibilities and the broader society on their rights as outlined in this regulation.[84] Regarding the implementation, It will be intriguing to observe the unfolding of events, given that it is too premature to make assessments since it has only been implemented recently.

Indonesia-s-National-Strategy-on-Business-and-Human-Rights-and-expectations-in-relation-to-human-rights-due-diligence (accessed 12 March 2024).

76 Ibid.

77 Ibid.

78 Praktik Baik Bisnis, "Implikasi Perpres Stranas Bisnis dan HAM pada Pengelolaan Korporasi," https://www.kompas.id/baca/opini/2023/10/31/implikasi-perpres-stranas-bisnis-dan-ham-pada-pengelolaan-korporasi (accessed 12 March 2024).

79 Insight, "Indonesia's National Strategy...

80 Ibid.

81 Ibid.

82 International Labor Organization Indonesia, "Indonesian Businesses Move Towards Responsible Business Conduct," International Labor Organization, https://www.ilo.org/jakarta/info/public/pr/WCMS_906840/lang--en/index.htm (accessed 12 March 2024).

83 Kabar Latuharhary, "Komans HAM Fokus Edukasi Bisnis dan HAM," National Commission on Human Rights, https://www.komnasham.go.id/index.php/news/2022/12/14/2288/komnas-ham-fokus-edukasi-bisnis-dan-ham.html (accessed 17 March 2024).

84 Ibid.

4. Business Ready Initiative

On May 1, 2023, the World Bank Group initiated the assessment of business and investment environments in approximately 180 economies through its flagship project, Business Ready.[85] This project serves as a crucial component of the organization's new strategy aimed at facilitating private investment, fostering job creation, and enhancing productivity to promote inclusive and sustainable development in countries.[86]

Business Ready represents an enhancement and replacement of the World Bank Group's previous Doing Business initiative, which is called Ease of Doing Business (EoDB). EoDB has been one of the most prioritized programs since President Joko Widodo was appointed as President in his first term in 2014.[87] Unfortunately, EoDB was later suspended in 2021 due to irregularities and integrity issues.[88] The Government of Indonesia, however, believes that EoDB indicators are still effective tools to measure Indonesian business competitiveness.[89] As it's still mandated as a priority issue in the National Medium-Term Development Plan (RPJMN) 2020-2024.[90]

With the discontinuation of EoDB, B-Ready was introduced in 2023 in the hope of replacing EoDB. Compared to EoDB, B-Ready adopts a more balanced and transparent approach to evaluating business and investment climates.[91] This approach has been shaped by input from experts both within and outside the World Bank Group, including governments, the private sector, and civil society organizations.[92]

B-Ready presents a quantitative evaluation of the global business landscape to facilitate private sector growth. Annually, the initiative assesses the quality of regulatory frameworks, the availability of public services supporting businesses and markets, and their practical integration. The detailed data and summarized findings aim to promote policy reforms for fostering a more robust private sector, offer informed policy guidance, and advance developmental policy research.[93]

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85 Press Release, "World Bank Group Launches Business Ready Project", World Bank https://www.worldbank.org/en/news/press-release/2023/04/28/World-Bank-Group-Launches-Business-Ready-Project (accessed 17 March 2024).

86 Ibid.

87 Cabinet Secretary, "Intervensi di KTT G-20, Presiden Jokowi Ingin Bangun Demokrasi Yang Dipercaya Rakyat," Cabinet Secretary, https://setkab.go.id/intervensi-di-ktt-g-20-presiden-jokowi-ingin-bangun-demokrasi-yang-dipercaya-rakyat/ (accessed 17 March 2024).

88 Statement, "World Bank Group to Discontinue Doing Business Report," World Bank, https://www.worldbank.org/en/news/statement/2021/09/16/world-bank-group-to-discontinue-doing-business-report (accessed 21 March 2024).

89 Jentera, "Meski Indeks EoDB BErhenti, Reformasi Hukum Bisnis Harus Terus Berjalan," Indonesia Jentera Law School, https://www.jentera.ac.id/kabar/prospek-reformasi-hukum-bisnis-indonesia-setelah-penghentian-indeks-ease-of-doing-business (accessed 21 March 2024).

90 Ibid.

91 Press Release, "World Bank Group Launches…

92 Ibid.

93 Ibid.

Primarily, there are 3 main themes of B-Ready which consist of Opening a business, Operating & expanding a business, and Closing a business. Furthermore, it delves into 10 themes structured along the lifecycle of businesses, covering their involvement in markets during establishment, operation, expansion, closure, or restructuring. These themes include Business Entry, Business Location, Utility Services, Labor, Financial Services, International Trade, Taxation, Dispute Resolution, Market Competition, and Business Insolvency.[94]

Figure 2 B-Ready Indicators

B-Ready offers a more balanced assessment of the business environment. It evaluates the environment holistically, considering not only individual firms' ease of operation but also the broader perspective of the private sector.[95] Additionally, it scrutinizes both regulatory burdens and the quality of regulations, along with related public services, throughout the business lifecycle.[96]

5. The Intersection

As mentioned earlier, Presidential Regulation on Business and Human Rights does not clearly mandate human rights due dilligence for the corporation. Instead, it focuses on building action plan and national strategy. Relatively similar to that, the B-Ready initiative does not entirely address human rights enforcement in general, thanks to its limited scope which solely focuses on how to start, operate, and close a business. However, from the B-Ready methodology handbook lies a profound commitment to economic rights.[97] B-Ready is not only concerned about the wealth of the entrepreneurs, but also the protection of other stakeholders such as their employees, counterparts, and affected society as well.

Through targeted interventions and policy reforms, the B-Ready program seeks to safeguard economic rights, including the right to livelihood, fair wages, and social security. Furthermore, the B-Ready Program places a strong emphasis on ensuring the

94 Ibid.
95 Ibid.
96 Ibid.
97 Public Documents, "B-READY Methodological Workshop presentations," World Bank, https://thedocs.worldbank.org/en/doc/cbd52897bf64e0a527e5175b15dbf4a6-0540022023/b-ready-methodological-workshop-presentations (accessed 23 March 2024).

rights to enter the market and property rights.[98] It acknowledges the importance of a competitive marketplace where businesses can operate freely and contribute to economic development. By promoting fair competition policies and protecting property rights, including intellectual property rights,[99] the program creates an enabling environment conducive to entrepreneurship, innovation, and investment, driving sustainable economic growth and job creation.

Moreover, the B-Ready Program is deeply committed to upholding labor rights, including minimum age and combating forced labor.[100] Recognizing the importance of decent work for human dignity and social justice, the program endeavors to promote decent working conditions.[101] B-Ready aims to protect workers' rights, ensure safe and dignified working conditions, and promote sustainable livelihoods.

In addition to economic and labor rights, the B-Ready Program recognizes the significance of the rights of information and consumer rights.[102] It acknowledges that access to information is essential for informed decision-making, transparency, and accountability, both in governance and business operations. The program empowers individuals to make informed choices and assert their rights as consumers, enhancing market efficiency and consumer welfare.[103]

Furthermore, the B-Ready Program is committed to promoting gender equality in doing business.[104] It recognizes that gender equality is not only a fundamental human right but also a prerequisite for achieving sustainable development. By promoting gender-responsive policies, enhancing access to education and employment opportunities for women, and combating gender-based discrimination and violence, the program seeks to advance women's empowerment in general.

In conclusion, the B-Ready program is moving beyond traditional pattern of business policies, which embraces a comprehensive approach to human rights-based empowerment. This is in line with progressive views which believes that business responsibilities has to consider moral and social issues.[105] While business and human rights has achieved notable advancements, there remains substantial ground to cover.[106]

Fortunately, B-Ready pays attention to basic rights in business operations, where it does not impose or prioritize purely business issues and disregards human rights aspects. However, the protection of rights in B-Ready remains highly specific and focused

98 Ibid.
99 Ibid.
100 Ibid.
101 Ibid.
102 Ibid.
103 Ibid.
104 Ibid.
105 George G. Brenkert, "Business Ethics and Human Rights…
106 Ibid.

on economic aspects. Therefore, it cannot be considered fully in line with the principles of Business and Human Rights. Nonetheless, it is still worthy of appreciation because Indonesia has adopted B-Ready as a national investment program, demonstrating ongoing concern for human rights issues within business field. It will be interesting to see B-Ready's first-ever report which hopefully will be released in September 2024 by the World Bank,[107] to see whether it really concerns human rights issues within business or not.

D. Closing

The intersection between business and human rights is complicated, but it's evident that businesses need to give priority to human rights, according to the ethical views of Aristotle and Amartya Sen. The introduction of the Presidential Regulation on Business and Human Rights in Indonesia is a significant step forward as it follows the principles of the UNGPs. However, the lack of specific clauses requiring businesses to conduct human rights due diliegence on that Presidential regulation raises doubts about its overall effectiveness. On a positive note, investment policy like B-Ready show that there's a growing awareness of integrating human rights principles into business practices, even though B-Ready mainly focus on economic and labor rights. Since both these initiatives were only launched in 2023, it will be interesting to see how they progress in balancing business ethics and human rights. In conclusion, human rights concern in Presidential Regulation on Business and Human Rights is fairly accomated in B-Ready initiative.

107 About Us, "Business Ready," World Bank, https://www.worldbank.org/en/businessready/about-us (accessed 27 March 2024).

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LEGAL IMPLICATION OF US-CHINA TRADE WAR ON INDONESIA'S POLICY RELATING TO PALM OIL INDUSTRY

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ABSTRACT

Indonesia has been the largest producer and exporter of Crude Palm Oil (CPO) in the world since 2006. However, Indonesia faces complex challenges related to global CPO trade, starting from the global issue of China and the United States trade war, Including other strategic issues. The impact of the complexity of the US and China trade war is hitting Indonesia where palm oil from Indonesia is considered to be old and not environmentally friendly. This will impact market demand and disrupt the stability of national production. So an appropriate policy strategy is needed to manage this. The research objective is used as consideration for stakeholders in reviewing Indonesia's CPO policy in anticipation of the future. The research method uses a sociolegal approach. The research results show that the reasons for the decline in Indonesian CPO exports are the rejection of several European Union countries, which prevented the entry of Indonesian CPO and the influence of the China and United States trade war where soybean and sunflower oil are abundant as boycott between China and the US. Then, to fight against the European Union, Indonesia filed a lawsuit with the WTO, then certification of Palm Oil Plantations in Indonesia as part of the resistance will certainly have a positive impact on Indonesian CPO and developing biodiesel so that CPO consumption is used domestically.

Keywords : CPO, Issues Strategic, Legal, Trade War

A. Introduction

Indonesia is a country that adheres to a non-Block system regarding all international geopolitical tensions.[1] Since the 1960s under the command of President Ir. Soekarno Indonesia never took sides between the western and eastern blocs even though if both of them became members there would be many benefits.[2] Indonesia prefers to collaborate in almost all fields, in both blocks.[3] Until now, in the midst of international political upheaval

1 Dzikiara Pesona Sadewa and Falhan Hakiki, "Dinamika Kebijakan Politik Luar Negeri Bebas Aktif Indonesia Melalui Gerakan Non-Blok," *Jurnal Lemhannas RI* 11, no. 1 (2023): 13–28.

2 Agus Haryanto, "Prinsip Bebas Aktif Dalam Kebijakan Luar Negeri Indonesia: Perspektif Teori Peran," *Jurnal Ilmu Politik dan Komunikasi* 4, no. 11 (2014): 17–27.

3 Luerdi and Ahmad Faruki, "Perang Dingin Dan Implikasinya Terhadap Sistem Politik Internasional Dalam

between China and the United States which has been going on since 2017, many countries are worried about a major depression like what happened in 1929-1939 as well as the economic crisis in 1998-1998 and 2008 which forced Indonesia to fighting extra hard to restore its national economy.[4]

Several countries that have benefited from the impact of the trade war between China and the United States are Taiwan, Vietnam, Malaysia, and Argentina, which show that their country's economies are growing positively.[5] Meanwhile, several countries that are increasingly squeezed due to the trade war between China and the United States, and their economies are declining due to mutual boycotts and weakening domestic politics.[6] The trigger for the trade war between China and the United States was precisely in May 2019 when business people in the United States were shocked because China imposed tariffs on imports of goods from the United States which were initially only 10%, increasing to 25%.[7] Meanwhile, in August 2019, the United States immediately ratified the policy of importing goods from China, for example cellphones, shoes, fish and even toys with an additional 10% tariff starting September 1 2019.[8]

Several countries that see this opportunity, namely Bangladesh, South Korea, Vietnam, and even Taiwan see this as a profitable opportunity.[9] Let's just say that Vietnam has benefited greatly and placed this country as number 1 in the countries that benefited from the trade war between China and the United States, where its gross domestic income (GDP) increased to 7.9% throughout 2019.[10] Meanwhile, Bangladesh recorded a record economic growth of more than 7% and made Bangladesh one of the fastest growing economies in the Asian region.[11] A report from Nomura, a private financial research institution from Japan,

Tinjauan High Politics," *International Society* IV, no. 1 (2017): 1–12.

4 Kompas.com, "The Great Depression, Krisis Ekonomi Terparah Dalam Sejarah," *Kompas.Com*, last modified 2023, accessed May 4, 2024, https://www.kompas.com/stori/read/2023/03/08/200000079/the-great-depression-krisis-ekonomi-terparah-dalam-sejarah?page=all.

5 detik.News, "Perang Dagang AS-China, Vietnam Dan Taiwan Mengeruk Untung," *Detik.News*, last modified 2019, accessed May 4, 2024, https://news.detik.com/dw/d-4580808/perang-dagang-as-china-vietnam-dan-taiwan-mengeruk-untung.

6 CNBC Indonesia, "Pengaruh Xi Jinping, Warga China Ketakutan Diintip Elon Musk," *Cnbcindonesia.Com*, last modified 2023, accessed May 4, 2024, https://www.cnbcindonesia.com/tech/20230815160307-37-463171/pengaruh-xi-jinping-warga-china-ketakutan-diintip-elon-musk.

7 CNN Indonesia, "Kronologi Perang Dagang AS-China Selama Kepemimpinan Trump," *CNN Indonesia*, last modified 2020, accessed May 4, 2024, https://www.cnnindonesia.com/ekonomi/20201103154223-92-565387/kronologi-perang-dagang-as-china-selama-kepemimpinan-trump.

8 cnbcindonesia, "Membongkar Perang Dagang AS Vs China & Upaya Dedolarisasi," *Cnbcindonesia.Com*, last modified 2023, accessed May 4, 2024, https://www.cnbcindonesia.com/research/20230421165302-128-431640/membongkar-perang-dagang-as-vs-china-upaya-dedolarisasi.

9 Kompas.com, "Inilah 4 Negara Yang Paling Diuntungkan Perang Dagang China-AS," *Kompas.Com*, last modified 2019, accessed May 4, 2024, https://money.kompas.com/read/2019/07/04/073200726/inilah-4-negara-yang-paling-diuntungkan-perang-dagang-china-as.

10 nomuraconnects.com, "US-China Trade Diversion: Who Benefits?," *Www.Nomuraconnects.Com*, last modified 2019, accessed May 4, 2024, https://www.nomuraconnects.com/focused-thinking-posts/us-china-trade-diversion-who-benefits/.

11 VOA Indonesia, "Perekonomian Yang Goyah Ancam Progres Pertumbuhan Bangladesh," *Voaindonesia.Com*,

stated that 30 countries benefited from this trade war, and Indonesia was not included in the list.

Of course, this is a question for many parties that Indonesia is once again relying solely on exports but is unable to see opportunities for this compared to the list of 30 other countries outlined in the Nomura Report. Indonesia, as a large country in the Asian region with abundant natural resources, cannot see the trade war between China and the United States as a trade opportunity. One of Indonesia's leading commodities internationally is Palm Oil (Crude Palm Oil = CPO). It is unable to compete with other products and in fact exports to the United States for the 2017-2018 period were only -6.29%, while exports to China were specifically CPO products. only grew 0.83% in the same period. [12]

As the country with the largest CPO producer in the world, for 2023 production will reach at least 50.07 million tonnes, up 7.15% compared to 2022 of 46.73 million tonnes.[13] Indonesia certainly faces various challenges in being able to supply these two countries. Apart from that, Indonesia also has to compete with several other vegetable oil producing countries whose prices are competitive and much healthier than CPO. Apart from that, China and the United States have been known as potential importers of CPO from Indonesia, but currently, the need for vegetable oil, especially American soybean oil, is still low. Safe while China continues to hoard previously imported vegetable oil.[14]

Of course, several policies have been implemented by the Indonesian government to save CPO production so that it can be sold on the international market or used domestically. One of the policies used is to accelerate the implementation of B30 as the main fuel. The Indonesian government through the Minister of Energy and Mineral Resources (ESDM) Regulation Number 12 of 2015 which was updated to become ESDM Regulation Number 24 of 2021 concerning the Provision and Utilization of Biodiesel Biofuels in the Financing Framework by the Palm Oil Plantation Fund Management Agency, which is in the manufacturing process This biodiesel has been initiated since 2016, which requires mixing 20% biodiesel in the form of processed CPO derivatives and also 80% diesel fuel.[15]

last modified 2024, accessed May 4, 2024, https://www.voaindonesia.com/a/perekonomian-yang-goyah-ancam-progres-pertumbuhan-bangladesh/7576465.html.

12 CNBC Indonesia, "Gawat! Minyak Sawit RI Mulai Tertekan Perang Dagang AS-China," *Cnbcindonesia.Com*, last modified 2018, accessed May 4, 2024, https://www.cnbcindonesia.com/news/20180712103347-4-23182/gawat-minyak-sawit-ri-mulai-tertekan-perang-dagang-as-china.

13 Media Indonesia, "Produksi CPO Pada 2023 Diprediksi Naik 7,15%," *Mediaindonesia.Com*, last modified 2024, accessed May 4, 2024, https://mediaindonesia.com/ekonomi/655119/produksi-cpo-pada-2023-diprediksi-naik-715#:~:text=PRODUKSI minyak kelapa sawit atau,sebesar 46%2C73 juta ton.

14 Antaranews.com, "Perang Dagang Amerika Serikat-China Pengaruhi Pasar Minyak Nabati," *Antaranews.Com*, last modified 2018, accessed May 4, 2024, https://www.antaranews.com/berita/725826/perang-dagang-amerika-serikat-china-pengaruhi-pasar-minyak-nabati.

15 *Peraturan Menteri Energi Dan Sumber Daya Mineral Republik Indonesia Nomor 24 Tahun 2021 Tentang Penyediaan Dan Pemanfaatan Bahan Bakar Nabati Jenis Biodiesel Dalam Kerangka Pembiayaan Oleh Badan Pengelola Dana Perkebunan Kelapa Sawit*

This is also a national mandate, which indirectly becomes the hope that CPO is not only a raw material that is always exported but also has various types of processing that can be useful, including being a renewable and environmentally friendly biofuel. Apart from Indonesia, several countries that implement it are Australia with B2, then Malaysia with B10, there is South Korea with B2-B3, then South Africa with B5, and the European Union with B7. The Indonesian government itself has strengthened its position with the issuance of Presidential Regulation Number 40 of 2023 concerning the Acceleration of National Sugar Self-Sufficiency and the Provision of Bioethanol as Biofuel.[16] However, this only affects around 50% of the total national CPO production, namely 25.4 million tons, and biodiesel consumption from CPO still absorbs 11.6 million tons of CPO. Meanwhile, the trend of Indonesian CPO exports is also decreasing, which in 2019 reached 37.4 million tonnes, decreasing to 34 million tonnes in 2020 and continuing in 2021 to only 33.6 million tonnes.[17]

Of course Indonesia try harder to be able to use CPO clearly and effectively amidst the current impossible situation, of course there must be significant changes, especially as Indonesia's national production is the largest in the world compared to Malaysia. Apart from that, Indonesia also accepts the fact that there is trade competition with other vegetable oils, namely sunflower oil, which is more competitive than CPO.

This research will analyze the impact of legal policies on the Indonesian palm oil industry by using a sociolegal approach to examine a number of legal policies implemented in response to the trade war between China and the United States. It is hoped that the aim of this research will be for stakeholders in the CPO trade amidst the trade war.

B. Research Method

This research uses a data analysis method with a sociolegal approach so that the use of secondary data is needed in discussing the Research Question in this research.[18] In addition, this research will emphasize the use of statutory regulations, jurisdiction or other documents relating to law as well as issues that will be discussed regarding Palm Oil in Indonesia and international policy.[19] In the research process, legal and policy studies related to the Indonesian Palm Oil Industry became the starting point for the research. This study material is considered important to map as the initial background for this research. Legal analysis was carried out on these legal materials regarding the Indonesian Palm

16 *Peraturan Presiden Republik Indonesia Nomor 40 Tahun 2023 Tentang Percepatan Swasembada Gula Nasional Dan Penyediaan Bioetanol Sebagai Bahan Bakar Nabati (Biofuel)*.

17 CNBC Indonesia, "Ekspor Minyak Sawit Turun Terus, Ternyata Ini Penyebabnya," *Cnbcindonesia.Com*, last modified 2024, accessed May 4, 2024, https://www.cnbcindonesia.com/news/20240202131343-4-511161/ekspor-minyak-sawit-turun-terus-ternyata-ini-penyebabnya.

18 Fellipe Silva Martins, Júlio Araujo Carneiro da Cunha, and Fernando Antonio Ribeiro Serra, "Secondary Data in Research – Uses and Opportunities," *Revista Ibero-Americana de Estratégia* 17, no. 04 (2018): 01–04.

19 Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie, *Routledge Handbook of Socio-Legal Theory and Methods*, 1st ed. (Routledge, 2019).

Oil Industry. The problem formulation in this research is the impact of legal policy on the Indonesian palm oil industry regarding the trade war between China and the United States. So, based on the results of this study, various comparisons of norms, assumptions, issues, institutions, authority, and hierarchy of applicable regulations will emerge.[20] So, this is the basic capital used by researchers as a starting point for carrying out analysis in this research. Data collection in this research will be carried out by a literature study of articles and literature sources that can be used in research. This literature study was carried out by applying several steps, namely searching, checking, and reviewing relevant secondary data.[21]

C. Discussions

1. Decline in Indonesian CPO Exports

The results of the study regarding the decline in Indonesian CPO exports due to the trade war between China and America have occurred in the last few years. At the beginning of the 2019 trade war, Indonesia still showed a positive attitude regarding this international dilemma until entering the 2020-2022 period, Indonesia experienced a decline in export volume, which in 2020 decreased by 8.55%.[22] This was also made worse by the fact that in 2020 Indonesia and the world faced various health problems (Covid-19) which hit all countries and caused several international economic activities to stop temporarily, CPO exports to China decreased by 57%, then the European Union decreased by 30%, then India decreased to 22%, then there was the United States which fell 64%, only Bangladesh which increased to 52% compared to the previous year.[23]

Based on the researcher's analysis based on several literatures, at least Indonesian CPO has dominated the markets in India and Spain for a long time in recent years, then Indonesia's rival is CPO from Malaysia which is also as big as Indonesia and has entered the Italian market in recent years.[24]

Referring to a report by Gapki (Indonesian Palm Oil Entrepreneurs Association), Indonesia's total CPO production during the 2022 period continues to decline to only 46.7 million tonnes and is lower than in 2021 at 46.8 million tonnes. This decline is the fourth

20 Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif Dan R&d* (Bandung: Alfabeta, 2020).

21 Mey Hariyanti, "Analisis Data Kualitatif Miles Dan Hubermen," *Kompasiana.Com*, last modified 2015, accessed December 9, 2023, https://www.kompasiana.com/meykurniawan/556c450057937332048b456c/analisis-data-kualitatif-miles-dan-hubermen.

22 Infosawit.com, "Kinerja Ekspor Minyak Sawit Indonesia 2020-2022 Cnderung Menurun," *Infosawit.Com*, last modified 2024, accessed May 11, 2024, https://www.infosawit.com/2024/01/04/kinerja-ekspor-minyak-sawit-indonesia-2020-2022-cenderung-menurun/.

23 Qonita Azzahra Salsabila et al., "Kondisi Ekspor Minyak Kelapa Sawit Indonesia Selama Periode Covid-19," *Manis: Jurnal Manajemen dan Bisnis* 6, no. 2 (2023): 71–80.

24 Asrilis Saban and Tanti Novianti, "Perbandingan Daya Saing Crude Palm Oil Indonesia Dengan Malaysia Di Negara Tujuan Utama Ekspor," *Buletin Ilmiah Litbang Perdagangan* 17, no. 2 (2023): 225–246.

time that Indonesian CPO has stagnated since palm oil began to penetrate the domestic market share. This decline is not noticeable, only 0.34%. This figure is very interesting because for domestic consumption alone, Indonesia needs at least 20.96 million tons of CO only in 2022 compared to 2021 reaching 18.422 million tons.[25]

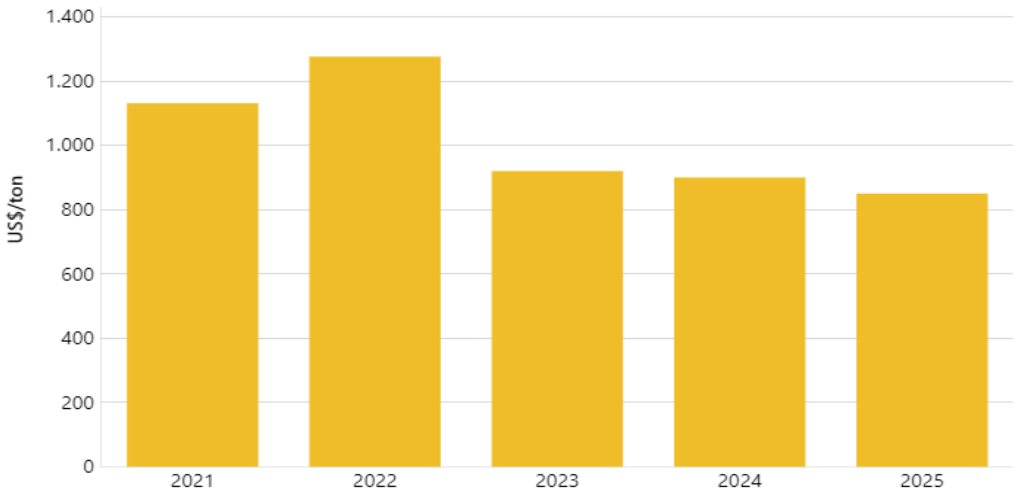

Figure 1. Graph of decline in the number of Indonesian CPO exports 2021-2025

Some predictions for example from the World Bank for 2023 through the Commodity Markets Outlook provide several assumptions that by 2025 world CPO prices will experience a decline (figure 1). This prediction is also accompanied by a decline in production from several productive world CPO producing countries, including Indonesia, however, the World Bank did not provide further details on the reasons for this decline and its impact. However, World Bank mentioned that the anti-deforestation policy from the European Union which was passed some time ago added to the list of policies that CPO entering Europe was limited and hampered.[26]

One thing that cannot be separated from Indonesian CPO is the international selling price determined by another country, namely Malaysia. Since 2006, Indonesia has become a global player in world palm oil production, beating Malaysia to date. The minimum raw price, namely CPO, is uncertain because international exchange and trade uses the Malaysian Ringgit currency. This determination is included in the realm of *the Bursa Malaysia Derivatives* (BMD), which was the first history that Malaysia has determined the price of CPO and palm oil commodities since 1980. On this basis, Indonesia cannot sell its production domestically at cheap prices and makes Indonesia continue to have a shortage of CPO because minimal domestic purchases. Apart from that, Indonesian palm oil is also

25 news.majalahhortus.com, "Produksi Dan Ekspor CPO Terus Menurun, Lebih Rendah Dari Tahun 2021," *news.majalahhortus.com* (Jakarta, 2023), https://news.majalahhortus.com/produksi-dan-ekspor-cpo-terus-menurun-lebih-rendah-dari-tahun-2021/.

26 World Bank, "Commodity Markets Outlook," *Www.Worldbank.Org*, last modified 2023, accessed May 11, 2024, https://www.worldbank.org/en/research/commodity-markets.

owned by many companies from Malaysia and data from the Ministry of Investment/BPKM shows that in 2015-2021 palm oil investment in Indonesia reached a value of 9.5 billion US dollars, which means that Indonesia is unable to do much about the large amount of palm oil production in the country today.[27]

So that in the future, Indonesia must be able to seize a share of the world oil market and be able to make a lot of breakthroughs so that Indonesian production is stable, and the Indonesian stock exchange must be able to take over price determination from Malaysia. This was immediately done so that the impact of the trade war between China and the United States would not have much of an impact on CPO production and processing in Indonesia and it was hoped that Indonesia would be able to become a global player that was not stagnant compared to Malaysia which always felt comfortable because its determination used the Malaysian Ringgit.

2. Indonesian Government Policy Towards CPO

On the basis of this trade war and seeing the situation of the decline in Indonesia's export volume in recent years and looking at future prospects, several policies have begun to be taken. In recent years, Indonesia has developed biodiesel energy made from CPO.[28] CPO is a raw material that is processed into various kinds of processed products and one of them is Biodiesel which is a type of biofuel or biofuel. Indonesian CPO itself is the largest in terms of income scale where in 2023 Indonesia produces ± 50.07 million tons.[29] Indonesian CPO products are also the best because they have a high level of quality and are grown in areas that are high in carbon and are planted in tropical soil with sufficient irrigation throughout the season.[30] It is not surprising that interest from other countries to buy CPO from Indonesia is increasing from year to year.[31]

Biodiesel in Indonesia is currently used as an alternative fuel that is more environmentally friendly and can also be produced domestically. As is known, Indonesia is one of the

27 Lamhot Gibson H Pane, "Diproduksi Indonesia, Ditentukan Malaysia," *News.Detik.Com*, last modified 2022, accessed May 11, 2024, https://news.detik.com/kolom/d-5953086/diproduksi-indonesia-ditentukan-malaysia.

28 Adrianto Ahmad, Idral Amri, and Rhmah Nabilah, "Produksi Bioetanol Generasi Kedua Dari Pelepah Kelapa Sawit Dengan Variasi Pretreatment H2SO4 Dan Waktu Fermentasi," *Journal of Bioprocess, Chemical, and Environmental Engineering* 1, no. 2 (2020): 37–39.

29 InfoSAWIT, "Produksi Minyak Sawit Indonesia 2023 Meningkat 7,15 Persen, Ekspor Ke Uni Eropa Melorot," *InfoSAWIT*, last modified 2024, accessed May 5, 2024, https://www.infosawit.com/2024/03/02/produksi-minyak-sawit-indonesia-2023-meningkat-715-persen-ekspor-ke-uni-eropa-melorot/#:~:text=InfoSAWIT%2C JAKARTA – Produksi minyak sawit,%2C66%25 dari tahun sebelumnya.

30 Liputan6.com, "Eropa Sebut Kualitas Minyak Sawit Indonesia Terbaik Di Dunia," *Liputan6.Com*, last modified 2019, accessed May 5, 2024, https://www.liputan6.com/bisnis/read/4055450/eropa-sebut-kualitas-minyak-sawit-indonesia-terbaik-di-dunia.

31 Dikta Muhammad Ferro Berlianto and Riko Setya Wijaya, "Pengaruh Transisi Konsumsi Energi Fosil Menuju Energi Baru Terbarukan Terhadap Produk Domestik Bruto Di Indonesia," *e-Jurnal Perspektif Ekonomi dan Pembangunan Daerah* 11, no. 2 (2022): 105–112.

world's crude oil producing countries but has not been able to meet its domestic needs. Meanwhile, to fill the gap within the country, Indonesia has to import fuel oil, which for the 2023 period from January to August will reach at least 11.42 million tonnes. This figure is quite significantly up to 17% compared to the same period in 2022 which is only 9.77 %.[32]

Of course, the Indonesian government's plan to replace fossil fuels and maximize the potential of one of these vegetable oils is certainly the hope of many parties. The Indonesian government through Minister of Energy and Mineral Resources (ESDM) Regulation Number 12 of 2015 which was updated to become ESDM Regulation Number 24 of 2021 concerning the Provision and Utilization of Biodiesel Type Biofuels in the Financing Framework by Palm Oil Plantation Fund Management Bodies.[33] The process of making biodiesel has been initiated since 2016, and it requires mixing 20% biodiesel in the form of processed CPO derivatives and 80% diesel fuel.[34]

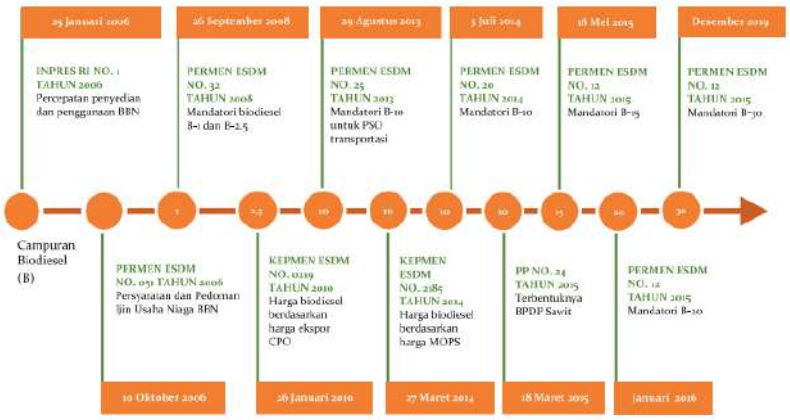

Figure 2. Implementation of Mandatory Biodiesel Policy in Indonesia

Referring to the Minister of Trade's regulation Article 21 of 2019 concerning Imports of Raw Fuels in Article 14 paragraph 5 states clearly that for Imports of Fuels used only for industrial raw materials and industrial auxiliaries so it can be said that this regulation is issued only for domestic industries that require fuel.[35] Indonesia's option to meet national vehicle fuel needs is to prioritize clean green resources and sustainable fuel. Indonesian CPO is also vulnerable to what is called rejection and there has even been a black campaign

32 CNBC Indonesia, "Bahaya! RI Masih Kecanduan Impor Minyak, Ini Buktinya," *Cnbcindonesia.Com*, last modified 2023, accessed May 5, 2024, https://www.cnbcindonesia.com/news/20230918131858-4-473377/bahaya-ri-masih-kecanduan-impor-minyak-ini-buktinya.

33 Wiko Saputra et al., *Pandangan Pemangku Kepentingan Terhadap Risiko Ekonomi Dan Lingkungan Dalam Kebijakan Biodiesel Di Indonesia* (Jakarta, 2021), https://sposindonesia.org/wp-content/uploads/2021/12/Working-Paper_SPOSI-KEHATI_ID.pdf.

34 *Peraturan Menteri Energi Dan Sumber Daya Mineral Republik Indonesia Nomor 24 Tahun 2021 Tentang Penyediaan Dan Pemanfaatan Bahan Bakar Nabati Jenis Biodiesel Dalam Kerangka Pembiayaan Oleh Badan Pengelola Dana Perkebunan Kelapa Sawit*

35 Peraturan Menteri Perdagangan Nomor 21 Tahun 2019 Tentang Ketentuan Ekspor Dan Impor Minyak Bumi, Gas Bumi Dan Bahan Bakar Lain

that said that Palm Oil from Indonesia is very environmentally unfriendly and damages the environment or deforestation, causing world climate change.

The Black Campaign for Indonesia shows that Indonesian palm oil still shows market vulnerability because palm oil is considered the most affordable and cheapest commodity. When compared with other vegetable oils, for example sunflower oil and soybean oil. 2019 became a dilemma for CPOs from Indonesia who were affected by the black campaign launched by several countries from the European region. It was recorded that in the first quarter of 2019 there was a decline in Indonesian CPO exports to the European Continent, especially in the Netherlands, reaching 39%. There was England with 22%, as well as several other potential countries, for example Germany, Italy and Spain.[36] This black campaign clearly states that Indonesian CPO products are high-risk and unsustainable products, so they are not worthy of being included in the European market list.

The term Green Deal was used by the Vice President of the European Union who wanted change and transparency in fighting deforestation and interpreted it as a global struggle. The same thing was also expressed by the Commissioner for Environment, Maritime Affairs and Fisheries of the European Union Parliament who stated that the European Union will continue to campaign to suppress deforestation in countries that contribute to forest destruction and influence the world's climate which is now shrinking. [37]

The implementation of the use of CPO as fuel was part of the mandatory BBN program with the issuance of Minister of Energy and Mineral Resources Regulation Number 32 of 2008 concerning the Provision and Trading Administration of BBN as another Fuel. It was clear that at that time Indonesia still had very little use as a Biofuel (BBN). Utilization is still on a minor scale, namely B2.5-B7.5, this process lasted quite a long time until 2014. Then in 2015, Minister of Energy and Mineral Resources Regulation Number 12 of 2015 reappeared which required an increase, which for 2014-2015 became B15. Of course, this also continues to increase as there is a lot of research related to the use of CPO, where the Indonesian government has continued to encourage domestic industries, for example micro businesses, fisheries, agriculture, transportation and public services to use B20 since 2016-2019 and in the last few years it has been directed towards private transportation B20 utilizes a mixture of 80% Diesel and up to 20% Biodiesel.

Of course, Indonesia must always look for ways to use and exploit CPO in potential ways. It is known that in CPO production economic concepts also apply which always come and go. Apart from the complex problems in oil palm plantations in Indonesia, of

36 CNN Indonesia, "Buntut Kampanye Hitam, Ekspor CPO RI Ke Uni Eropa Anjlok," *Cnnindonesia.Com*, last modified 2019, accessed March 21, 2024, https://www.cnnindonesia.com/ekonomi/20190415204434-92-386648/buntut-kampanye-hitam-ekspor-cpo-ri-ke-uni-eropa-anjlok.

37 voaindonesia.com, "Mempersoalkan Kampanye Negatif Sawit Indonesia Di Eropa," *Www.Voaindonesia.Com*, last modified 2022, accessed March 21, 2024, https://www.voaindonesia.com/a/mempersoalkan-kampanye-negatif-sawit-indonesia-di-eropa-/6882222.html.

course there must be several policies to be able to provide many benefits to the abundant CPO yields that can be enjoyed by the domestic community.

3. Indonesian Palm Oil Plantantions

The area of oil palm plantations in Indonesia is divided into several management parties, namely some are privately owned and some are owned by the community/oil palm farmers, and some are owned by state-owned companies or *PTPN* which are still operating today. At least until 2023, referring to the Indonesian Central Statistics Agency, it has an area of 15.4 million hectares (ha).[38] And of this area there are 10 Provinces in Indonesia which have the largest plantation area in Indonesia, with Riau Province being the largest area in Indonesia with 3.49 Million Ha or 20.7% of the total area of Oil Palm (figure 3), followed by Central Kalimantan with 2.03 Million Ha, and also North Sumatra with 2.01 Million Ha.[39]

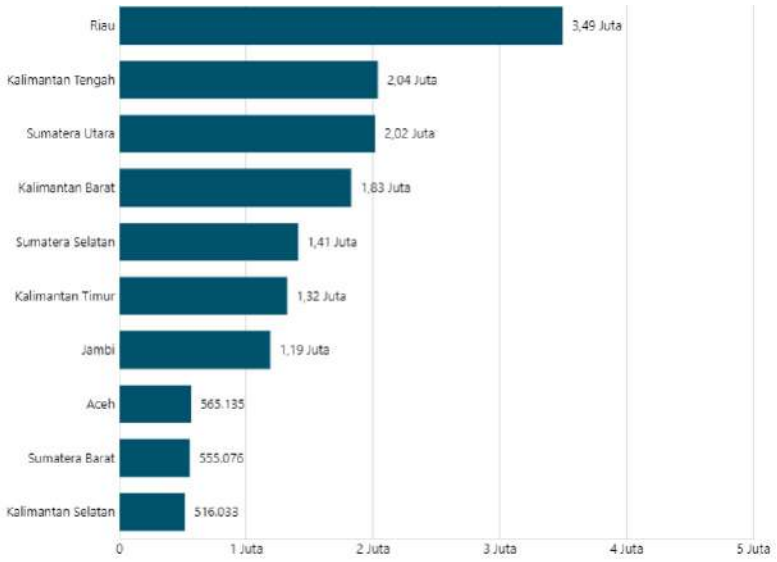

Figure 3. 10 Province with the largest area of palm oil plantations in 2023

Apart from that, Indonesia also has an area of oil palm plantations managed by communities spread across various regions in Indonesia. At least until 2018, plantations managed by these people reached 5.8 million hectares or at least controlled 40.6% of the total area. Meanwhile, in the 1980s, Indonesia only had 295 thousand Ha, with people's ownership of only 6,175 Ha or 2.1%.[40] This development continues to increase along with

38 BPS RI, "Luas Tanaman Perkebunan Menurut Provinsi (Ribu Hektar), 2023," *Badan Pusat Statistik Republik Indonesia*, last modified 2024, accessed May 12, 2024, https://www.bps.go.id/id/statistics-table/2/MTMxIzI=/luas-tanaman-perkebunan-menurut-provinsi--ribu-hektar-.html.

39 databoks.katadata.co.id, "10 Provinsi Dengan Perkebunan Kelapa Sawit Terluas Pada 2023, Riau Juaranya," *Databoks.Katadata.Co.Id*, last modified 2023, accessed May 12, 2024, https://databoks.katadata.co.id/datapublish/2023/12/22/10-provinsi-dengan-perkebunan-kelapa-sawit-terluas-pada-2023-riau-juaranya.

40 databoks.katadata.co.id, "Luas Perkebunan Sawit Rakyat 40,6% Dari Total Perkebunan Sawit Indonesia,"

the number of companies entering Indonesia and the ease with which people can participate in palm oil management in Indonesia in the last few years.[41]

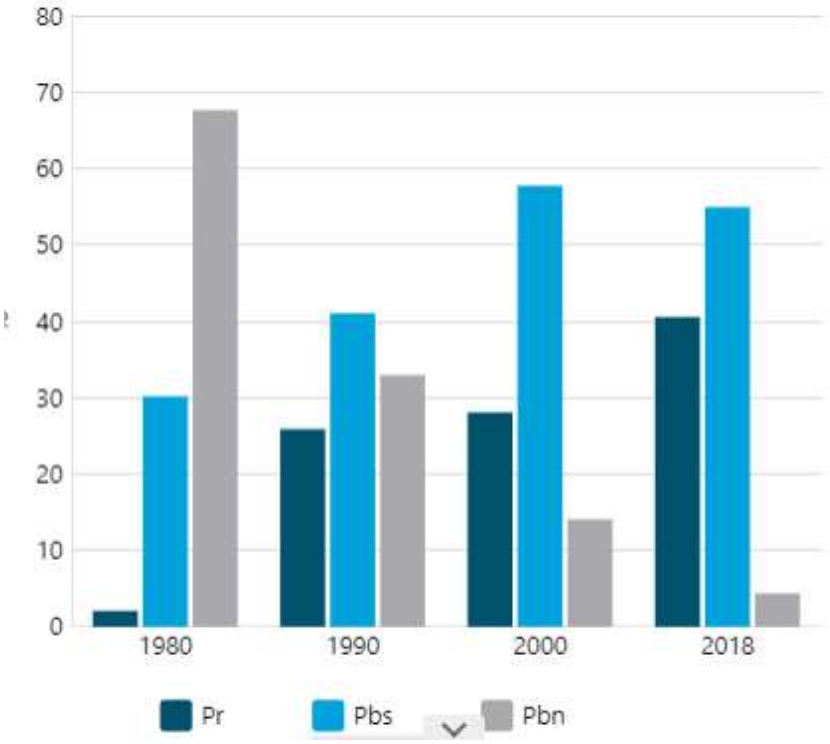

Figure 4. Palm Oil Plantation Ownership in Indonesia

Meanwhile, the area of control carried out by BUMN (State-Owned Enterprises) through reports by the Ministry of Agriculture (Figure 5) shows that the area of management by the state tends to shrink when compared with previous years, but it has the advantage of increasing production, it can be seen that in 2016 alone the area reached ± 707 thousand Ha with total production reaching 1.8 million tons, then in 2019 the area was only 617 thousand Ha with a production area reaching 2.1 million Ha, then in 2021 the area shrank again to only 579 thousand Ha with production 2.2 Million Ha.[42] From the results of this achievement, Indonesia was able to obtain foreign exchange for the country as a whole, namely 25 billion US dollars or the equivalent of 359 trillion rupiah in 2021.

Databoks.Katadata.Co.Id, last modified 2019, accessed May 12, 2024, https://databoks.katadata.co.id/datapublish/2019/12/10/luas-perkebunan-sawit-rakyat-406-dari-total-perkebunan-sawit-indonesia.

41 Megawati Siahaan and Open Darnius, "Klasifikasi Provinsi Di Indonesia Berdasarkan Luas Pengusahaan Dan Produktivitas Tanaman Kelapa Sawit Menggunakan Analisa Klaster," *Jurnal Agro Estate* 7, no. 2 (2023): 1–10.

42 datatempo.co, "Luasan Lahan Sawit Milik BUMN Cenderung Menyusut," *Datatempo.Co*, last modified 2021, accessed May 12, 2024, https://www.datatempo.co/DataEkonomi/view/20210712161919/luasan-lahan-sawit-milik-bumn-cenderung-menyusut.

No	Provinsi	Luas Areal (Ha)		
		Perkebunan Besar Negara	Perkebunan Besar Swasta	Perkebunan Rakyat
1	Aceh	33.325	195.153	247.101
2	Sumatera Utara	288.809	517.204	442.073
3	Sumatera Barat	8.403	189.806	250.631
4	Riau	75.192	1.020.818	1.762.163
5	Jambi	20.591	292.111	771.998
6	Sumatera Selatan	33.865	561.246	52.247
7	Bengkulu	830	98.706	273.286
8	Lampung	7.601	79.855	109.175
9	Bangka Belitung	-	155.361	79.457
10	Kepulauan Riau	-	6.073	1.283
11	DKI Jakarta	-	-	-
12	Jawa Barat	10.334	3.788	291
13	Jawa tengah	-	-	-
14	D.I. Yogyakarta	-	-	-
15	Jawa Timur	-	-	-
16	Banten	9.997	2.374	6.697
17	Bali	-	-	-
18	Nusa Tenggara Barat	-	-	-
19	Nusa Tenggara Timur	-	-	-
20	Kalimantan Barat	28.021	1.453.126	534.767
21	Kalimantan Timur	5.377	1.446.281	376.612
22	Kalimantan Selatan	16.027	355.897	107.582
23	Kalimantan Timur	-	1.043.425	252.643
24	Kalimantan Utara	-	199.641	37.494
25	Sulawesi Utara	-	-	-
26	Sulawesi Tengah	-	888.30	54.766
27	Sulawesi Selatan	11.089	1.184	34.677
28	Sulawesi Tenggara	872	61.974	7.945
29	Gorontalo	-	14.185	4.958
30	Sulawesi Barat	-	40.269	108.124
31	Maluku	-	9.342	853
32	Maluku Utara	-	5.555	-
33	Papua Barat	-	45.929	22.135
34	Papua	-	153.475	20.794
	Total	550.333	8.041.608	6.029.752

Figure 5. Wide Distribution of Oil Palm Plantations in each Province in Indonesia

Due to these results, Indonesia can certainly get a lot of foreign exchange from trading CPO and its derivatives, which can be marketed globally to meet the needs of countries that do not have large palm oil plantations. Currently, Indonesian palm oil is known for its abundant production, cheapness, and high quality. However there are several countries that have criticized Indonesia's actions because they consider it excessive human exploitation and also environmental damage, which continues to be campaigned against by the international community. So, Indonesia needs to determine many strategies to face these various complexities, including the Trade War between China and the United States which has an impact on Indonesian CPO exports.

4. Malaysian Investment in Palm Oil Sector

Since 2006, Indonesia has become a major player in the palm oil business and the world's main exporter with foreign exchange in 2021 reaching 429 trillion just from this activity.[43] After beating Malaysia for a long time in terms of exports they had previously since

43 Maulandi Rizky Bayu Kencana, "Kalahkan Malaysia, Industri Sawit Indonesia Rajai Dunia Sejak

the 1980s. However, this pride has something to do with Malaysia, where many Malaysians have invested in palm oil through several companies. Data for 2021 alone shows at least 7.9 palm oil plantation concessions held by foreign companies and 3.7 million hectares held by Malaysia.[44] Based on the permits granted, there are in the form of HGU (*Hak Guna Usaha*) and IUP (Plantation Business License) with an Indonesian IUP covering an area of + 12.3 million Ha and in detail 9 companies from Malaysia control around 2.32 million Ha. Meanwhile, in 2014, these 9 Malaysian companies controlled 1.42 million Ha of the total 5.12 million Ha of Indonesian plantation area.[45]

In comparison, Malaysia has been a player in the world palm oil plantation industry since the 1980s.The details of the 9 Malaysian companies are CBIP Holding Berhad, Felda Global Ventures Holding Berhad, Genting Plantation Berhad, IJM Corporation Berhad, IOI Corporation Berhad, KLK Berhad, Kulim Berhad, Sime Darby Plantation, and Wilmar International.[46] It is not an exaggeration why many foreign companies in the Palm Oil Plantation sector entered Indonesia due to the monetary crisis in 1997-1999 and Indonesia received a loan from the IMF (International Monetary Fund) and one of the conditions was to open investment taps in the palm oil plantation sector.[47] Meanwhile, in previous years, during the New Order era, many palm oil plantation companies were held by BUMN, Perkebunan Nusantara Company, national private plantations and also people's plantations. Until a critical moment, Indonesia tried to sell several important assets that were bankrupt and many companies from Malaysia started buying these assets, including PT Perkebunan Nusantara, some of whose shares had changed ownership to Malaysia.[48]

This has also had a further impact so far, Malaysia, even though its plantation area is small, has become a player that cannot be underestimated because they are the country that determines and standards the price of CPO and can export CPO at a premium to the markets of the European Union, the United States and even Japan. Meanwhile, Indonesia is only a non-premium market and its market share is only Bangladesh, India and even

2006," *Liputan6.Com*, last modified 2021, accessed May 12, 2024, https://www.liputan6.com/bisnis/read/4473100/kalahkan-malaysia-industri-sawit-indonesia-rajai-dunia-sejak-2006.

44 Aryo Bhawono and Raden Ariyo Wicaksono, "Kuasa Sawit Malaysia Di Indonesia," *Betahita.Id*, last modified 2022, accessed May 12, 2024, https://betahita.id/news/detail/7941/kuasa-sawit-malaysia-di-indonesia.html?v=1671757213#:~:text=Olah data menunjukkan luas total,lahan dengan Fungsi Ekosistem Gambut.

45 Kennial Laia, "Membongkar Luas Dan Cuan Kebun Sawit Malaysia Di Indonesia," *Betahita.Id*, last modified 2022, accessed May 12, 2024, https://betahita.id/news/detail/7297/membongkar-luas-dan-cuan-kebun-sawit-malaysia-di-indonesia.html.html.

46 Muhammad Idris, "Mengapa Perusahaan Malaysia Menguasai Banyak Kebun Sawit Di Indonesia?," *Kompas.Com*, last modified 2022, accessed May 12, 2024, https://pemilu.kompas.com/read/2022/02/01/113530226/mengapa-perusahaan-malaysia-menguasai-banyak-kebun-sawit-di-indonesia.

47 poskota.co.id, "Ya Ampun! Sejak Krisis Moneter 1998, Perusahaan Malaysia Kuasai Lahan Sawit Indonesia," *Poskota.Co.Id*, last modified 2022, accessed May 12, 2024, https://poskota.co.id/2022/06/01/ya-ampun-sejak-krisis-moneter-1998-perusahaan-malaysia-kuasai-lahan-sawit-indonesia#google_vignette.

48 Farid Firdaus, "Malaysia Kuasai 20% Lahan Sawit Di Indonesia," *Beritasatu.Com*, last modified 2015, accessed May 12, 2024, https://www.beritasatu.com/ekonomi/282180/malaysia-kuasai-20-lahan-sawit-di-indonesia.

China. Of course the prices they give cannot be the same and the amount of volume given to these importing countries is different, because it is only non-premium.[49] This action will certainly be detrimental to many Indonesian farmers and national companies who compete with immigrants under the name of investment. Then this Malaysian company harvests its plantation products, brings them to Malaysia, and sells the products with the Malaysian label so that the results obtained will actually be much greater than using the Indonesian label which has been selling with a non-premium label.

5. Indonesian CPO Against the European Union

It's not just the trade war between China and the United States that Indonesia is fighting against, making this an opportunity and also a global strategic issue. However, Indonesia also faced several rejections from the European Union which asked Indonesian CPO to stop entering its territory[50]. Since 2021, from a report by Sidik, as research coordinator on food and digital economic issues from Indonesia for Global Justice, he stated that the European Union parliament's decision on renewable energy requires only a maximum of 7% of energy use from CPO until 2030, especially energy for transportation. Thus, Indonesia-Malaysia as palm oil producers with a market share of 80% globally is threatened, especially in the European Union.[51]

There are at least 5 (five) reasons for the European Union Parliament to ban CPO and its derivative products from Indonesia, including deforestation, degradation of flora and fauna habitats, slavery, human rights violations, and corruption in permits for forest expansion from the palm oil industry.[52] The problem that is often raised by the European Union Parliament is the problem of deforestation, where since 2013 the European Commission has highlighted changes in land cover in Indonesia, where the area of the agricultural sector in that year reached 58 million hectares, and palm oil contributed 6 million hectares which was destructive or equivalent to 2.5% of the causes of global deforestation (239 million Ha) and the details are from the 2000-2010 period. Companies must be responsible for 88% of forest destruction and only 11% of farmers.[53]

This consideration makes Indonesia and Malaysia indirectly accused because the world's palm oil plantations are only dominated by these two countries. This discrimination

49 cnbcindonesia.com, "Indonesia Raja Minyak Sawit Yang 'Diatur' Malaysia! Kok Bisa?," *Cnbcindonesia.Com*, last modified 2022, accessed May 12, 2024, https://www.cnbcindonesia.com/market/20221027170638-17-383062/indonesia-raja-minyak-sawit-yang-diatur-malaysia-kok-bisa.

50 Hendra Maujana Saragih and Hanna Rahayu, "Pengaruh Kebijakan Uni Eropa Terhadap Ekspor Kelapa Sawit Indonesia," *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 8, no. 2 (2022): 296–303.

51 Rahmat Maulana Sidik, *CPO Indonesia Ditolak Uni Eropa, Kenapa?* (Jakarta, 2018).

52 Windratmo Suwarno, "Kebijakan Sawit Uni Eropa Dan Tantangan Bagi Diplomasi Ekonomi Indonesia," *Jurnal Hubungan Internasional* 8, no. 1 (2019): 23–34.

53 Janice Ser Huay Lee et al., "Environmental Impacts of Large-Scale Oil Palm Enterprises Exceed That of Smallholdings in Indonesia," *Conservation Letters* 7, no. 1 (2014): 25–33.

does not stop there, where in 2019 the European Union again issued a policy draft entitled "Delegated Regulation Supplementing Directive of the EU Renewable Energy Directive II" which was proposed by the European Commission and ratified as Delegated Regulation No. C in the same year. In the draft, it states that some vegetable oils are unsustainable and have a high risk, and if no member countries sue, they will be passed as standard regulations.[54]

Following this issue, since 2015, Indonesia has made several diplomatic efforts, through the Indonesian Ministry of Foreign Affairs, mapping other potential markets and being assisted by the BPPK (Policy Research and Development Agency) to create a single study and narrative on palm oil policy. sustainability in Indonesia.[55] Apart from that, Indonesia continues to actively invite several countries in the ASEAN region, especially Malaysia and Thailand, as well as from the Latin American region, especially Colombia. Collaboration that can also strengthen the position of Indonesian CPO is cooperation between Indonesia and Malaysia through the instruments of the Council of Palm Oil Producer Countries (CPOCP) and[56] inviting Thailand to participate because they are both major palm oil producing countries in ASEAN.[57]

Another issue that has arisen is because the European Union wants to protect countries that produce vegetable oils, especially sunflower oil or soybean oil, which have larger land areas than palm oil and the volume produced is also minimal.[58] As a result, Indonesia continues to try to protest very convincingly to the WTO (World Trade Organization), as the UN body that handles world trade issues.[59]

Through a press release from the Indonesian Ministry of Trade and through the Permanent Mission of the Republic of Indonesia (PTRI) in Geneva, Switzerland sued the WTO on December 9 2019. Discrimination of Indonesian CPO by the European Union is very detrimental to Indonesia and has a negative impact on CPO and its derivative products, and data from Indonesian BPS for In the last 5 years (starting from 2019 onwards) Indonesia has shown a negative trend in the value of its exports and if it continues it will

54 European Union, "Palm Oil: Outcome of the Trilogue of the EU's Renewable Energy Directive (RED II)," *European Union*, last modified 2018, accessed May 12, 2024, https://eeas.europa.eu/delegations/%0Aindonesia/46646/palm-oil-outcome-trilogue-eu'srenewable-%0Aenergy-directive-red-ii_en.

55 Badan Pengkajian dan Pengembangan Kebijakan, "Diplomasi Sawit," *BPPK Kementerian Luar Negeri*, last modified 2017, accessed May 12, 2024, Diambil kembali dari Kementerian Luar Negeri.

56 Riva Dessthania Suastha, "RI-Malaysia Lawan Resolusi Diskriminatif UE Soal Sawit," *Cnnindonesia.Com*, last modified 2017, accessed May 12, 2024, https://www.cnnindonesia.com/internasional/20170812031841-106-234173/ri-malaysia-lawan-resolusi-diskriminatif-ue-soal-sawit.

57 D. Sutrisno, "Indonesia Ajak Thailand Lawan Resolusi Sawit Eropa," *Republika.Co.Id*.

58 Caren Riady, Kholif Badarul, and Helen Hi, "Analisis Upaya Indonesia Dalam Melawan Black Campaign Minyak Kelapa Sawit Dari Uni Eropa," *Proyeksi: Jurnal Ilmu Sosial dan Humaniora* 28, no. 1 (2023): 53–67.

59 Indriati Safitri, "Strategi Council of Palm Oil Producing Countries Dalam Melindungi Ekspor Komoditas Kelapa Sawit Negara Anggota Dari Ancaman Kebijakan Proteksionis Uni Eropa," *Indonesian Journal of Global Discourse* 3, no. 2 (2021): 64–82.

threaten the economy of small communities who depend on palm oil in Indonesia and communities on the border with Malaysia.[60] Until the last few years, Indonesia, through the Indonesian Ministry of Foreign Affairs, has attempted batik diplomacy in its resistance to the European Union parliament which narrated that with the existence of palm oil, there will be derivatives, including oil for batik, as well as palm oil as a national commodity that must be maintained because it contributes even more to state income. Has already freed the Indonesian people more over 10 million people from poverty and this is to meet the goals of sustainable development and support for this.[61]

After this feud had been going on for a long time, Indonesia began to implement a strategy to look for other alternatives that could be boycotted like CPO, so this decision came after Indonesia began to receive investment from China for nickel which was spread across the Eastern Indonesia region. Indonesia started proposing a boycott of Indonesian nickel to the European Union because the European Union had done the same thing to CPO. The European Union is overwhelmed and is trying to do the same thing to Indonesia by suing the WTO. As a result, Indonesia had to repeatedly appeal because the WTO agreed with the European Union's reasons, but it is known that the United States has left WTO membership and this is good news for Indonesia. Apart from that, the WTO rules for approving nickel exports are also at odds with the WTO's pro-environmental obligations. Meanwhile, Indonesia wants to promote the downstreaming of nickel and its derivatives domestically. Due to this dispute, Indonesia and the European Union again have to wait for a unanimous decision from the newly formed body, namely the WTO Appellate Body, and wait for the WTO judge's decision.[62]

Indonesia continues to strive to create sustainable palm oil with various policies and various methods to prevent the accumulation of domestic CPO and the downstreaming of palm oil so that it can be used in various derivatives. Then Indonesia continues to promote the use of environmentally friendly palm oil as fuel so that this energy will replace various sources which currently still depend on fossil fuels, especially coal and petroleum.

6. Black Campaign and Sustainability of the Indonesian Palm Oil Industry

The black campaign for Indonesian palm oil has long been carried out by various civil servants as well as national institutions and even international institutions which always highlight the activities of Indonesian palm oil. Since 2022 the European Union has passed

60 Kementerian Perdagangan RI, "Lawan Diskriminasi Kelapa Sawit, Indonesia Gugat Uni Eropa Di WTO," *Kemendag.Go.Id*, last modified 2019, accessed May 12, 2024, https://www.kemendag.go.id/berita/siaran-pers/lawan-diskriminasi-kelapa-sawit-indonesia-gugat-uni-eropa-di-wto-3.

61 BPPK, "Dasawarsa Diplomasi Batik Indonesia Peran Diplomasi Dan Industri Minyak Nabati" (Jakarta: Kementerian Luar Negeri, n.d.).

62 Verda Nano Setiawan, "RI Kalah Digugat Uni Eropa, Eks Pejabat WTO Blak-Blakan," *Cnbcindonesia.Com*, last modified 2023, accessed May 12, 2024, https://www.cnbcindonesia.com/news/20230222081557-4-415860/ri-kalah-digugat-uni-eropa-eks-pejabat-wto-blak-blakan.

the Anti-Deforestation Law (EUDR) which not only applies to palm oil products and their derivatives but also applies to soybeans, coffee, chocolate, furniture, beef, rubber, wood and even cows which are considered to be the cause of the destruction of the world climate during This. The European Union, through the Commissioner for Environment, Maritime Affairs and Fisheries, stated that this was their effort to prevent cases of deforestation in various countries and world climate change and current environmental damage.[63]

This black campaign was once opposed by Indonesia and research from Habibie in 2016, stated that in the 2007-2012 period the step taken by Indonesia was to carry out a green marketing strategy, namely economic diplomacy to pressure countries that carried out black campaigns so that these issues could be countered with maximally and with an accurate approach, Indonesian diplomats are prepared to face this plan, green marketing which is developing in the global region will of course really support those who are pro-environment and Indonesia sees this as an opportunity and many oil palm plantations are given direction to be more pro-environment.[64]

However, this campaign did not just stop, this action continued to spread and lead to various negative views on palm oil in Indonesia and Malaysia. Especially on the islands of Kalimantan and Sumatra which are the world's main bases for global suppliers of vegetable palm oil. Another strategy used by Indonesia is diplomacy, namely by implementing the Indonesian-European Free Trade Association Comprehensive Economic Partnership (IE-CEPA) which includes Indonesia, Switzerland, Norway, Iceland and Liechtenstein. This is one way to ward off black campaigns and because for example Switzerland only imported 200 thousand tons of Indonesian oil in 2018 or the equivalent of 0.5% of Indonesia's total global exports and this is an opportunity for Indonesia to to enter the share of the European Union slowly. Switzerland can use Indonesian palm oil for global companies, namely Nestle.[65]

On the other hand, Indonesia's other strategy is to collaborate with Ghana, which is Indonesia's partner and is the main palm oil producer in Africa, where the Ghanaian government positively responds to Indonesia's desire to fight back against this black campaign. Indonesia's first step is to prepare several Indonesian companies. which is starting to expand into business in Ghana and implementing several pro-environment policies as well as assisting the Ghanaian Government in developing its Palm Oil business

63 Nurhadi Sucahyo, "Mempersoalkan Kampanye Negatif Sawit Indonesia Di Eropa," *Voaindonesia.Com*, last modified 2022, accessed May 12, 2024, https://www.voaindonesia.com/a/mempersoalkan-kampanye-negatif-sawit-indonesia-di-eropa-/6882222.html.

64 A B Habibie, "Strategi Indonesia Dalam Mengatasi Black Campaign Sawit Untuk Meningkatkan Ekspor Crude Palm Oil (CPO) Periode Tahun 2007-2012," *Global dan Policy* (2016): 1–18, http://ejournal.upnjatim.ac.id/index.php/jgp/article/view/1923.

65 Gapki Indonesia, "Bukan Hanya Tudingan, Referendum Swiss Buktikan Kampanye Hitam Sawit," *Gapki.Id*, last modified 2021, accessed May 12, 2024, https://gapki.id/news/2021/03/11/bukan-hanya-tudingan-referendum-swiss-buktikan-kampanye-hitam-sawit/.

to be more pro-healthy environment.[66] Then another lobby was carried out, namely by entering Poland, which has always been a partner for a long time and has benefited both parties (Indonesia-Poland). Diplomatically, Indonesia and Poland have a long history and have always had emotional closeness in the past. then Indonesian products became superior in that country. This was also welcomed by the Indonesian Ambassador to Poland, who supported the Indonesian Government and sought diplomatic lobbying against this black campaign.[67]

7. Indonesian Palm Oil Certification

Improving Indonesian Palm Oil production is of course not just planning, since 2020 through Presidential Regulation of the Republic of Indonesia Number 44 of 2020 concerning the Indonesian Sustainable Palm Oil Plantation Certification System, the government has continued to strive to downstream and establish sustainable and environmentally friendly Palm Oil Plantations.[68] The concrete step taken by Indonesia is to certify domestic palm oil so that it can be accepted and free from international black campaigns. In article 1 the certification will be carried out for palm oil and its processed products, then in article 4 it is stated in detail that management of the environment and natural resources as well as social responsibility to the community must be addressed and transparency as an antidote to the issue of indications of corruption in licensing. Included in this regulation are sanctions that can be given to every palm oil plantation in Indonesia, in the form of a warning, up to the closure of the licensing business and revocation of the ISPO certificate.

Indonesia is a country that always suffers from various global issues and also other strategic issues if it does not act quickly. Indonesia has had to fight several times from various sides to fight world tensions and also an economy that is not conducive to several events that have occurred so far. Through the trade war between China and the United States, Indonesia cannot take sides because America and China have been strategic partners for Indonesia all this time. Where for the United States itself 12.6% of trade then China accounts for 26.3% of trade.[69] Indonesia is always improving the governance of palm oil and its domestic derivatives and their use to avoid European black campaigns, the

66 Gapki Indonesia, "Indonesia – Ghana Kerja Sama Lawan Kampanye Negatif Sawit," *Gapki.Id*, last modified 2018, accessed May 12, 2024, https://gapki.id/news/2018/04/12/indonesia-ghana-kerja-sama-lawan-kampanye-negatif-sawit/.

67 bpdp.or.id, "Indonesia Ajak Ghana Lawan Kampanye Hitam Sawit," *Bpdp.or.Id*, last modified 2018, accessed May 12, 2024, https://www.bpdp.or.id/indonesia-ajak-ghana-lawan-kampanye-hitam-sawit.

68 *Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Tentang Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia*, n.d.

69 lemhannas.go.id, "Mitra Dagang Terbesar Indonesia: AS Dan China Sedang Alami Perlambatan Ekonomi," *Lemhannas.Go.Id*, last modified 2022, accessed May 12, 2024, https://www.lemhannas.go.id/index.php/publikasi/press-release/1627-mitra-dagang-terbesar-indonesia-as-dan-china-sedang-alami-perlambatan-ekonomi-2.

China and United States Trade War which has made the world economy unstable.[70]

D. Closing

Global developments are related to the issue of the China and United States Trade War, and also strategic issues that influence the Indonesian palm oil industry. The impact caused by this trade war will of course affect all lines in Indonesia, including the influence on Indonesia's export uncertainty. The strategic issues facing Indonesia are no less important because until 2023 Indonesia faces various challenges including rejection of Indonesian palm oil and its derivatives as well as black campaigns carried out by countries in the European region. Impact on Indonesian exports and their volume to date. Through analysis related to the impact of legal policies on the Indonesian palm oil industry regarding the trade war between China and the United States and global strategic issues. Several ways Indonesia can do this are by making efforts to implement downstream policies on palm oil derivatives, then downstreaming products that are also needed by Europe, especially Nickel, diplomacy with global palm oil producing countries, for example Malaysia, Thailand, Colombia and also Ghana as production palm oil global. As well as starting to approach countries that are loyal to Indonesia, for example Poland, Iceland, Norway and even Switzerland to support Indonesia's decision. Apart from that, Indonesia is making various efforts to implement a certification policy for processed palm oil products so that they are more systematically organized and wisely managed by the Indonesian government because palm oil has become an important commodity for Indonesia.

70 Udin Abay, "Percepatan Dan Kredibilitas ISPO, Solusi Jitu Melawan Issue Negatif," *Swadayaonline.Com*, last modified 2018, accessed May 12, 2024, https://www.swadayaonline.com/artikel/1714/Percepatan-dan-Kredibilitas-ISPO-Solusi-Jitu-Melawan-Issue-Negatif/.

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GUARANTEEING ADHERENCE TO HUMAN RIGHTS STANDARDS IN INFRASTRUCTURE PROJECTS: A LEGAL EXAMINATION OF THE NATIONAL STRATEGY FOR BUSINESS AND HUMAN RIGHTS IN INDONESIA'S PUBLIC-PRIVATE PARTNERSHIP LEGAL FRAMEWORK

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ABSTRACT

This study analyses the integration of human rights principles into Indonesia's Public-Private Partnership (PPP) legal framework, focusing on the implementation of Presidential Regulation No. 60 of 2023. The findings indicate that aligning the regulation Indonesia's PPP framework with international human rights standards, is significant step towards. Key provisions include mandatory human rights due diligence, and the accountability of both public and private actors in projects. Despite this progress, the study identifies that the existing legal framework, such as Presidential Regulation No. 38 of 2015, remains predominantly focused on economic and technical aspects, with limited attention to social and environmental impacts. This gap underscores the need for further efforts to incorporate comprehensive human rights impact assessments and stakeholder engagement into the PPP framework. By drawing on international best practices, the study recommends strengthening legal and institutional mechanisms to ensure PPP projects contribute to equitable, inclusive, and sustainable development.

Keywords: Business and human rights, public-private partnerships (PPP), Indonesia.

A. Introduction

The regulation of business responsibility for human rights is becoming increasingly important for diplomats, policymakers, business strategists, and social activists. There is significant fragmentation and divergence in the implementation of business and human rights principles. On a national level, there is noticeable divergence among states in their implementation of the UN Guiding Principles on Business and Human Rights 2011, with many states remaining largely passive in their efforts.[1] Similarly, in the business sector, most additional regulations are voluntary industry schemes rather than binding international legal instruments.[2] The scope of business and human rights issues is expanding, making it challenging for social advocates to strategically prioritize issues, potentially affecting the agenda's overall impact and resonance.[3]

1 United Nations Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. New York, 2011, 1
2 De Schutter, O, The Implementation of the UN Guiding Principles on Business and Human Rights, European Parliament, 2017, 19
3 World Benchmarking Alliance, Corporate Human Rights Benchmark, 2020, 1

Internationally, efforts are underway to adapt the human rights regime to provide protection across diverse aspects and sectors. The United Nations (UN) has defined a range of internationally accepted rights, including civil, cultural, economic, political, and social rights.[4] Financial sector actors, who play a vital role in the global economy, have substantial leverage over various sectors and business activities and are crucial in ensuring corporate respect for human rights at scale.[5] The United Nations' Sustainable Development Goal (SDG) 16, "Peace, Justice, and Strong Institutions," aligns with the human rights framework by promoting societies that respect individual rights, freedom of expression, privacy, and access to information.[6] SDG 16 also recognizes business as a driver of economic growth. The G20 is well-positioned to address challenges to human rights in the global economy, which is necessary for a sustainable future. The G20's underlying purpose is to meet the needs of people worldwide, especially the neediest.

In another field, the G20's Action Plan on the 2030 Agenda for Sustainable Development includes commitments to develop infrastructure that supports economic development and human well-being.[7] The G20 aims to promote policy options that bridge the global infrastructure gap, including mobilizing public and private finance. The UN has mechanisms to promote and protect these rights and to help countries fulfill their responsibilities. Specifically, the UN has launched the UN Guiding Principles on Business and Human Rights, calling for a strong commitment from countries.[8]

According to these principles, business activities can generate economic growth, reduce poverty, and increase the demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights. Effective markets require embedding rules that prevent societal harm and ensure business benefits align with broader societal goals.

The UNGP on Business and Human Rights rest on three pillars; protect, respect, and remedy. These pillars assist all social actors governments, companies, and civil society in reducing the adverse human rights consequences of business activities.[9] The framework's first pillar, protection, emphasizes the state's obligation to protect human rights and prevent abuses by third parties, including businesses.[10] The second pillar, respect, underscores the responsibility of business enterprises to avoid infringing on the rights of others and address adverse human rights impacts.[11] The third pillar is remedy, focuses on ensuring that those

4 United Nations, Universal Declaration of Human Rights 1948
5 Shift Project, Human Rights Due Diligence: Practical Strategies for Businesses, 2019, 2
6 United Nations. (2015). Transforming our world: the 2030 Agenda for Sustainable Development.
7 Action Plan on the 2030 Agenda for Sustainable Development, diakses di https://pipeline.gihub.org/?gad_source=1&gclid=Cj0KCQjw6uWyBhD1ARIsAIMcADrbFFLjp6OVkqOxdAnkM8cwEkTJE-b3-Ua_0r4YG9qqg8Zocj116okaAnoZEALw_wcB pada May 2024
8 Business and Human Rights in Asia: Progress and Challenges diakses di https://www.ohchr.org/en/climate-change/integrating-human-rights-unfccc?gad_source=1&gclid=Cj0KCQjw6uWyBhD1ARIsAIMcADr7RFD42zEY6L0q21QYfzf2KPox8WofdVz478e1h76g3tObxKixWKUaAiGcEALw_wcB pada May 2024
9 United Nations Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. New York, 2011, 1
10 *Ibid.*
11 *Ibid.*

affected by adverse impacts have access to effective remedies through judicial or non judicial mechanisms.[12]

In Indonesia, the President Regulation No. 60 of 2023 as a national strategy for business and human rights, seeks to align with these principles by promoting human rights compliance in business activities, particularly within public-private partnerships (PPPs).[13] The national action plan aims to reflect state law obligations under international law, enhance access to effective remedies, and foster respect for human rights through due diligence processes.[14] Claire Methven highlights that a national action plan is a framework for articulating business and human rights policies, explaining the implementation of international or national obligations and commitments.[15] This framework should guide policies across general and specific sectors, including market-based, investment, and financing policies, such as PPP schemes.[16] This study aims to analyze the impact of the President Regulation No. 60 of 2023 on PPP Indonesia legal framework and what are the key provisions of the President Regulation No. 60 of 2023 relevant to PPP legal framework in Indonesia.

This article is organized as follows the first section provides an overview of the key provisions of President Regulation No. 60 of 2023 that are relevant to PPP highlighting their implications for human rights compliance in infrastructure projects. The second section examines the legal framework for PPPs in Indonesia, focusing on how it addresses human rights concerns, including gaps and challenges. The third section presents a case study analysis to illustrate the practical application of these provisions and the legal framework in PPP projects. Finally, the article concludes with a discussion of findings and recommendations for strengthening human rights compliance in PPPs projects.

B. Research Method

Soerjono Sokanto explains that legal research involves applying a specific method, system, or thought to investigate legal phenomena through analysis.[17] Peter Mahmud Marzuki identifies five approaches for legal research case approach, statutory approach, historical approach, comparative approach, and conceptual approach.[18] This study adopts the normative legal research method, along with statutory, conceptual, and comparative approaches. The statutory approach involves analyzing regulations related to PPP's in Indonesia. Conceptually, problem-solving relies on concepts from secondary legal sources like books and articles. The comparative approach seeks best practices from other countries to develop new concepts. Overall, this research combines various methods to analyze PPP's legal framework in Indonesia thoroughly with related human rights standards.

12 *Ibid*
13 Ibid.
14 Presidential Indonesia Regulation No. 75/2020 on the National Strategy on Business and Human Rights.
15 Methven O'Brien, C, Business and Human Rights: A Handbook for Legal Practitioners. Council of Europe, 2018, 59
16 *Ibid.*
17 Soerjono Soekanto, Pengantar Penelitian Hukum, (Jakarta: Universitas Indonesia), 43
18 Marzuki dalam Bachtiar, Metode Penelitian Hukum, Jakarta: UNPAM PRESS, 2019, 81

To analyze the impact of the President Regulation No. 60 of 2023 for PPPs legal framework Indonesia, this article utilized a yuridis normative method with three law approaches; statute approach; case approach; and historical approach. The statute approach involves examining relevant laws and regulations governing PPP and human rights in Indonesia. Key statutes include Presidential Regulation No. 38 of 2015 on PPPs and President Regulation No. 60 of 2023. These regulations outline the procedures and requirements for PPP projects and emphasize the need for human rights due diligence. The President Regulation No. 60 of 2023 requiring businesses to respect human rights and providing remedies for affected parties. The historical approach involves examining the development of PPP regulations over time. The evolution of these frameworks reflects a growing recognition of the importance of integrating human rights considerations into infrastructure projects. The adoption of the The President Regulation No. 60 of 2023 represents a significant step towards aligning national policies with international standards and addressing the human rights in developing infrastructure project along with PPP schemes.

C. Discussions

1. Integrating Human Rights into Indonesia's PPP Framework: A Critical Analysis of Regulation No. 60 of 2023

The global framework for business and human rights has evolved significantly over the past few decades. The UNGPs 2011 are the cornerstone of these efforts. These principles rest on three pillars; the state duty to protect human rights, the corporate responsibility to respect human rights, and the need for greater access to remedies for victims of business-related abuses.[19] The UNGPs provide a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. Various countries have developed national action plans (NAPs) to implement the UNGPs.

The United Kingdom was the first to launch its NAP in 2013, followed by other countries such as Germany, the Netherlands, and Norway. These action plans typically outline how governments intend to meet their duty to protect human rights and promote corporate respect for human rights within their jurisdictions.[20] However, the implementation of these guidelines is uneven across countries and sectors. Many states remain passive, and their efforts to enforce these principles vary widely.[21] This divergence reflects broader trends in the regulation of business responsibility for human rights, where voluntary industry schemes

19 United Nations Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. New York, 2011, 1

20 Government of the United Kingdom. (2013). Good Business: Implementing the UN Guiding Principles on Business and Human Rights. UK Government. https://www.gov.uk/government/publications/bhr-action-plan

21 De Schutter, O, The Implementation of the UN Guiding Principles on Business and Human Rights, European Parliament, 2017, 19

often take precedence over binding international legal instruments.[22]

Presidential Regulation No. 60 of 2023, Indonesia's national strategy for business and human rights, aims to address national policies in bussines aligned with with the human rights protection. This strategy emphasizes the state's duty to protect human rights, the corporate responsibility to respect human rights, and the importance of access to remedies for those affected by business activities.[23]

Comparing Indonesia's approach to business and human rights with other countries reveals both similarities and differences. For example, the UK's NAP emphasizes corporate transparency and reporting, while Germany's plan focuses on supply chain due diligence. These variations reflect different national priorities and contexts but share a common commitment to implementing the UNGPs.[24] The fragmented and voluntary nature of many business and human rights initiatives globally poses challenges for achieving consistent and comprehensive human rights protection. However, the trend towards greater regulatory oversight and the development of binding international standards, such as the proposed UN treaty on business and human rights, indicates a growing recognition of the need for more robust mechanisms to ensure corporate accountability.[25]

PPP have become a crucial mechanism for infrastructure development in Indonesia. These partnerships leverage private sector efficiency and capital to meet public infrastructure needs, bridging gaps in public funding and expertise. The legal framework for PPPs in Indonesia, which outlines the procedures and requirements for PPP projects, aiming to attract private investment and ensure project feasibility and sustainability.[26] PPPs in Indonesia cover various sectors.

The Indonesian legal framework for PPPs is built on a series of laws and regulations designed to promote investment and safeguard public interests, establishing the rights and obligations of all parties involved. However, despite its comprehensive nature, the framework largely prioritizes economic and technical aspects, often overlooking critical social and environmental impacts. This oversight highlights the pressing need to integrate human rights principles, such as due diligence and impact assessments, into PPP practices. Strengthening human rights enforcement within the PPP framework is essential to ensure that infrastructure development not only drives economic growth but also upholds the dignity and rights of affected communities.

The integration of human rights into PPP projects is essential for promoting sustainable and inclusive development. This involves incorporating human rights impact assessments

22 World Benchmarking Alliance, Corporate Human Rights Benchmark, 2020, 1

23 Presidential Regulation No. 75/2020 on the National Strategy on Business and Human Rights.

24 German Federal Government, National Action Plan: Implementation of the UN Guiding Principles on Business and Human Rights, 2016, access at https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ForumSession6/Germany.pdf in May 2024

25 International Corporate Accountability Roundtable, The Future of Business and Human Rights Regulation, 2020, access at https://icar.ngo/wp-content/uploads/2020/01/ICAR-5th-Annual-Meeting-Report.pdf in May 2024

26 Presidential Regulation No. 38/2015 on Cooperation between Government and Business Entities in Infrastructure Provision.

into project planning and ensuring meaningful stakeholder engagement.

Presidential Regulation No. 60 of 2023 marks a pivotal shift in Indonesia's approach to PPP by addressing critical gaps in the existing legal framework under Presidential Regulation No. 38 of 2015. While the previous regulation focused primarily on economic and technical aspects to attract private investment and ensure project feasibility, it failed to adequately consider the broader social and environmental impacts, including the integration of human rights principles. The introduction of Regulation No. 60/2023 aims to rectify this oversight by embedding human rights considerations into PPP practices, aligning them with global standards such as the UNGDP on Business and Human Rights. By emphasizing the state's duty to protect human rights, the corporate responsibility to respect them, and the need for accessible remedies for those affected by business activities, this regulation seeks to create a more inclusive and accountable framework for infrastructure development.

The new regulation highlights the importance of incorporating human rights due diligence and impact assessments into every stage of PPP projects, from planning to implementation and monitoring. It mandates that businesses assess and mitigate potential human rights risks, ensuring that projects do not inadvertently harm vulnerable communities. Moreover, the regulation underscores the necessity of meaningful stakeholder engagement, providing affected populations with a platform to voice their concerns and contribute to decision-making processes. This approach not only strengthens the social license of PPP projects by building trust and reducing opposition but also aligns with international best practices seen in countries like Germany and the United Kingdom, which prioritize supply chain due diligence and corporate transparency in their national action plans.

In addition to fostering community trust, the regulation aims to enhance corporate accountability by establishing clearer expectations for compliance and access to remedies for those adversely affected by PPP projects. It reflects Indonesia's commitment to aligning with global trends towards binding human rights protections in business practices, addressing the challenges posed by the fragmented and voluntary nature of many business and human rights initiatives. However, the successful implementation of Presidential Regulation No. 60/2023 will require significant institutional support, including the development of detailed guidelines for integrating human rights impact assessments into PPP processes, the establishment of robust monitoring and enforcement mechanisms.

Ultimately, Presidential Regulation No. 60 of 2023 represents a transformative opportunity for Indonesia's PPP framework. By balancing economic development with the protection of human rights, it ensures that infrastructure projects contribute not only to economic growth but also to sustainable and inclusive development. Strengthening its implementation can position Indonesia as a regional leader in integrating human rights into infrastructure development, setting a strong precedent for the Asia-Pacific region and beyond.

Successful integration of human rights can enhance the social license of PPP projects, mitigate risks, and contribute to positive social outcomes. Research by Moffat and Zhang

emphasizes that stakeholder engagement and addressing community concerns, including respecting human rights, are crucial for achieving a social license to operate in large-scale projects such as mining and infrastructure development.[27] Similarly, the UNGPD on Business and Human Rights highlight that embedding human rights due diligence into business operations reduces legal, operational, and reputational risks for businesses, particularly in projects involving significant public interaction.[28] Evidence from the Business and Human Rights Resource Centre further demonstrates that integrating human rights in PPP projects fosters better community relations, enhances project sustainability, and aligns with the Sustainable Development Goals (SDGs), resulting in improved societal outcomes.[29] Case studies by the International Finance Corporation (IFC) illustrate how its Performance Standards, which incorporate social and environmental considerations, including human rights, have mitigated conflicts and garnered community support in transport and energy projects.[30] Collectively, these findings underscore the critical role of human rights integration in ensuring that PPP projects not only achieve economic objectives but also promote inclusive and sustainable development.

In conclusion, the integration of human rights principles into PPP projects significantly impacts the sustainability and success of these initiatives. By ensuring human rights due diligence, conducting social impact assessments, and fostering meaningful stakeholder engagement, PPP projects can secure a stronger social license to operate, reduce legal and reputational risks, and deliver positive social outcomes. International studies and guidelines, such as the UNGP on Business and Human Rights and IFC standards, demonstrate that embedding human rights not only strengthens community relations but also contributes to inclusive and sustainable development.

Therefore, it is crucial for Indonesia's PPP legal framework to explicitly incorporate a human rights-based approach to address social and environmental challenges, enhance accountability, and support equitable economic growth. This can be achieved by developing a comprehensive manual and framework that provide clear guidelines for integrating human rights principles into every stage of PPP projects. Such a framework and manual would serve as a practical tool for stakeholders, ensuring that human rights considerations are systematically embedded in project planning, implementation, and monitoring processes, ultimately fostering more sustainable and inclusive infrastructure development.

2. Key Provisions of Presidential Regulation No. 60/2023 and The Relevance to Indonesia's PPP Legal Framework

27 Moffat, K., & Zhang, A, The Paths to Social License to Operate: An Integrative Model Explaining Community Acceptance of Mining. *Resources Policy, 39*, 2014, p 61–70.

28 United Nations, Guiding Principles on Business and Human Rights, 2011

29 Business and Human Rights Resource Centre. (n.d.). Human Rights and PPP Projects, access at https://www.business-humanrights.org/

30 International Finance Corporation (IFC). (2012). IFC Performance Standards on Environmental and Social Sustainability. access at https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards

Key provisions of the President Regulation No. 60 of 2023 that relevant to enhance the accountability of both public and private actors in PPP projects and ensure that infrastructure development contributes to the realization of human rights. The President Regulation No. 60 of 2023 represents a significant step towards aligning Indonesia's PPP framework with international human rights standards following by the analysis reveals several key findings. First, alignment with International Standards. The President Regulation No. 60 of 2023 aligns Indonesia's PPP framework with international human rights standards, particularly the UNGPs. This alignment enhances the accountability of both public and private actors in PPP projects and promotes the integration of human rights considerations into project planning and implementation. Second, human rights due diligence. The requirement for human rights due diligence in PPP projects ensures that potential human rights impacts are identified and addressed early in the project lifecycle. This proactive approach helps mitigate risks and prevent adverse human rights impacts. Third, grievance mechanisms. The establishment of grievance mechanisms provides affected communities and individuals with access to remedies for human rights violations. This is crucial for ensuring accountability and addressing grievances effectively.

Despite the progress made, challenges remain in integrating human rights considerations into PPP projects. The existing legal framework primarily focuses on economic and technical aspects, with limited attention to social and environmental impacts. This gap underscores the need for continued efforts to incorporate human rights due diligence and impact assessments into the PPP framework. Comparing Indonesia's approach with other countries reveals both similarities and differences in the implementation of business and human rights guidelines. The trend towards greater regulatory oversight and the development of binding international standards indicates a growing recognition of the need for robust mechanisms to ensure corporate accountability. However, effective implementation and enforcement are crucial for realizing the potential benefits of these guidelines. Further research is needed to evaluate the impact of these guidelines on human rights outcomes in PPP infrastructure projects.

Presidential Regulation No. 38 of 2015 outlines the process and requirements for PPP projects, emphasizing technical feasibility, financial viability, and risk-sharing mechanisms to attract private sector participation.[31] While it includes provisions for environmental sustainability and community involvement, these are secondary to economic objectives, as demonstrated by its primary focus on financial structuring and operational efficiency.[32]

The lack of explicit requirements for human rights due diligence and impact assessments within Indonesia's legal framework for PPPs represents a significant gap when compared to international standards and best practices. Unlike the UNGPs, which emphasize corporate accountability for identifying, preventing, and mitigating human rights impacts,[33] Indonesia's PPP regulations prioritize technical and financial feasibility, neglecting broader implications

31 Presidential Regulation No. 38 of 2015 on Public-Private Partnerships in Infrastructure Development.
32 Ministry of Finance Indonesia, Guidelines for Implementing PPP Projects, 2015
33 Ruggie, J., *Just Business: Multinational Corporations and Human Rights*. W.W. Norton & Company, 2013, p. 56.

for communities, labor rights, and environmental sustainability.[34] While the framework mandates general Environmental Impact Assessments (EIAs) under Law No. 32 of 2009 on Environmental Protection and Management,[35] these focus primarily on ecological concerns and fail to address critical social and human rights issues, such as forced displacement, labor exploitation, and impacts on vulnerable groups. Moreover, the absence of explicit social impact assessments results in overlooked concerns such as the rights of indigenous peoples, fair compensation for displaced communities, and gender-sensitive project planning, increasing risks of harm to affected populations and potential delays due to community resistance. In contrast, countries like Germany and the United Kingdom provide models for integrating human rights into legal frameworks. Germany's Supply Chain Due Diligence Act mandates human rights and environmental due diligence,[36] while the UK's Modern Slavery Act emphasizes corporate reporting on labor practices,[37] demonstrating how legal requirements drive accountability. Without similar provisions, Indonesia's PPP projects risk perpetuating negative social outcomes, undermining their social license, and deterring socially responsible investors. Addressing this gap by incorporating mandatory human rights due diligence and social impact assessments into the legal framework is crucial for ensuring that PPP projects contribute to inclusive, equitable, and sustainable development.

In conclusion, Presidential Regulation No. 60 of 2023 represents a significant advancement in aligning Indonesia's PPP framework with international human rights standards, particularly the UNGPs. Key provisions such as the requirement for human rights due diligence, the establishment of grievance mechanisms, and the emphasis on accountability for both public and private actors in PPP projects demonstrate a proactive approach to integrating human rights considerations into infrastructure development. These measures help mitigate risks, ensure access to remedies for affected communities, and promote more inclusive and sustainable outcomes.

However, challenges persist, as the existing legal framework, including Presidential Regulation No. 38 of 2015, prioritizes economic and technical feasibility over social and environmental impacts. The lack of explicit requirements for human rights due diligence and comprehensive social impact assessments limits the framework's ability to address critical issues such as displacement, labor exploitation, and the rights of vulnerable groups. Lessons from international best practices, such as Germany's Supply Chain Due Diligence Act and the UK's Modern Slavery Act, highlight the importance of embedding human rights into regulatory frameworks to enhance corporate accountability and project sustainability.

To fully realize the potential of these guidelines, effective implementation and

34 Kerf, M., Gray, R. D., Irwin, T., Levesque, C., & Taylor, R, *Concessions for Infrastructure: A Guide to Their Design and Award*. World Bank Publications, 1998 p. 22.

35 Glasson, J., Therivel, R., & Chadwick, A, *Introduction to Environmental Impact Assessment*. Routledge, 2012, p. 134.

36 Cragg, W., Arnold, D. G., & Muchlinski, P, *Business and Human Rights*. Edward Elgar Publishing, 2012, p. 274.

37 Nolan, J., & Frishling, L. (2020). *Addressing Modern Slavery in Business*. Federation Press, p. 45.

enforcement are essential. Strengthening the legal framework by incorporating mandatory human rights assessments, stakeholder engagement, and monitoring mechanisms is crucial to bridging existing gaps. By doing so, Indonesia can ensure that its PPP projects contribute to equitable, sustainable development while upholding the dignity and rights of all stakeholders involved. Further research and evaluation are needed to measure the practical impact of these advancements on human rights outcomes in PPP infrastructure projects.

3. Framework and Manual for Business and Human Rights in Indonesian PPP Infrastructure Projects

The framework and manual for business and human rights in PPP projects provide comprehensive guidance for integrating human rights considerations into the planning, implementation, and monitoring of PPP initiatives.

Many elements of human rights due diligence would already be covered by existing due diligence tools and processes that assess and deal with social and environmental risks, for example Social Impact Assessments (SIA), Environmental and Social Impact Assessments (ESIA), Labour Audits and Health Impact Assessments (HIA). Drawing upon international best practices and comparative analysis, this framework aims to ensure that PPP projects in Indonesia promote sustainable development while upholding human rights principles:

a. Respect for Human Rights

   PPP projects must respect and uphold internationally recognized human rights standards, including the Universal Declaration of Human Rights and relevant conventions ratified by Indonesia.

b. Corporate Responsibility

   Private sector partners in PPP projects have a responsibility to identify, prevent, mitigate, and address human rights impacts associated with their activities.

c. Government Duty to Protect

   The Indonesian government has a duty to protect human rights, including ensuring that PPP projects do not infringe upon the rights of affected individuals and communities.

d. Access to Remedies

   Individuals and communities affected by PPP projects should have access to effective remedies for any human rights violations or harms they experience.

4. Key Components on Framework and Manual for Business and Human Rights in Indonesian PPP Projects

a. Human Rights Impact Assessment

   PPP projects should undergo a comprehensive human rights impact assessment prior to approval and throughout the project lifecycle. This assessment should identify potential human rights risks and impacts, including those related to labor rights, land

acquisition, environmental protection, and community displacement.

b. Stakeholder Engagement

Meaningful engagement with affected stakeholders, including local communities, indigenous peoples, and civil society organizations, is essential for identifying human rights concerns, building trust, and fostering collaboration throughout the project.

c. Grievance Mechanisms

PPP projects should establish accessible and transparent grievance mechanisms to address complaints or grievances from affected stakeholders. These mechanisms should provide avenues for redress and resolution of human rights-related issues.

d. Capacity Building

Capacity-building initiatives should be implemented to enhance awareness and understanding of human rights among all project stakeholders, including government officials, private sector partners, and local communities.

e. Monitoring and Reporting

Regular monitoring and reporting mechanisms should be established to track the human rights impacts of PPP projects and ensure compliance with human rights standards and obligations.

f. Remediation and Accountability

PPP projects should take prompt and effective measures to address any human rights violations or harms that occur as a result of project activities. This includes providing remedies to affected individuals and communities and holding accountable those responsible for human rights abuses.

5. Implementation of Framework and Manual for Business and Human Rights in Indonesian PPP Projects

The Indonesian government should provide regulatory oversight and enforcement to ensure that PPP projects comply with human rights standards and obligations. This includes conducting periodic audits, inspections, and reviews of project compliance. Private sector partners in PPP projects should integrate human rights considerations into their corporate policies, practices, and decision-making processes. This includes conducting due diligence on human rights risks and impacts and implementing measures to address them. Civil society organizations and community representatives should be actively engaged in the planning, implementation, and monitoring of PPP projects to ensure that human rights concerns are addressed and respected.

The Framework and Manual for Business and Human Rights in Indonesian PPP Projects provide a comprehensive roadmap for ensuring that PPP initiatives contribute to sustainable development and respect for human rights in Indonesia. By adhering to the principles and guidelines outlined in this framework, PPP projects can promote social equity, environmental sustainability, and inclusive economic growth while upholding human

rights principles. This framework and manual are tailored specifically for PPP projects in Indonesia and are informed by comparative analysis of international best practices in integrating human rights into infrastructure development initiatives. By adopting this framework, Indonesia can strengthen its commitment to promoting responsible business conduct and protecting human rights in the context of PPP projects.

6. The integration of Environmental, Social, and Governance (ESG) and Gender Equality and Social Inclusion (GEDSI) principles into public-private partnership (PPP) regulations in Indonesia

The integration of Environmental, Social, and Governance (ESG) and Gender Equality and Social Inclusion (GEDSI) principles into public-private partnership (PPP) regulations in Indonesia represents a significant step towards promoting sustainable and inclusive development practices. Indonesian PPP regulations can mandate environmental impact assessments (EIAs) for all PPP projects to evaluate potential environmental risks and impacts. These assessments should adhere to international standards and guidelines. PPP regulations can incentivize the procurement of environmentally-friendly technologies and materials. This can include criteria for selecting contractors and suppliers with strong environmental credentials. PPP contracts can include specific sustainability criteria, such as energy efficiency standards, waste management practices, and carbon footprint reduction targets. Compliance with these criteria can be monitored throughout the project lifecycle. PPP regulations should require meaningful stakeholder engagement, particularly with affected communities. This can involve consultation meetings, public hearings, and grievance mechanisms to address community concerns. PPP contracts should incorporate provisions to protect workers' rights, including fair wages, safe working conditions, and access to social protections. Compliance with labor standards should be monitored and enforced. PPP projects should prioritize social inclusion by ensuring equitable access to project benefits for marginalized groups, including women, indigenous peoples, and persons with disabilities. This can involve targeted employment and training programs, as well as community development initiatives. PPP regulations should promote transparency and accountability in project governance. This can include requirements for open procurement processes, disclosure of project information, and independent project oversight mechanisms. PPP contracts should include anti-corruption clauses to prevent corrupt practices in project implementation. This can involve measures such as conflict-of-interest disclosures, whistleblower protections, and integrity pledges from project stakeholders. PPP regulations should establish clear mechanisms for resolving disputes that may arise during project implementation. This can include mediation, arbitration, or access to independent dispute resolution bodies.

Gender Equality and Social Inclusion (GEDSI), PPP regulations should mainstream gender considerations throughout the project lifecycle. This can involve gender-responsive planning, budgeting, and monitoring to ensure that projects benefit men and women equally. PPP projects should promote women's participation in decision-making processes at all

levels. This can include setting targets for women's representation in project committees, advisory bodies, and workforce. PPP regulations should address the needs of vulnerable groups, including indigenous peoples, persons with disabilities, and LGBTQ+ communities. This can involve targeted interventions to promote their inclusion and empowerment. By integrating these ESG and GEDSI principles into PPP regulations, Indonesia can enhance the sustainability, inclusivity, and transparency of its infrastructure development projects. This not only ensures compliance with international standards and commitments but also contributes to the country's broader development goals and aspirations. The utilization of ESG and GEDSI principles in Indonesian PPPs can be observed in various projects and initiatives implemented by the government and private sector. For example, in the Jakarta MRT project, environmental sustainability measures were integrated into the construction and operation phases, including energy-efficient design features and waste management practices. Additionally, in the Central Java Power Plant project, efforts were made to promote social inclusion through the provision of job opportunities for local communities and the implementation of community development programs. These references demonstrate how ESG and GEDSI principles have been applied in real-world PPP projects in Indonesia, highlighting their importance in promoting sustainable and inclusive development practices.

The integration of Gender Equality and Social Inclusion (GEDSI) and Environmental, Social, and Governance (ESG) principles into the Framework and Manual for Business and Human Rights in Indonesian Public-Private Partnership (PPP) Projects is essential for fostering sustainable and inclusive development. This section elaborates on the specific strategies and mechanisms for integrating GEDSI and ESG principles into PPP projects, emphasizing their alignment with human rights considerations.

a. GEDSI Principles Integration

Gender mainstreaming should be embedded throughout the PPP project lifecycle, from project design to implementation and monitoring. This entails ensuring equal participation, representation, and access to benefits for women and marginalized groups. Social inclusion measures should address the needs and concerns of vulnerable populations, including indigenous peoples, persons with disabilities, and ethnic minorities. Stakeholder engagement processes should be inclusive and participatory, giving voice to marginalized communities. Gender-sensitive indicators should be integrated into project evaluation criteria to assess the gender responsiveness of PPP projects. This involves tracking outcomes related to women's empowerment, access to services, and participation in decision-making processes. Social inclusion measures should be incorporated into project design through targeted interventions, such as skills training programs for marginalized groups, community development initiatives, and inclusive procurement practices.

b. Environmental, Social, and Governance (ESG) Considerations

Environmental sustainability should be a core consideration in PPP project planning, with assessments conducted to identify and mitigate potential environmental risks and impacts. Emphasis should be placed on promoting biodiversity conservation, mitigating climate change, and preserving natural resources. Social impact assessments should go beyond

traditional economic metrics to assess the broader social implications of PPP projects, including their effects on community well-being, cultural heritage, and social cohesion. Governance mechanisms should promote transparency, accountability, and integrity in project decision-making. PPP regulations should include provisions for incorporating environmental sustainability criteria into project design and procurement processes. This may involve setting targets for reducing greenhouse gas emissions, promoting energy efficiency, and enhancing ecosystem resilience. Green infrastructure solutions should be prioritized in PPP projects, with investments directed towards renewable energy, sustainable transportation systems, and eco-friendly construction practices.

c. Corporate Social Responsibility (CSR)

Private sector partners should be incentivized to adopt CSR practices that align with GEDSI and ESG principles. This could include investing in community development projects, supporting environmental conservation efforts, and promoting ethical supply chain practices. PPP contracts should include clauses that require private sector partners to demonstrate their commitment to CSR through concrete actions, such as reporting on social and environmental performance indicators.

Multi-stakeholder partnerships should be formed to leverage expertise and resources from diverse sectors, including government, academia, business, and civil society. These partnerships can support innovation, knowledge transfer, and joint problem-solving in addressing complex social and environmental challenges. Public-private dialogues and consultations should be institutionalized to ensure ongoing collaboration and coordination among PPP stakeholders. Regular forums for stakeholder engagement can enhance transparency, build trust, and promote shared ownership of PPP projects. Capacity-building programs should be tailored to the specific needs of PPP stakeholders, including government agencies, private sector partners, civil society organizations, and local communities. Training modules should cover topics such as gender analysis, social impact assessment, and environmental management. Peer learning networks and knowledge-sharing platforms should be established to facilitate exchange of best practices and lessons learned in integrating GEDSI and ESG principles into PPP projects.

The integration of GEDSI and ESG principles into the Framework and Manual for Business and Human Rights in Indonesian PPP Projects represents a holistic approach to sustainable and responsible development. By aligning human rights considerations with gender equality, social inclusion, and environmental stewardship, PPP projects can contribute to inclusive growth, environmental resilience, and social equity. Through targeted strategies and collaborative efforts, Indonesia can realize the full potential of PPPs as catalysts for positive change and sustainable development. This elaboration provides a detailed overview of the strategies and mechanisms for integrating GEDSI and ESG principles into PPP projects, emphasizing their alignment with human rights considerations.

D. Closing

The integration of business and human rights principles, particularly within the context

of Public-Private Partnerships (PPPs), is of paramount importance in addressing the complex challenges of sustainable development and human rights protection. Against the backdrop of increasing globalization and economic interconnectedness, there is a growing recognition among diplomats, policymakers, and social activists of the need to regulate business responsibility for human rights. Despite this recognition, there exists significant fragmentation and divergence in the implementation of business and human rights principles, both at the national and international levels. Many states have yet to fully operationalize the 2011 UNGDP on Business and Human Rights, leading to varied approaches and outcomes across different jurisdictions. Moreover, the predominance of voluntary industry schemes over binding international legal instruments underscores the challenges in achieving comprehensive human rights protection within the business sector. Internationally, efforts are underway to adapt the human rights regime to address diverse aspects and sectors, including the financial industry, which wields substantial leverage over various business activities. The United Nations' SDG 16 underscores the importance of promoting societies that respect individual rights while recognizing the role of businesses in driving economic growth. Within this context, the UNGP on Business and Human Rights serve as a foundational framework, emphasizing the pillars of Protect, Respect, and Remedy. These principles outline the respective responsibilities of states and business enterprises in preventing human rights abuses and ensuring access to effective remedies for affected individuals. In Indonesia, the Presidential Regulation No. 60 of 2023 represents a concerted effort to align national policies with international human rights standards, particularly within the realm of PPPs. This national strategy aims to promote human rights compliance in business activities, enhance access to remedies, and foster respect for human rights through due diligence processes. Key provisions of the Presidential Regulation No. 60 of 2023 relevant to PPPs include requirements for human rights due diligence, establishment of grievance mechanisms, and integration of human rights criteria into project planning and implementation. By aligning with the UN Guiding Principles, Indonesia seeks to strengthen human rights protections within its PPP framework and ensure that infrastructure development projects contribute to broader societal goals. Overall, the integration of business and human rights principles into the legal framework for PPPs in Indonesia represents a significant step towards promoting sustainable development and human rights protection. However, challenges remain in translating these principles into concrete actions and outcomes, highlighting the need for continued efforts and collaboration among stakeholders.

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Curriculum Vitae

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INDIGENOUS FORESTS AND CARBON TRADING: ASSESSING THE POTENTIAL FOR HUMAN RIGHTS VIOLATIONS

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ABSTRACT

To promote national economic growth, the Indonesian government has introduced several laws, including investment policies related to carbon trading in indigenous forests. This article explores the legal concerns surrounding how investment strategies involving carbon trading in these forests could potentially lead to human rights violations, especially affecting Indigenous Peoples (IP). This study utilizes normative research methods and a case approach, with data collected through library research. This study shows that indigenous peoples gain both economically and environmentally from investment strategies involving carbon trading in indigenous forests. However, it may result human rights violations against IP. The state's failure to fully recognize Indigenous Peoples's rights has delayed the official acknowledgment of Indigenous Territories and Indigenous Forests. In contrast, business licenses for companies in the forestry sector trading carbon in Indonesia are processed quickly. This discrepancy can lead to potential human rights violations against IP, including threats to their indigenous forests and unfair access to social forestry management licenses.
Keywords : Human rights, Indigenous forests, Carbon trading.

A. Introduction

Carbon trading is an issue that cannot be separated from the problem of climate change experienced globally. As the adage man in nature means that all human actions towards nature or the environment around them will have an impact on humans themselves. Climate change is one of the impacts felt by humans as a result of the instability of CO2, CH4, CFC, N2O, and O3 gas concentrations or commonly referred to as greenhouse gas (GHG) elements. In order to stabilise the concentration of these greenhouse gases, the international community seeks to provide solutions in the form of mechanisms in international agreements to prevent, reduce and restore the negative impacts of climate change. Two of them are the Kyoto Protocol in 1997 which has been amended in the Doha Amendment in 2012 and the Paris Agreement in 2015, which regulates the mechanism of preventing and controlling climate change through a market mechanism approach. Through these two

international agreements, the concept of carbon trading was born.[1]

Indonesia also ratified the Kyoto Protocol through Law No. 17 of 2004 on the Ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Law No. 17/2004). Indonesia also participated in the 2015 Paris Agreement, which resulted in Nationally Determined Contributions (NDCs) and ratified through Law No. 16/2016 on the Ratification of the Paris Agreement to the United Nations Framework Convention on Climate Change.[2] In its 2021 NDC, Indonesia has committed to reducing its greenhouse gas (GHG) emissions by 29% by 2030 through its own efforts, and potentially achieving a 41% reduction with international support.[3] The commitment places particular emphasis on the forestry and land use sector, which accounts for 24.1% of the reduction target, equivalent to 692 metric tonnes of carbon dioxide equivalent (Mton CO2e), and the energy sector accounts for 15.5% or 446 Mton CO2e.[4]

The legal mechanism for carbon trading contained in both international agreements gives participating countries the right to buy and sell carbon. In Indonesia, the carbon trading mechanism is regulated in Presidential Regulation (Perpres) Number 98 of 2021 concerning the Implementation of Carbon Economic Value for Achieving Nationally Determined Contribution Targets and Controlling Greenhouse Gas Emissions in National Development. The regulation defines carbon trading as a mechanism for buying and selling market-based carbon units aimed at reducing greenhouse gases.[5]

Technically, carbon trading uses the concept of offsets by allowing compensation from one place that has contributed an amount of carbon that exceeds the carbon emission limit and paid to another place that has an adequate amount of carbon storage as a carbon offset. With this offset method, forests in the southern hemisphere such as in Indonesia have become a commodity for carbon trading for large industrialised countries such as Germany and America.[6] Currently, the carbon trading mechanism in Indonesia has been incorporated into the Carbon Exchange so that any entity both state and private entities

1 Sukanda Husin, *Hukum Lingkungan Internasional* (Jakarta: Rajawali Pers, 2016), 86-89.

2 Nationally Determined Contributions (NDCs) are national commitments to address global Climate Change in order to achieve the objectives of the Paris Agreement to the United Nations Framework Convention on Climate Change (Article 1 point 4 of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 7 of 2023 on Forestry Sector Carbon Trading Procedures).

3 Pasal 2 ayat 3 huruf a Presiden Nomor 98 Tahun 2021 Tentang Penyelenggaraan Nilai Ekonomi Karbon untuk Pencapaian Target Kontribusi yang Ditetapkan Secara Nasional dan Pengendalian Emisi Gas Rumah Kaca dalam Pembangunan Nasional.

4 Mahmul Siregar, Mohammad Ekaputra, Vita Cita Emia Tarigan, Agus Purwoko. ., ""Empowering coastal communities: enhancing income via carbon trading initiatives (collaboration between JGUFH and USU)", *International Journal of Research and Review 10* (9) (2023) 368-382, https://doi.org/10.52403/ijrr.20230938

5 Katadata Insight Center, "Indonesia Carbon Trading Handbook", https://cdn1.katadata.co.id/media/filespdf/2022/Indonesia_Carbon_Trading_Handbook.pdf (diakses 27 Mei 2024)

6 Muhammad Arman dan Uli Arta Siagian, "Perspektif Ekonomi Politik Perdagangan Karbon dan Dampaknya bagi Masyarakat Adat", Policy Brief: Aliansi Masyarakat Adat Nusantara, https://www.aman.or.id/files/publication-documentation/46147Kertas_Posisi_Perdagangan_Karbon_2023%20-%20fin.pdf (diakses 20 Mei 2024).

(people and business entities) can invest in carbon units which are further categorised as securities based on the Financial Services Authority Regulation (POJK) Number 14 of 2023 concerning Carbon Trading Through Carbon Exchange.[7]

One of the forest categories used as carbon units is indigenous forests as stipulated in Article 6 letter g of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 7 of 2023 concerning Procedures for Carbon Trading in the Forestry Sector. The implementation of carbon trading in indigenous forests uses the greenhouse gas emission (GHG Emission) offset method through customary law communities that manage businesses and/or GHG emission offset activities in the indigenous forest.[8] However, problems arose during the process of recognising indigenous forests that became the territory of indigenous peoples by the government.[9] When compared to the processing of Cultivation Rights Title (HGU) by corporations, it only takes about 14 days, while the recognition of people's rights or indigenous territories takes several years. Based on data from the Indigenous Territory Registration Agency (BRWA), there are at least 19.5 million hectares of indigenous forest land that are actually managed by indigenous peoples in Indonesia that have not yet received formal recognition from the state.[10]

This situation can occur in cases where indigenous peoples are evicted from their customary forests due to the lack of formal recognition of their customary forests by the state. Conversely, if one were to imagine a corporation registering its Business Use Rights over a particular forest land that may intersect with the indigenous forest, then the rights of indigenous peoples to their indigenous forests that have been part of their lives would be in danger of being lost. Furthermore, if the corporation uses the forest land for palm oil business, there is the potential for deforestation of these forests, especially indigenous forests.

The fact that GHG carbon emissions produced by forestry and land use sector businesses have increased between 2000 and 2020 with a total of 4.7 million tonnes of GHG. This is due to forest fires on peatlands that occurred between 2015 and 2019. Wahana Lingkungan Hidup Indonesia (WALHI) stated that there are 969 companies operating in

7 Pasal 3 ayat (1) Peraturan Otoritas Jasa Keuangan Nomor 14 Tahun 2023 Tentang Perdagangan Karbon Melalui Bursa Karbon.

8 Pasal 7 Angka 7 Peraturan Menteri Lingkungan Hidup dan Kehutanan Republik Indonesia Nomor 7 Tahun 2023 tentang Tata Cara Perdagangan Karbon Sektor Kehutanan.

9 Customary Territory is customary land in the form of land, water, and/or waters along with the natural resources on it with certain boundaries, owned, utilized and preserved from generation to generation and sustainably to meet the needs of the Community's life obtained through inheritance from their ancestors or ownership claims in the form of customary land or Customary Forests (Article 1 point 23 of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 9 of 2021 concerning Social Forestry Management).

10 WALHI, dkk, "Boikot! Perdagangan Karbon, Hentikan Pelepasan dan Pembongkaran Emisi, dan Percepat Pengakuan Wilayah Adat serta Wilayah Kelola Rakyat", Surat Bersama Masyarakat Sipil Atas Perdagangan Karbon, https://www.walhi.or.id/boikot-perdagangan-karbon-hentikan-pelepasan-dan-pembongkaran-emisi-dan-percepat-pengakuan-wilayah-adat-serta-wilayah-kelola-rakyat (diakses 27 Mei 2024).

forest and peatland ecosystem areas. On the other hand, companies responsible for forest fires and increased GHG emissions from their forestry and land-use businesses can get away with paying a certain amount of carbon units for their excess emissions. In relation to forests and peatlands, there is a possibility that some of the peatlands burnt due to palm oil land use could impact on adjacent indigenous forest areas.

The potential loss of indigenous forest areas and deforestation as a result of forestry and land use businesses that are quicker to process their Business Use Rights than the recognition of indigenous forest areas by the state, raises the issue of potential human rights violations against indigenous peoples. As Article 6(1) of Law No. 39/1999 on Human Rights states, in order to uphold human rights, the differences and needs of indigenous peoples must be considered and protected by law, society and government. Furthermore, in the explanation of the article, it is stated that indigenous rights that are actually still valid and upheld in the environment of indigenous peoples must be respected and protected in the context of protecting and upholding human rights in the community concerned by taking into account the laws and regulations. The potential for human rights violations proves the intersection between business activities and the protection of human rights in Indonesian society, especially for indigenous peoples.

In this regard, since 2023 there is a Presidential Regulation (Perpres) Number 60 of 2023 concerning the National Strategy for Business and Human Rights (Stranas BHAM) which basically aims to protect, respect and restore human rights from any business. The parties highlighted as having obligations for the protection of human rights in the Perpres are ministries / institutions and local governments. Meanwhile, the parties highlighted in the effort to respect human rights are business actors. The reality of the issue of potential human rights violations of indigenous peoples over their indigenous forests against carbon trading investments is interesting to investigate based on the existing legal situation to see whether or not human rights violations occur.

Previous research in 2022 showed that carbon trading poses a threat to the recognition of customary forests by the government. The threat is due to the fact that carbon trading is based on a market mechanism that tends to be business-like and pays little attention to the rights of indigenous peoples. The government's lack of attention to the rights of indigenous peoples is characterized by the government's weak recognition of customary forests.[11] Another study in 2024, showed that government policies on carbon trading have led to land disputes with indigenous peoples and tend to favor entrepreneurs. The government's carbon trading policy should accommodate both business and indigenous peoples and be oriented towards reducing greenhouse gases.[12]

11 Aidal Rasyif Nurulhadi and Neni Ruhaeni., "Konservasi Kawasan Hutan Adat dalam Perdagangan Karbon berdasarkan Paris Agreement dan Implementasinya di Indonesia", *Bandung Conference Series: Law Studies, Vol. 2*, No. 2 (2022), https://doi.org/10.29313/bcsls.v2i2.4557

12 *Muhamad Afifullah, Imam Haryanto, dan Muthia Sakti,* Trading Bursa Carbon Indonesia Peluang atau Ancaman

Based on the legal issues previously outlined, the aim of this research will be to analyze the potential for carbon trading policies in Indonesia to violate the human rights of indigenous peoples.

B. Research Method

This article uses normative juridical research by analyzing legal aspects based on legislation and finding legal rules, as well as legal doctrines to solve existing legal issues.[13] This article also uses a case approach and library research method as data collection technique. The case approach is used to map legal problems that arise in the process of implementing a policy or regulation related to carbon trading that involves and impacts indigenous peoples and indigenous forests. The author analyzes the substance of the rules contained in: 1) Law Number 39 of 1999 on Human Rights; 2) Presidential Regulation No. 60 of 2023 on the National Strategy for Business and Human Rights; 3) Presidential Regulation No. 98 of 2021 on the Implementation of Carbon Economic Value for Achieving Nationally Determined Contribution Targets and Controlling Greenhouse Gas Emissions in National Development; 4) Minister of Environment and Forestry Regulation No. 7 of 2023 on Forestry Sector Carbon Trading Procedures; 5) Minister of Environment and Forestry Regulation No. 9 of 2021 on Social Forestry Management; violation of Human Rights for Indigenous Peoples; 6) Regulation of the Financial Services Authority Number 14 of 2023 on Carbon Trading through Carbon Exchanges. The analysis is concerned with the utilization of indigenous forests in investment policies through carbon trading with reference to the above-mentioned laws and regulations. In order to solve the research question, the author will examine the relationship between the implementation of carbon trading investment in Indonesia that uses indigenous forests and the possibility of human rights violations for indigenous peoples.

C. Discussion

1. Regulations Related to Investment Policy Through Carbon Trading in the Forestry Sector in Indonesia

The mandate of Law No. 32/2009 on Environmental Protection and Management related to carbon emission reduction also became the forerunner of carbon trading. Carbon trading is one of the media used by the national and international community as a joint effort to control and balance greenhouse gases (GHG). The basic mechanism used is the provision of economic incentives to individuals or corporate entities in their efforts to

bagi Lingkungan?, *National Conference on Law Studies (NCOLS) Fakultas Hukum Universitas Pembangunan Nasional Veteran Jakarta*, Vol. 6, No. 1 (2024)

13 Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: Kencana Prenada Media Group, 2005), 35.

reduce their carbon emissions.[14] The parameters used in measuring the amount of carbon emissions are set by the government or international organizations for a country in the form of emission targets or permitted emission limits. This determination is then tied to the imposition of a fine that must be paid by the entity concerned if the emission limit exceeds the emission limit set by the government or certain international institutions. The setting of emission targets or limits provides individuals or companies with a predictable way of allocating the amount of carbon emissions they produce, as well as the consequences of exceeding these limits.[15]

Indonesia demonstrates its commitment to the Paris Agreement To The United Nation Framework Convention On Climate Change in realizing an open carbon market mechanism through the issuance of Financial Services Authority Regulation Number 14 of 2023 (hereinafter POJK Number 14 of 2023) on Carbon Trading Through Carbon Exchanges. Legally, this POJK implements the technical provisions of article 26 paragraph (1) of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector.[16] Specifically in the forestry sector, through the Ministry of Environment and Forestry, Indonesia issued Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 7 of 2023 concerning Procedures for Carbon Trading in the Forestry Sector.

POJK Number 14 of 2023 aims to facilitate parties in Carbon Trading in the Capital Market Sector through the Carbon Exchange related to licensing, governance, requirements and supervision of its implementation. As stipulated in Article 1 point 8 of POJK Number 14 of 2023, Carbon Trading is a market-based mechanism to reduce GHG (Greenhouse Gas) emissions through the sale and purchase of Carbon Units.[17] The buying and selling of carbon units is done in a system called carbon exchange. Based on Article 1 point 9 of POJK Number 14 of 2023 Carbon Exchange is a system that regulates Carbon Trading and/or Carbon Unit ownership records.[18]

The launch of the Indonesia Carbon Exchange (IDXCarbon) was conducted by the Indonesia Stock Exchange (IDX) on September 26, 2023. The business license of the Carbon Exchange Operator has been granted to IDX by the Financial Services Authority (OJK) through Decree Number KEP-77/D.04/2023 on September 18, 2023 in accordance with POJK Number 14 of 2023 concerning Carbon Trading Through Carbon Exchange. Currently, there are 4 (four) IDXCarbon trading mechanisms, namely Auction,

14 Suyanto., *Mengenal Bursa Karbon di Indonesia* (Serang: CV. AA. Rizky, 2023), 28.
15 *Ibid*, hlm. 29
16 Valiant Alfarizy, "Mekanisme Hukum : Perdagangan Karbon Melalui Bursa Karbon di Indonesia", *UNES Law Review Vol. 6,* No.2 (2023), https://doi.org/10.31933/unesrev.v6i2.1618
17 Pasal 1 angka 8 Peraturan Otoritas Jasa Keuangan Nomor 14 Tahun 2023 Tentang Perdagangan Karbon Melalui Bursa Karbon
18 Pasal 1 angka 8 Peraturan Otoritas Jasa Keuangan Nomor 14 Tahun 2023 Tentang Perdagangan Karbon Melalui Bursa Karbon

Regular Trading, Negotiated Trading, and Marketplace. IDXCarbon is connected to the National Registry System for Climate Change Control (SRN-PPI)[19] owned by the Ministry of Environment and Forestry (KLHK), thus simplifying the administration of carbon unit transfer and avoiding double counting. Business actors in the form of companies that have obligations and/or have a commitment to voluntarily reduce Greenhouse Gas emissions, can become IDXCarbon Service Users and purchase available Carbon Units. In addition, project owners who already have Carbon Units registered in SRN-PPI, can sell their Carbon Units through IDXCarbon.[20]

Entities wishing to enter into carbon trading through carbon exchanges must first apply for registration and emission permits. The registration can be done by the company or project to the relevant agencies such as the National Carbon Exchange Agency or similar international organizations. The registration process includes the preparation of explanatory documents of the project aimed at greenhouse gas emission reduction efforts, following the standards set by the authorized agency, such as requirements in emission measurement methods and monitoring methods. A company or project that has passed the registration process will be issued an emission permit, which authorizes the company or project to emit a certain amount of greenhouse gases and a certain limit that the company or project is not allowed to exceed.[21]

Companies or projects that are able to reduce their emissions in excess of a predetermined requirement can sell permits for the excess emissions to other entities that need emission permits to achieve their targets. This concept is called an economic incentive for companies to continuously pursue any form of reduction in their carbon emissions releases. These emission permits are also traded on the secondary market with speculative investors able to participate. This economic incentive concept allows for a complex market mechanism that has a direct effect on the price of emissions permits, encouraging companies to compete and innovate in order to reduce their emissions requirements.[22]

The registration and emissions permit process is the foundation of a carbon exchange trading system, ensuring that entities can operate within the regulatory framework and

19 The National Registry System for Climate Change Control, hereinafter abbreviated as SRN PPI, is a web-based system for managing, providing data and information on actions and resources for climate change mitigation, climate change adaptation, and carbon economic value in Indonesia (Article 1 point 14 of Presidential Regulation Number 98 of 2021 concerning the Implementation of Carbon Economic Value for Achieving Nationally Determined Contribution Targets and Controlling Greenhouse Gas Emissions in National Development).

20 OJK, "Bursa Karbon Indonesia (IDXCarbon) Resmi Diluncurkan", https://www.idx.co.id/id/berita/siaran-pers/2016 (diakses 28 Mei 2024)

21 Suyanto., *Mengenal Bursa Karbon di Indonesia* (Serang: CV. AA. Rizky, 2023), 27.

22 Posma Hutasoit, "Kajian mengenai Pemanfaatan Perhutanan Sosial dalam Perdagangan Karbon di Indonesia untuk Menghadapi Perubahan Iklim", *Fundamental Management Journal,* Vol. 9, No. 1 (2024), https://doi.org/10.33541/fjm.v9i1.5809

play a role in global greenhouse gas emissions reduction efforts.[23] The pricing of carbon credits is determined by the market's supply and demand system, giving companies the ability to predict the price of their carbon credits in their emission reduction efforts. The drive to reduce the need for carbon emissions has led to technological breakthroughs and knowledge transfer among carbon trading companies.[24]

The price of carbon credits is set at a value that reflects the potential cost of the environmental damage caused by these emissions. As explained earlier, companies are encouraged to innovate to reduce their carbon emission needs, essentially as a result of the carbon market mechanism or Carbon Exchange that sets prices based on supply and demand. In other words, a company will seek to sell its surplus carbon emissions to companies that are struggling to meet their carbon emissions targets. Conversely, if a company is still trying to meet its carbon emissions target, it is required to purchase carbon credits from other companies or entities that have surplus carbon emissions. Companies that are able to sell their surplus carbon emissions can make more profit, while companies that are required to buy carbon credits will be burdened by the high cost of carbon credits. In addition, companies that benefit from selling their surplus carbon emissions can use them to reallocate to other environmentally sustainable development projects.[25]

For developing countries like Indonesia, mitigation measures in reducing GHG emissions through renewable energy and technology require a long time. Economic development is also the main consideration for developing countries to continue running economic activities that have externalities on the environment, especially carbon-producing energy-intensive industries. Carbon trading is considered as one of the appropriate mechanisms in achieving GHG emission reduction goals under the Paris Agreement.

One solution to achieving GHG emission reduction targets is the provision of Nature Based-Solution (NBS) projects. Such projects can include nature conservation, restoration and sustainable ecosystems that allow carbon sequestration through natural means to compensate for global emissions from human activities.[26] These projects are located in the forestry, agriculture and marine sectors. Carbon trading is particularly beneficial for Indonesia, which has one of the largest tropical forests in the world. According to data from the Coordinating Ministry for Maritime Affairs and Investment, Indonesia has the third largest tropical rainforest in the world with an area of 125.9 million hectares that has the potential to absorb 25.18 billion tons of carbon emissions.[27] Meanwhile, the area of mangrove forests in

23 Suryanto, *Loc.Cit.*
24 *Ibid*. hlm. 28-29.
25 *Ibid*. hlm 30.
26 Daniel Oehling, Marc Schmidt, (2021), "Seeding Environmental and Economic Success with Nature-Based Solutions", https://jakartaglobe.id/opinion/seeding-environmental-and-economic-success-with-naturebased-solutions (diakses 27 Mei 2024).
27 Cindy Mutia Annur, "Potensi Ekonomi Karbon Indonesia Capai Rp8.000 Triliun, Ini Rinciannya", Databox,https://databoks.katadata.co.id/datapublish/2022/07/28/potensi-ekonomi-karbon-indonesia-

Indonesia reaches 3.31 million hectares and peatlands around 7.5 million hectares, which can absorb 33 billion tons and 55 billion tons of carbon emissions, respectively.[28]

The implementation of the NBS project contributes to carbon trading as a provider of carbon credits in mitigation measures to reduce GHG emissions. According to calculations by the Ministry of Environment and Forestry (KLHK) in 2020, the economic potential of carbon trading reached IDR 350 trillion in the next five years.[29] Even from the above data on forest area, with the scenario of the selling price of carbon credits at US$ 5 per ton in the carbon market, the potential revenue obtained from such trading could reach around Rp 8,000 trillion.[30] Globally, Indonesia will play an important role in achieving the Paris Agreement goals through carbon trading. One aspect that opens up this opportunity is the involvement of domestic stakeholders. Industry can contribute significantly to the enhancement of the carbon trading ecosystem, both as carbon credit consumers and carbon credit providers. Given the scale and importance of NBS projects in sequestering carbon and as a counterweight to an efficient carbon market, the potential marketing, trading and sale of carbon credits will be key in Indonesia's evolving carbon market in the future.[31]

The concept of 'Nature-based Solutions' (NBS) has become a concern for parties and a hot topic of discussion at the global level. In particular, after the final decision of the UN Climate Summit at COP 27 in Egypt, at the end of 2022. Pros and cons revolve around the implementation of NBS. Especially, since this topic became the target of the Kunming-Montreal Global Biodiversity Framework (GBF) discussion at the UN Biodiversity Conference COP15/2022 in Canada. On the one hand, pro-policy makers see NBS as a potential means by which nature can be used to assist humans in addressing the global climate crisis through carbon trading mechanisms, halting biodiversity loss, and other environmental issues in the world.

The carbon trading concept run through the NbS project is one of the investment-based businesses managed by the state, which should be able to guarantee human rights. As stipulated in Article 2 of Presidential Regulation No. 60 of 2023 concerning the National Strategy for Business and Human Rights which states that the National Strategy for Business and Human Rights includes: a) the obligations of ministries/agencies and Regional Governments to protect human rights in business activities; b) the responsibility of Business Actors to respect human rights; and c) access to remedies for victims of alleged human

capai-rp8000-triliun-ini-rinciannya (diakses 27 Mei 2024).

28 Kementrian Sekretariat Negara, "Arti Pesan Mangrove Indonesia di G20: Atasi Krisis Iklim Global", https://www.setneg.go.id/baca/index/arti_pesan_mangrove_indonesia_di_g20_ atasi_krisis_iklim_global (diakses 27 Mei 2024).

29 Rio Christiawan, "Maximizing our massive carbon trading potential", The Jakarta Post http://www.thejakartapost.com/academia/2021/08/14/maximizing-our-massive-carbon-trading-potential.html (diakses 27 Mei 2024).

30 Cindy Mutia Annur, *Loc.Cit.*

31 Kementrian Sekretariat Negara, *Loc.Cit*

rights violations in business activities. Its function is as a guideline for ministries/institutions and local governments to carry out planning, implementation, and monitoring of business and human rights; and guidelines for business actors and other stakeholders to participate in respecting human rights in the business sector.[32] Based on Article 2 paragraph (2) letter a of Presidential Regulation Number 60 of 2023 above, there is an obligation of ministries/ agencies and Regional Governments to protect human rights in business activities.

But on the other hand, NBS can be a danger to the ecology and local communities of indigenous peoples. It is feared that the NBS instrument as a carbon credit provider will legitimize companies, financial institutions, and other organizations as a means of greenwashing, achieving profit alone, and can further trigger violations of the human rights of indigenous peoples over the use of indigenous forest products.[33]

Article 5 of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia No. 7 of 2023 on Forestry Sector Carbon Trading Procedures states that carbon trading in the forestry sector is carried out through emission trading and GHG emission offset mechanisms. Emission trading is a transaction mechanism between Business Actors that have emissions exceeding the specified GHG emission ceiling. Meanwhile, GHG emission offsets are GHG emission reductions made by businesses and/or activities to compensate for emissions made elsewhere. Carbon trading in the forestry sector can be carried out on indigenous forests s as stated in Article 6 letter g of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 7 of 2023 concerning Procedures for Carbon Trading in the Forestry Sector. Forestry sector carbon trading for indigenous forests s applies the GHG emission offset mechanism and is implemented by customary law communities that conduct GHG emission offset businesses and/or activities. Related regulations and implementation of forestry sector carbon trading towards indigenous forests s are further discussed in the sub-chapters below.

2. Regulation and Implementation of Indigenous forests Use in Indonesia's Carbon Trading Policy

Law No. 41/1999 on Forestry recognizes the existence of indigenous forests s as part of state forests whose management is handed over to indigenous communities. The use of the word "indigenous forests " can also be found in the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 9 of 2021 concerning Social Forestry Management. Social Forestry as defined in Article 1 point 1 of Minister of Environment and Forestry Regulation No. 9 of 2021 is a sustainable forest management system implemented in state forest areas or Indigenous forests /Rights Forest implemented

32 Peraturan Presiden Nomor 60 Tahun 2023 tentang Strategi Nasional Bisnis dan Hak Asasi Manusia

33 MONGABAY, "Kritik dan Kekhawatiran 'Solusi Berbasis Alam': Dari Hilangnya Kehati hingga HAM", https://www.mongabay.co.id/2023/02/03/kritik-dan-kekhawatiran-atas-konsep-solusi-berbasis-alam-dari-hilangnya-keanekaragaman-hayati-hingga-ham/ (diakses 28 Mei 2024).

by Local Communities or Customary Law Communities as the main actors to improve their welfare, environmental balance and socio-cultural dynamics in the form of Village Forests, Community Forests, Community Plantation Forests, Indigenous forests s and forestry partnerships.

Indigenous forests are forests located within the territory of Indigenous Peoples.[34] As mentioned earlier, carbon trading can be carried out on indigenous forests s using the GHG emission offset mechanism. For indigenous peoples, holders of Social Forestry Management Agreements and communities with forest rights who conduct GHG Emissions Offset businesses and/or activities must receive assistance or partners who have experience or expertise related to carbon measurement, project planning and implementation or accessing the carbon market. In the implementation of carbon trading in the Forestry sector, the Government facilitates communities including customary law communities to improve knowledge and skills. The facilities as referred to are carried out in 3 (three) stages, namely starting from activity planning, activity implementation and/or activity reporting.[35]

In the context of carbon trading involving indigenous forests s, the most fundamental challenge is related to the recognition of the status of Masyarakat Hukum Adat. Article 1 point 22 of Minister of Environment and Forestry Regulation Number 9 of 2021 limits the definition of Indigenous people as a traditional community that is still related in the form of a community, has institutions in the form of customary institutions and legal instruments that are still obeyed, and still collects forest products in the surrounding forest area whose existence is confirmed by regional regulations. Specifically, if the Customary Law Community is located within the state forest area, it is determined by regional regulation, while if it is located outside the state forest area, it is determined by regional regulation or decree of the governor and/or regent/mayor in accordance with their authority. However, it is known that there are still many Indigenous Peoples whose status has not been confirmed by regional regulations or decrees of governors and/or regents/mayors. This is because the identification of indigenous peoples in Indonesia has not been optimized. Then sometimes the process of recognizing Indigenous people often faces bureaucratic obstacles and conflicts of interest with other parties such as forestry and plantation companies.

In addition to the obstacles in determining the status of Indigenous Peoples through local regulations, the determination of Indigenous Forest status is also needed to obtain legal access to social forestry management. Determination of Indigenous Forest status is granted by the Minister of Environment and Forestry of the Republic of Indonesia.[36] The

34 Pasal 1 angka 8 Peraturan Menteri Lingkungan Hidup dan Kehutanan Republik Indonesia Nomor 9 Tahun 2021 tentang Pengelolaan Perhutanan Sosial.

35 Pasal 24 Peraturan Menteri Lingkungan Hidup dan Kehutanan Republik Indonesia Nomor 7 Tahun 2023 tentang Tata Cara Perdagangan Karbon Sektor Kehutanan.

36 Pasal 6 ayat (1) dan (3) Peraturan Menteri Lingkungan Hidup dan Kehutanan Republik Indonesia Nomor 9 Tahun 2021 tentang Pengelolaan Perhutanan Sosial.

indigenous forests referred to above can originate from state forests and/or non-state forests managed by Indigenous Peoples and have the main functions of conservation, protection, and/or production.[37] The social forestry project initiative provides forest management rights to local and indigenous communities through Community Forests (HKm), Village Forests, Community Plantation Forests (HTR) and Indigenous Forests schemes.

An interesting point is that although laws and regulations at the level of Laws to Ministerial Regulations have included the term Hutan Adat, this does not mean that indigenous peoples will have management rights over the indigenous forest. Indigenous peoples still have to prove that they have met the requirements stipulated by the law to be recognised by the state as indigenous peoples and only then have the right to apply for approval of Indigenous Forest management from the Government. Not only that, ironically, after receiving recognition and approval, indigenous peoples still have to apply for forest utilisation permits from state authorities in the forestry sector. This means that recognition of the rights that have been granted is not enough of a basis to enjoy everything on top of those rights.[38]

Within the context of carbon trading, Director General of Sustainable Forest Management of the Ministry of Environment and Forestry (MoEF) Agus Justianto stated that indigenous communities are also entitled to benefit from carbon trading activities, which are part of efforts to control greenhouse gas emissions.[39] Furthermore, the status of indigenous forests under the social forestry framework means that as long as indigenous communities undertake quantifiable mitigation actions, they are eligible to benefit from carbon trading.

The implementation of carbon trading that impacts Indigenous Peoples can be seen in Indigenous Peoples in East Kalimantan and Jambi Provinces who have received result-based payments. Another customary forest that has the potential to be included in carbon trading is the Imbo Putui Prohibition Forest located in Petapahan Village, Tapung District, Kampar Regency, Riau Province. Imbo Putui Forest is a forest managed by the customary law community around the forest, namely Ninik Mamak.[40] There is also the Rumbio Indigenous Forest located in Kampar District, Kampar Regency, Riau Province and the 987-hectare Yapase Indigenous Forest located in Yapase Village, Jayapura Regency, Papua Province, both of which have potential for carbon trading. In fact, the Rumbio

37 Pasal 62 ayat (1), (2) dan (3) Peraturan Menteri Lingkungan Hidup dan Kehutanan Republik Indonesia Nomor 9 Tahun 2021 tentang Pengelolaan Perhutanan Sosial.

38 Apricia, N. (2022). "Hak Negara Dan Masyarakat Hukum Adat Atas Hutan Adat", *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan, 1*(7) (2022), https://doi.org/10.54443/sibatik.v1i7.128

39 KLHK, "Masyarakat adat berhak mendapat manfaat dari perdagangan karbon", https://www.antaranews.com/berita/3815475/klhk-masyarakat-adat-berhak-mendapat-manfaat-dari-perdagangan-karbon (diakses 28 Mei 2024).

40 Sadjati, E., Sulistyo, J., & Azwin, A. (2023). "Potensi Karbon Pada Tegakan Hutan Adat Imbo Putui Desa Petapahan Kabupaten Kampar", *Jurnal Karya Ilmiah Multidisiplin (JURKIM), 3*(1) (2023): 90-94, https://doi.org/10.31849/jurkim.v3i1.12658

Indigenous Community also has a 10-year management plan masterplan that includes the utilisation of environmental services and carbon trading in its programme of activities.[41]

Through Presidential Regulation (Perpres) Number 60 of 2023 concerning the National Strategy for Business and Human Rights, the Government stipulates Strategy 2, namely the Development of Regulations, Policies and Guidelines that Support the Protection and Respect of Human Rights, which in Action Plan point 2 states that the availability of policies to encourage the protection and empowerment of indigenous peoples in business practices is a criterion for the successful implementation of human rights-based business. The relevant agencies given responsibility for ensuring the implementation of the national strategy are the Ministry of Environment and Forestry, Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency, Ministry of Villages, Development of Disadvantaged Regions and Transmigration, Ministry of Education and Culture and Ministry of Social Affairs.[42]

The use of indigenous forests in Indonesia's carbon trading policy is a strategic step towards achieving greenhouse gas emission reduction targets and supporting the welfare of indigenous peoples. Existing regulations provide a legal basis, but effective implementation requires collaboration between the government, indigenous peoples and the private sector. Challenges such as customary rights recognition and management capacity need to be addressed through inclusive and sustainable policies. Moreover, the potential for human rights violations for Indigenous Peoples should be the focus of the government in considering the implementation of investment policies through carbon trading for Indigenous Forests.

3. Interconnections between the Use of Indigenous Forests in Indonesia's Carbon Trading Policy and Potential Violations of Indigenous Peoples' Human Rights

The interconnection between potential violations of indigenous peoples' human rights and the use of indigenous forests in carbon trading in Indonesia can be seen in the gap between the number of companies in the forestry and land-use sectors that obtain business licences to clear land and use forests as a place to set up their businesses compared to the number of customary forest designations by the government, which takes a long time. This assumption is supported by the existence of a forestry permit regime that tends to be multidimensional where companies can carry out several types of business or exploitation activities by only applying for one type of forestry permit. Based on WALHI data in 2023, there are around 624,012 hectares of ecosystem restoration concessions owned by companies.[43] This situation is inversely proportional to the total number of indigenous forest

41 Alviya, I., Muttaqin, M. Z., Salminah, M., Hamdani, F. A. U., & Uhib, A. "Upaya penurunan emisi karbon berbasis masyarakat di hutan berfungsi lindung", *Jurnal Analisis Kebijakan Kehutanan, 15*(1) (2018): 19-37, https://doi.org/10.20886/jakk.2018.15.1.19-37

42 Peraturan Presiden Nomor 60 Tahun 2023 tentang Strategi Nasional Bisnis dan Hak Asasi Manusia

43 Muhammad Arman dan Uli Arta Siagian, *Op.Cit*, hlm. 14

designations in 2023 in Indonesia recorded by the Indigenous Territory Registration Agency (BRWA), which totalled around 221,648 hectares.[44]

With this permit, companies can exploit timber from natural forests, plant timber plantations and trade carbon at the same time. The practice of carbon credits in the voluntary carbon market, created through projects that remove community lands and territories, is a common practice.[45] This can happen, for example, because carbon credit project developers say they have to 'protect' the area being used to generate carbon credits and use this as an excuse to evict communities living there, or restrict community access to, and use of, the area. This ignores indigenous knowledge and governance systems, which have protected forests for thousands of years, and continue to do so today. Where indigenous forests have not yet been designated by the government, their status still tends to merge with state forests because it is considered that there is insufficient proof of the existence of customary law communities that manage these indigenous forests. This proof is what makes the establishment of indigenous forests by the government take quite a long time and could potentially be lost due to the carbon credit Carbon credit projects may also make it more difficult for indigenous peoples to gain legal rights to their customary lands and territories in some places. Some carbon credit projects have also violated indigenous peoples' right to consultation and the use of the principle of Free, Prior, Informed, Consent (FPIC), which affirms the right of indigenous peoples and/or local communities to determine what forms of activities they want in their territories, can be formulated in more detail as the right of indigenous peoples and/or local communities to be informed before a development programme or programmes are implemented in their customary territories, and based on this information, they are free without pressure to agree or refuse.[46] However, it is important to note that many of the risks posed by carbon markets to indigenous peoples and communities may depend on context-specific matters, such as what the law says about respecting the rights and customary lands of indigenous peoples and the legality rights of peoples and communities to those customary lands.

Law No. 39/1999 explicitly regulates the rights of indigenous peoples in Indonesia through Article 6 paragraphs (1) and (2) which are intended to uphold the human rights of indigenous peoples who have unique and diverse needs that must be considered by the law, society and government. Furthermore, paragraph (2) states that the cultural identity of indigenous peoples, including the right to customary land, is protected, in line with the times. The element that becomes the reference for proving the existence of customary law

44 Ariya Dwi Cahya, "Status Pengakuan Wilayah Adat di Indonesia pada Hari Internasional Masyarakat Adat Sedunia Tahun 2023", Badan Registrasi Wilayah Adat, https://brwa.or.id/news/read/609 (diakses 28 Mei 2024).

45 Drupal, "Pasar Karbon, Hutan dan Hak: Seri Pengantar (Serangkaian penjelasan singkat untuk masyarakat dan komunitas adat", Forest Peoples Programme, https://www.forestpeoples.org/sites/default/files/documents/Latar%20belakang%20dan%20pendahuluan.pdf (diakses 27 Mei 2024).

46 Drupal, Pasar Karbon, Hutan dan Hak: Seri Pengantar.. *Op.Cit* hlm 22

communities is attached in the explanation section of article by article of the law, namely, customary rights that are actually still valid and upheld in the environment of customary law communities must be respected and protected in the context of protecting and upholding human rights in the community concerned by paying attention to laws and regulations.[47] From the explanation of this article, it basically requires a process of proving the existence of customary law communities, but in reality it is not accompanied by a real commitment from the government to accelerate the process. On the contrary, the government tends to accelerate all forms of business licensing including forestry sector business licences and land use in Law Number 6 of 2023 on Work Creation (Cipta Kerja).

The potential for human rights violations here is seen from the threat of loss of residence of indigenous peoples who may have settled in Indigenous forests scattered in Indonesia. In the context of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), there is an affirmation of human rights from the communal, economic, traditional and cultural dimensions. The ICESCR also covers the fulfilment of the right to adequate shelter and housing.[48] The principles contained in the ICESCR are basically oriented towards the commitment of the state, in this case the government as a duty bearer, to protect, respect and fulfil human rights in economic, social and cultural aspects. Duty bearers in the context of ICESCR must be able to properly regulate and promote the economic, social and cultural human rights of their people. If the principles in the ICESCR are not regulated or have errors in the regulation and application of the law in society, then the government as a duty bearer has the potential to violate human rights.[49]

The actions of the Indonesian government as a duty bearer towards efforts to protect, respect and fulfil the human rights of indigenous peoples in Indonesia have errors in the regulation and application of the law, resulting in potential human rights violations. Regulatory errors that support the potential for human rights violations can be seen from the ease of business licences accommodated by Law Number 6 of 2023 concerning Work Creation which is not accompanied by accelerated recognition of indigenous forest areas. In general, the ease of business permits is in the form of deregulation and debureaucratisation of several permits such as environmental permits. This simplification of permits is intended to improve the good business climate in Indonesia and advance the country's economy, but the negative effects of the provisions of the Law have an impact on the state's fulfilment of

47 Pasal 6 ayat (1) dan (2) dan Penjelasan Undang-undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.

48 Cecillia Maria Margaretha, Mutiara Safa'atidz Dzikra, dan Sofia Azizah Salsabiila, "Penanganan Pelanggaran Hak Asasi Manusia dalam Hukum Internasional oleh Perserikatan Bangsa Bangsa", *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora, Vol. 2*, No.1 (2024): 176-195, https://doi.org/10.572349/kultura.v2i1.826 .

49 Setiyani dan Joko Setiyono, "Penerapan Prinsip Pertanggungjawaban Negara Terhadap Kasus Pelanggaran HAM Etnis Rohingya Di Myanmar", *Jurnal Pembangunan Hukum Indonesia, Vol. 2 (*2020): 261-274, https://doi.org/10.14710/jphi.v2i2.261-274. Lihat juga Muhammad Miftahul Huda, Suwani, dan Aunur Rofiq, "Implementasi Tanggung Jawab Negara Terhadap Pelanggaran HAM Berat Paniai Perspektif Teori Efektivitas Hukum Soerjono Soekanto", *In Right: Jurnal Agama dan Hak Azazi Manusia, Vol. 11*, No. 1 (2022): 115-134, https://doi.org/10.14421/inright.v11i1.2591.

adequate housing for citizens,[50] including customary law communities who inhabit certain indigenous forest areas because it is not followed by legal regulations that accelerate the recognition of these customary forest areas. The fast processing of business permits can be seen in the Work Creation Law and Government Regulation (PP) Number 5 of 2021 concerning the Implementation of Risk-Based Business Permits that have been integrated with the Online Single Submission (OSS).[51] This can then be compared with the recognition of indigenous forest areas regulated in the Minister of Environment and Forestry Regulation (Permen LHK) Number 9 of 2021 concerning Social Forestry Management, which tends to still require lengthy proof by involving several stakeholders.[52] Besides the slow recognition of indigenous forest areas by the government, the misapplication of the law can be seen in the technical provisions for the implementation of carbon trading investments regulated in the Financial Services Authority Regulation (POJK) Number 14 of 2023. The POJK sets the capital requirement for carbon exchange organisers at Rp. 100,000,000,000 (one billion rupiah) and is not a loan. This provision tends to make it difficult for indigenous peoples to become a carbon exchange organising entity, so that the 'players' in carbon trading appear to be favoured by corporations.[53]

The efforts that have been regulated in Presidential Regulation Number 60 of 2023 concerning the National Strategy for Business and Human Rights (Stranas Bham) in dealing with the negative effects of business activities consist of three pillars, namely, protection of human rights by the state, respect for human rights by business actors, and recovery of victims of human rights violations due to business. From these three pillars, it is clear that the potential for human rights violations in this issue is a violation of the second pillar, namely the vulnerability of violations of respect for human rights by business actors or corporations for the rights of indigenous peoples to their indigenous forests. Therefore, in resolving this potential human rights violation, the government needs to adjust all relevant laws and regulations and decrees from relevant agencies regarding carbon trading investment through carbon exchanges, with the Perpres Stranas Bham. This urgency is in line with the explanation in the appendix on the background point of the Presidential Regulation, which is in the form of mainstreaming the three pillars of human rights in national policy by making various efforts in the form of research to strengthening the state apparatus across

50 Rony Sulistyanto Luhukay, "Penghapusan Izin Lingkungan Kegiatan Usaha dalam Undang-undang Omnibus Law Cipta Kerja", *Jurnal Meta-Yuridis, Vol. 4*, No. 1 (2021): 100-122, https://doi.org/10.26877/m-y.v4i1.7827.

51 Pasal 179 Peraturan Pemerintah Nomor 5 Tahun 2021 Tentang Penyelenggaraan Perizinan Berusaha Berbasis Risiko.

52 Pasal 68 Peraturan Menteri Lingkungan Hidup dan Kehutanan Nomor 9 Tahun 2021 Tentang Pengelolaan Perhutanan Sosial. Lihat juga dalam Kenny Cetera, "Keselarasan Implementasi Aturan Pengakuan Hak Masyarakat Adat untuk Mengelola Hutan terhadap Nilai-nilai Pancasila", *Pancasila: Jurnal Keindonesiaan Vol. 1,* No. 2 (2021): 152-162, https://doi.org/10.52738/pjk.v1i2.39

53 Muhammad Arman dan Uli Arta Siagian, *Op.Cit*, hlm. 14. Lihat juga Pasal 13 ayat (1) dan (2) Peraturan Otoritas Jasa Keuangan Nomor 14 Tahun 2023 Tentang Perdagangan Karbon Melalui Bursa Karbon.

ministries and other stakeholders.[54]

D. Conclusion

Indonesia's commitment to implementing the contents of the Kyoto Protocol and the Paris Agreement is demonstrated by the issuance of various arrangements related to carbon trading. The concept of carbon trading through the Nature Based Solution (NBS) project is one of the investment-based businesses managed by the state. But on the other hand, NBS can be a threat to ecology and Indigenous Peoples. The utilisation of indigenous forests in carbon trading as regulated through the MoEF Regulation poses challenges for Indigenous Peoples. This is due to the sub-optimal recognition of the status of Indigenous Peoples (Masyarakat Hukum Adat, MHA) by the state, resulting in the slow recognition of Indigenous Territory, which is closely related to the recognition of Indigenous Forest status. The interconnection between the use of indigenous forests in carbon trading and potential violations of the human rights of Indigenous Peoples in Indonesia lies in errors in legal arrangements and the application of law by the government. Errors in legal arrangements can be seen in regulations that accelerate all business licences in carbon trading investments by the government to business actors, but are not accompanied by a commitment to accelerate the recognition of Indigenous Peoples in order to determine the status of Indigenous Forests. Another factor is the misapplication of the law in the provision of capital requirements for carbon exchange organisers, which tend to be high-cost and difficult to reach by indigenous peoples, and seem to be more specialised for business actors.

As a recommendation, it is necessary to adjust the implementation of carbon trading towards indigenous forests to encourage the protection and empowerment of indigenous peoples in business practices that are based on human rights as the government's strategic policy contained in Presidential Regulation (Perpres) Number 60 of 2023 concerning the National Strategy for Business and Human Rights. Collaboration between relevant agencies, namely the Ministry of Environment and Forestry, Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, Ministry of Villages, Financial Services Authority (OJK) Non-Governmental Organizations (NGOs) and Indigenous Peoples is needed to ensure the implementation of the national business and human rights strategy.

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ASSESSMENT OF INDONESIA'S LEGAL FRAMEWORK FOR HUMAN RIGHTS IN CORPORATE SETTINGS

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ABSTRACT

Indonesia has long upheld the protection of fundamental human rights and labor rights through its Constitution, laws, and regulations. In recent years, this commitment has evolved to incorporate global discourses on human rights in corporate and business contexts—such as the United Nations Guiding Principles on Business and Human Rights (UNGP)—into its legal framework. Key milestones in this progression include the enactment of Presidential Regulation No. 60 of 2023 on the National Strategy for Business and Human Rights, the formation of bodies such as the National and Regional Task Forces on Business and Human Rights (*Gugus Tugas Nasional and Gugus Tugas Daerah Bisnis dan Hak Asasi Manusia*), and the introduction of mechanisms like the Business and Human Rights Risk Assessment (*Penilaian Risiko Bisnis dan Hak Asasi Manusia*). These efforts aim to align Indonesia's approach with international standards on human rights due diligence.

It is important to note that during the rapid industrialization of many advanced economies, corporations often operated with minimal regulatory oversight. In contrast, modern Indonesian companies face numerous legal frameworks while striving for similar economic growth. This contrast highlights the unique challenges Indonesian companies face in pursuing rapid economic growth while navigating an increasingly complex regulatory environment.

Indonesia already has a robust foundation of regulations and policies aimed at safeguarding labor rights and improving working conditions. What the country needs is not another layer of regulations that risk confusing and burdening business players, but rather an effective system to enforce its existing legal framework to its fullest potential. Imposing extensive compliance requirements—such as responding to over 140 detailed inquiries and providing exhaustive evidence of human rights safeguards—could overwhelm Indonesian businesses and undermine their global competitiveness.

1 This research has been assisted by Abdurachman Sidik, Tifanny Natalia, Marintan Panjaitan, Laras Sekar Hadiyanti Kusumo, Ricky Raytona, Marlon Enrico Mikail, Edmund Khovey, Graciela Phebe Nathanie Sumarli, and Fidelia Evangelyn Abigail.

Instead of directly replicating regulatory models from advanced economies, Indonesia should tailor its approach to align with its unique socio-economic landscape. This means prioritizing the optimization of current legal instruments, strengthening the rule of law, and enhancing legal certainty. These measures are more likely to foster sustainable development than introducing overly complex or burdensome new regulations that may not align with the nation's current stage of growth.
Keywords: Business and Human rights, UNGP, workplace safety, women's protection.

A. Introduction

In today's interconnected global economy, the protection of human rights within corporate settings has become an increasingly significant concern. Multinational corporations, with their expansive reach across borders, wield substantial influence over the lives of individuals and communities worldwide. This influence brings about a heightened responsibility for corporations to operate ethically and uphold human rights standards in all operations. The complexity of global supply chains, coupled with varying legal and regulatory environments across countries, underscores the importance of a robust framework to ensure that human rights are respected and protected in the corporate sector. Consequently, there is a growing demand for transparency, accountability, and due diligence from businesses to prevent human rights abuses and address any adverse impacts.[2]

Aligning with international law principles established by the United Nations, there is a growing emphasis on corporate responsibility that reflects a broader commitment to uphold human rights.[3] The initial foundational document of human rights in the global community is generally regarded as the Universal Declaration of Human Rights ("**UDHR**"), famously stating that "All human beings are born free and equal in dignity and rights" in Article 1. While not legally binding, the UDHR, as being grounded in the core principles of the United Nations, became a standard among the states for human rights that countries enforce through their own domestic legal processes.[4]

Over time, the widespread recognition of these human rights principles led to their integration into various sectors, including the multinational corporate world. Corporations' significant impact on individuals and communities, combined with globalization, stakeholder expectations, and regulatory developments, also facilitated this shift. Therefore, this influence has shaped international norms and standards of corporate responsibility for human rights, exemplified by initiatives of the United Nations Guiding Principles on Business and Human Rights ("**UNGP**"), which emphasizes the obligation of businesses to respect human rights

2 United Nations Development Programme, "6 Ways Companies Can Integrate Human Rights," https://www.undp.org/blog/6-ways-companies-can-integrate-human-rights (accessed July 7, 2024)
3 Article 1, 217 A (III), the *Universal Declaration of Human Rights*, 10 December 1948, United Nations.
4 See United Nations, *Charter of the United Nations*, 24 October 1945.

throughout their operations.[5]

Indonesia, with its dynamic economic growth and significant labor force, presents a compelling case for examining the intersection of corporate activities and human rights. As of 2024, Indonesia's population stands at approximately 277.53 million people, making it one of the most populous countries in the world.[6] This large population is matched by robust economic performance. In the first quarter of 2024, Indonesia's economy, measured by Gross Domestic Product (GDP) at current prices, reached IDR 5,288.3 trillion, marking a 5.11% increase compared to the first quarter of 2023.[7] This economic growth underscores Indonesia's expanding market and its increasing integration into the global economy.

Moreover, the labor market data further illuminate the conditions under which corporate entities operate within Indonesia. According to the National Labor Force Survey, the total labor force in February 2024 was 149.38 million people.[8] Out of this, 142.18 million were employed, resulting in an unemployment rate of 4.82%, which translates to approximately 7.20 million unemployed individuals.[9] These figures highlight the significant portion of the population engaged in the workforce and the notable unemployment rate.

The robust economic growth and substantial labor force participation present unique challenges and opportunities for human rights protection in the business sector. Rapid economic expansion can sometimes lead to the overlooking of human rights considerations as corporations face pressures to maximize profits and expand operations. High unemployment rates can result in a vulnerable workforce, potentially leading to exploitative practices. Therefore, understanding these economic and labor dynamics is essential when working out the legal frameworks for human rights in corporate settings.

However, in the business world, it is often impractical to prioritize abstract concepts, such as human rights, over immediate business objectives.[10] The inherent conflicts between

5 "*A. Foundational Principles […] The responsibility of business enterprises to respect human rights […] An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work*." United Nations, *Guiding Principles on Business and Human Rights* (2011), Pp.18-19

6 See Word Bank, "*World Bank Data on Indonesia's Population*," https://data.worldbank.org/indicator/SP.POP.TOTL?locations=ID&name_desc=false (accessed July 7, 2024.)

7 Badan Pusat Statistik Indonesia, "Pertumbuhan Ekonomi Indonesia Triwulan I-2024," May 6, 2024, https://www.bps.go.id/id/pressrelease/2024/05/06/2380/ekonomi-indonesia-triwulan-i-2024-tumbuh-5-11-persen--y-on-y--dan-ekonomi-indonesia-triwulan-i-2024-terkontraksi-0-83-persen--q-to-q--.html (accessed on August 6, 2024).

8 Badan Pusat Statistik Indonesia, "Unemployment Rate Was 4.82 per Cent and Average Labour Wage Was 3.04 Million Rupiahs per Month," May 6, 2024, https://www.bps.go.id/en/pressrelease/2024/05/06/2372/unemployment-rate-was-4-82-per-cent-and-average-labour-wage-was-3-04-million-rupiahs-per-month-.html (accessed on August 6, 2024).

9 Ibid.

10 "The business of business is business" is a famous quote by Milton Friedman. See Friedman, Milton. "The

human rights and business goals, coupled with the inevitable ambiguity in how human rights should be implemented in the corporate world, may lead to the adoption of superficial legal frameworks that fail to provide meaningful protection. Introducing unreasonable burdens on companies in an excessive effort to follow global regulatory trends may result in more disastrous consequences than not adopting new regulations at all.

Against this background, this paper first examines Indonesia's current legal status on this issue through the country's legislative and regulatory mechanisms. To this end, this research analyzes the initial discourse on human rights in Indonesia to understand the overall historical and contextual foundations of this topic. Subsequently, it explores how this initial discourse has evolved into the current discourse on human rights in business, highlighting the significant changes and developments. Following this, the paper analyzes recent legislative advances, including the umbrella regulation that adopted the UNGP and specific sectoral regulations, including (a) human rights due diligence, (b) protection for women in the workplace, and (c) protection for workers' health and safety, along with the latest court rulings pertaining to these regulations and their implications.

B. Research Method

This research was conducted between January 2024 and November 2024 and is centered on Indonesia, with additional contextual analysis incorporating global influences. Fieldwork included reviewing legal documents and policies, as well as analyzing court decisions from Jakarta and other relevant jurisdictions. The study also incorporates a contextual examination to understand the global influences on Indonesia's human rights policies.

This study utilizes a comparative analysis approach to examine the evolution of human rights discourse in Indonesia, particularly focusing on the transition from general human rights principles to specific human rights considerations in the business context. By comparing historical and contemporary legislative and regulatory frameworks, the research aims to identify significant changes and developments that have shaped the current state of human rights in corporate settings. Key sources of data include Indonesian legal documents, international guidelines such as the UNGP, and recent court rulings related to corporate human rights obligations.

Additionally, this research incorporates a contextual examination to understand the global influences on Indonesia's human rights policies. This involves analyzing the impact of international norms, stakeholder expectations, and regulatory trends on Indonesia's legislative actions. By evaluating these global influences alongside domestic developments,

Business of Business Is Business" The New York Times, September 13, 1970. In sum, the management of a business is responsible for the business and its employees and is expected to generate as much profit as possible for the owners.

the study provides a nuanced understanding of how Indonesia's legal framework for human rights in business has been shaped and what further advancements may be necessary to ensure the effective protection of human rights within the corporate sector.

C. Discussions

1. Initial Discourse on Human Rights in Indonesia

Human rights protection in Indonesia is deeply rooted in the nation's historical and cultural context. The development of human rights thinking in Indonesia has experienced significant ups and downs, clearly illustrated by examining the period of Indonesian history from 1908 to the present.[11] This evolution reflects not only the country's struggle for independence and national identity but also the broader journey toward recognizing and institutionalizing human rights. The pre-independence era, starting in 1908, marked the beginning of a conscious effort to assert individual and collective rights against colonial rule.[12] This period laid the groundwork for future human rights developments in Indonesia by fostering a sense of national consciousness and the importance of freedom and equality.

Post-independence, Indonesia's approach to human rights has been characterized by an ongoing effort to balance individual rights with collective responsibilities. The foundation of its legal framework begins with Pancasila, Indonesia's philosophical cornerstone, particularly its Second Precept, which emphasizes "Fair and Civilized Humanity (*Manusia yang Adil dan Beradab)*." This principle symbolizes and supports the nation's dedication to ensuring that human rights are respected and upheld in all aspects of society.

The 1945 Constitution of the Republic of Indonesia further solidifies this commitment through various articles, such as Articles 27-34, Chapter XA, and Articles 28 A-J, which explicitly guarantee a range of human rights that include but are not limited to the right to equality before the law, freedom from discrimination, personal liberty, and security, as well as economic, social, and cultural rights. These constitutional provisions are then complemented by additional important legislative and executive actions, which include TAP MPR RI No. II/MPR/1993 concerning the Broad Guidelines of State Policy (GBHN); MPR Decree No: XVII/MPR/1998 on Human Rights; Law No. 5 of 1998, which formalizes the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment into its national law; Law No. 26 of 2000 on the Human Rights Court; Presidential Regulation No. 129 of 1998 as amended with Presidential Decree No. 61 of 2003 on the National Action Plan for Human Rights; and Presidential Decree No. 181 of 1998 on the National Commission

11 Retno Kusniati, "Sejarah Perlindungan Hak-Hak Asasi Manusia Dalam Kaitannya Dengan Konsepsi Negara Hukum," *Jurnal Ilmu Hukum* 4, no. 5 (2011), https://media.neliti.com/media/publications/43199-ID-sejarah-perlindungan-hak-hak-asasi-manusia-dalam-kaitannya-dengan-konsepsi-negar.pdf (accessed 1 August 2024).

12 Id.

on Violence Against Women; Presidential Decree No. 126 of 1998, which mandates the cessation of using "indigenous" and "non-indigenous" in governmental activities; adoption of the Universal Declaration of Human Rights (1948) and the 1993 Vienna Declaration and Program of Action, emphasizes the government's proactive stance in addressing specific human rights issues.

2. Recent Discourse on Human Rights in Business

a. Global Developments in Human Rights in Business

Before the introduction of the UNGPs, the international community engaged in extensive discussions regarding 'business and human rights' due to the significant issue of human rights abuses by multinational corporations. This discourse on human rights in business was different from the initial discourse on human rights as follows:[13]

Table 1 Comparison between Initial Discourse on Human Rights and the Recent Discourse on Human Rights in Business

Aspect	Initial Discourse on Human Rights	Recent Discourse on Human Rights in Business
Focus	Establishment of universal principles and norms	Extending responsibility to businesses and corporations
Primary Duty-Bearer	States	States and businesses
Key Rights Emphasized	Civil and political rights	Civil, political, economic, social, and cultural rights
Context	Post-World War II, preventing atrocities	Globalization, corporate influence on human rights
Corporate Responsibility	Not a focus	Emphasized, with frameworks like UNGP
Due Diligence	Not a focus	Essential, with human rights due diligence
Supply Chain Considerations	Not a focus	Critical, considering global supply chains
Stakeholder Engagement	Limited	Active and broad stakeholder engagement
Integration with Sustainability	Limited	Holistic integration with economic, social, and environmental issues
Sector-Specific Guidelines	Not developed	Increasingly developed for specific industries
Legal and Regulatory Measures	Primarily state-focused	Emerging laws and regulations mandating compliance, but not as the state-based law

The first global initiative in response to this challenge was the 'Draft UN Norms on

13 Regarding how the discourse has developed over time, see the chapters Introduction of John Roggie, Just Business – Multinational Corporations and Human, W.W. Norton & Company Ltd., 2013. It is also briefly explained by John G. Ruggie and Emily K. Middleton, "Money, Millennials and Human Rights: Sustaining 'Sustainable Investing,'" *Harvard Kennedy School, M-RCBG Faculty Working Paper Series* (2018).

the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.' ("**UN Draft**")[14] This UN Draft aimed to impose legal obligations on multinational corporations and establish various enforcement mechanisms. It required corporations to comply with approximately 40 international human rights laws, regularly disclose their implementation status, undergo independent external monitoring and verification, and include human rights norms in contracts with other economic actors.

As is still the case today, it is rare for international human rights treaties to impose legal obligations on corporations directly. Typically, these treaties impose obligations on states rather than private entities. Hence, this initiative was considered groundbreaking and harshly criticized due to significant limitations, including ambiguity and implementation challenges, overreach and feasibility, lack of binding authority, and economic impact.[15]

The UN Draft presented to the UN Commission on Human Rights was not adopted since it faced opposition from several countries, including the United States, the United Kingdom, and Australia, as well as strong resistance from business entities like the International Chamber of Commerce.[16]

In terms of Human Rights in Business, Late John G. Ruggie[17] is presumably the most renowned scholar as he introduced the concepts of international regimes and brought human rights into the global legal discourse of business. As the UN Secretary-General's Special Representative for Business and Human Rights, he developed a set of principles, the UNGP, and thus, it is often called the "Ruggie principles" or the "Ruggie framework."[18]

Unlike the UN Draft, he introduced it as soft law or "*areas of mixed hard and soft law*,"[19] which lacks legally binding force. They did not impose direct legal obligations on

14 United Nations, Subcommission on the Promotion and Protection of Human Rights. *Working Group on the Working Methods and Activities of Transnational Corporations, Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights: Draft Norms*. Submitted by the Working Group on the Working Methods and Activities of Transnational Corporations pursuant to resolution 2002/8. *United Nations Digital Library*. https://digitallibrary.un.org/record/498842?v=pdf (accessed 1 August 2024).

15 Carolin F. Hillemanns, "UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights," *German Law Journal* 4, no. 10 (1 October 2003): 1065–1080.; and David Weissbrodt and Muria Kruger, "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights," *American Journal of International Law* 97, no. 4 (October 2003): 901–922.

16 Id.

17 "*John Gerard Ruggie (18 October 1944 – 16 September 2021) was the Berthold Beitz Research Professor in Human Rights and International Affairs at Harvard Kennedy School at Harvard University and an affiliated professor in international legal studies at Harvard Law School. He was an influential scholar in the field of international relations, as well as an influential policy-maker in the United Nations*." Wikipedia. https://en.wikipedia.org/wiki/John_Ruggie

18 Hugh Wheelan, "Obituary: John Ruggie, Architect of the UN Guiding Principles on Business and Human Rights," *Responsible Investor*, September 20, 2021, https://www.responsible-investor.com/obituary-john-ruggie-architect-of-the-un-guiding-principles-on-business-and-human-rights/ (accessed 1 August 2024).

19 "*The incorporation of human rights principles into commercial practice has been slowly but steadily increasing in recent years. Now, with the global convergence on the GPs as the authoritative standard on business and human*

corporations. Instead of imposing stringent human rights duties, the UNGP proposed procedures and processes to prevent human rights abuses. This approach earned substantial support from the international community. In 2011, the United Nations Human Rights Council unanimously endorsed the UNGP.

The UNGP has established that companies have a responsibility to respect internationally recognized human rights, regardless of the adequacy of the human rights protections in the countries they operate in. Consequently, if a global company has partners in developing countries, and human rights violations occur due to the negligence or intentional actions of these partners, the global company can still be held accountable.

The UNGP holds global companies responsible not only for human rights violations they '*cause*' but also for those they *'contribute to*' or are 'directly linked to' through their business relationships. Therefore, companies must ensure they are not indirectly '*involved*' in human rights abuses committed by third parties, such as partners or suppliers, with whom they have business relationships.[20] This principle has been the subject of much debate.[21]

To fulfill these responsibilities, the UNGP stipulates that companies must conduct human rights due diligence to identify, assess, and manage human rights risks throughout their operations. This requirement has led to the development and adoption of human rights due diligence processes.

The impact of the UNGP has been profound. It was recognized as not only "*over and above all applicable legal requirements,"* but also something so fundamental that it does not even necessitate state-based law to implement it.[22] Consequently, many global standards,

rights, this process has accelerated dramatically. It is at the beginning, and there are many details to be filled in. This may be uncomfortable for those lawyers who are unfamiliar with human rights or are uncomfortable providing advice in ***areas of mixed hard and soft law****."* John Gerard Ruggie and John F. Sherman III, "Adding Human Rights Punch to the New Lex Mercatoria: The Impact of the UN Guiding Principles on Business and Human Rights on Commercial Legal Practice," *Journal of International Dispute Settlement* 6, no. 3 (November 2015): 461.

20 See the chapter "Causing, contributing and having a direct link to an adverse impact" of the following UN document: OHCHR, *Response to Request from Bank Track for Advice Regarding the Application of the UN Guiding Principles on Business and Human Rights in the Context of the Banking Sector* (12 June 2017), https://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf (accessed 2 August 2024).

21 Van Ho, Tara, "Defining the Relationships: 'Cause, Contribute, and Directly Linked to' in the UN Guiding Principles on Business and Human Rights," *Human Rights Quarterly* 43, no. 4 (2021): 625–658.

22 "*For businesses, beyond compliance with legal obligations, the Guiding Principles focus on the need to prevent and address involvement in adverse human rights impacts, for which conducting human rights due diligence is prescribed. […] This responsibility is* ***neither based on nor analogizes from state-based law****. It is rooted in a transnational social norm, not an international legal norm. […]* ***it exists 'over and above' all applicable legal requirements*** *[…]* ***the move to state-based law is unnecessary*** *given the fact that the Guiding Principles stipulate their own constitutive construct of human rights due diligence. […] human rights are much more than laws' antecedents or progeny*." John Gerard Ruggie and John F. Sherman III, "The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale," *The European Journal of International Law* 28, no. 3 (2017): 921–928.

including ISO 26000, an international standard for social responsibility; the OECD Guidelines for Multinational Enterprises 2011 Edition; International Finance Corporation (IFC)'s UN Guiding Principles on Business and Human Rights, and; the Global Reporting Initiative (GRI), a leading international standard for ESG disclosure, have incorporated the Ruggie framework and embraced the concept of human rights due diligence. Companies aiming to publish sustainability reports under the GRI standards are now required to conduct human rights due diligence.

Furthermore, countries have begun to legislate human rights due diligence as a legal obligation. Starting with France in 2017, several European countries, including Germany, the Netherlands, and Norway, have enacted due diligence laws.[23] In 2022, an EU-wide regulation was also established. The Corporate Sustainability Due Diligence Directive, prepared by the European Commission, will come into effect in 2024, requiring companies operating in or trading with the EU to conduct human rights due diligence.[24] Japan has also initiated efforts towards formalization by drafting the "Guidelines for Respecting Human Rights in Responsible Supply Chains, etc." in 2022.[25]

However, in practice, the legal nature of this mandate regarding human rights in business remained uncertain and significantly confused practitioners.[26]

Besides, human rights are so broad a concept that any rights one can think of can be categorized as a human right.[27]

b. How Indonesia Adopted the Discourse on Human Rights in Business

The global discourse on human rights in business, particularly Western-led voluntary

23 Hannes Lubitzsch and Stuart Neely, "Human Rights Due Diligence in the EU," *Norton Rose Fulbright*, March 2024, https://www.nortonrosefulbright.com/en/knowledge/publications/0085b65a/human-rights-due-diligence-in-the-eu (accessed 2 August 2024).

24 Shift, "Human Rights Due Diligence: The State of Play in Europe," June 4, 2024, https://shiftproject.org/resource/mhrdd-europe-map/ (accessed 2 August 2024).

25 Japanese Ministry of Economy, Trade and Industry,「責任あるサプライチェーン等における人権尊重のためのガイドライン」, 2022.

26 "*The UN Global Compact recently commissioned the London law firm of Linklaters to interview forty general counsels of Global Compact members, who have committed publicly to respect human rights. It found that* ***lawyers felt challenged in dealing with human rights issues****, because "human rights issues can be* ***hard, complex, messy****, and carry significant reputational risk for an organization—many times* ***without clear guidance*** *on how to manage or navigate through them.""* John Gerard Ruggie and John F. Sherman III, "Adding Human Rights Punch to the New Lex Mercatoria: The Impact of the UN Guiding Principles on Business and Human Rights on Commercial Legal Practice," *Journal of International Dispute Settlement* 6, no. 3 (November 2015): 455–461. Adding Human Rights Punch to the New Lex Mercatoria: The Impact of the UN Guiding Principles on Business and Human Rights on Commercial Legal Practice

27 "*The conceptual oddity is that* ***virtually all of these elements are*** *well-known business and human rights issues,*" "*Research conducted in developing the UNGPs showed that business enterprises can affect* ***virtually all internationally recognized rights****.*" John G. Ruggie and Emily K. Middleton, "Money, Millennials and Human Rights: Sustaining 'Sustainable Investing,'" *Harvard Kennedy School, M-RCBG Faculty Working Paper Series* (2018). The citation quoted in this research for this is "Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse," UN Document A/HRC/8/5/Add. 2, *Corporations and Human Rights: A Survey of the Scope and Patterns of Alleged Corporate-Related Human Rights Abuse*, 23 May 2008.

initiatives, has significantly influenced Indonesia to adopt similar mandates. The key factors can be briefly capsulated as follows: [28]

Table 2 Key Factors in Adoption of the Discourse on Human Rights in Business

Key Factors	Global Factors	Indonesian Factors
Globalization	Expansion of multinational companies impacting local communities and environments.	Entry of international companies into Indonesia
Corporate Influence	Significant effects of multinational corporations on local conditions, requiring better practices.	Companies' impact on local communities, highlighting the need for corporate responsibility.
Expanded Human Rights Understanding	Broader scope of human rights, including economic, social, and cultural rights.	Emphasis on labor rights and community welfare in sectors like agriculture and manufacturing.
Increased Awareness and Advocacy	Active civil society organizations advocating for human rights and environmental protection.	Indonesian NGOs campaigning against exploitation.
Legal and Regulatory Developments	Introduction of laws and regulations mandating corporate human rights compliance.	National Action Plan on Business and Human Rights and specific regulations on labor rights and environmental protection.[29]

This alignment was not merely to follow developed countries but also to address unprecedented and urgent domestic demands. For instance, between 2019 and September 2021, the National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia* or "**KOMNAS HAM**") received 1,366 complaints of corporate human rights violations, with 435 cases in 2019, 455 in 2020, and 428 in 2021.[30] Predominantly, these grievances concern agrarian disputes, labor rights abuses, and environmental degradation, directly infringing upon rights such as land ownership, welfare, and environmental quality. Ultimately, a report from KOMNAS HAM in 2023 consistently highlights that on an annual basis, corporations consistently rank second on the list of entities that complained to KOMNAS HAM, following the police.[31] Based on these findings, some activists assert that as corporate influence in human rights issues grows, proactive engagement with these entities becomes essential,

28 Regarding how industrialization brought the development of excessive legislative framework on corporate social responsibility in Indonesia, see Edgar Soonpeel Chang, "Has Indonesia's Unique Progressivism in Mandating Corporate Social Responsibility Achieved Its Ends?" *Sriwijaya Law Review* 2, no. 2 (July 2018): 131-151; Also, see Edgar Soonpeel Chang, *Indonesia Company Law*. New York and London: Routledge, 2018, pp. 132–150.

29 Agus Hartono, "Human Rights in Business: The Case of Indonesia's National Action Plan on Business and Human Rights," *Journal of Southeast Asian Human Rights* 15, no. 2 (2017): 115-134.

30 KOMNAS HAM. "Komnas HAM Rangkul APINDO Dalam Penerapan HAM Di Dunia Bisnis." *Komisi Nasional Hak Asasi Manusia*, March 15, 2022,, https://www.komnasham.go.id/index.php/news/2022/3/15/2101/komnas-ham-rangkul-apindo-dalam-penerapan-ham-di-dunia-bisnis.html.

31 Niken Sitoresmi, "Bisnis Dan HAM Sebagai Agenda Prioritas Pemajuan Dan Penegakan HAM," *Komisi Nasional Hak Asasi Manusia - KOMNAS HAM*, May 31, 2023, https://www.komnasham.go.id/index.php/news/2023/5/31/2369/bisnis-dan-ham-sebagai-agenda-prioritas-pemajuan-dan-penegakan-ham.html.

and business operations must uphold and respect human rights standards.[32]

Nonetheless, a significant difference between the developed countries mentioned and Indonesia is evident. The UNGP requires multinational companies, generally from developed countries, to conduct human rights due diligence and be responsible for avoiding "causing, contributing to, and being directly linked to" human rights violations in developing countries, including Indonesia. In contrast, in Indonesia, the number of contractors and subcontractors, whose laborers are the primary beneficiaries of the UNGP, far outweighs the presence of multinational corporations.

Given Indonesia's different phases of economic development and the need to maintain strategies suitable for its current conditions, careful consideration is required regarding how it approaches this topic. Particularly, as aforementioned, the legal nature of this mandate, coupled with its broad coverage, is considered uncertain and significantly confusing for practitioners even in developed countries. Considering the notorious obscurity of the current Indonesian legal framework and stipulations, hasty adoption may only exacerbate business inefficiency.

3. Recent Legislative Advances and Their Implications in Indonesia

a. Adoption of UNGP

Once again, considering the significant differences in background between Indonesia and the developed countries that established the UNGP, Indonesia's approach to this topic requires careful consideration. Any implementation should be guided by thorough studies and diagnostics to form a consensus, rather than hastily mirroring the methods of other countries. Despite the lack of notable social or academic consensus on the concept of human rights in business, Indonesia faced social pressures to implement these principles nonetheless.[33]

To meet this demand and respond to this pressure despite the insufficient consensus, the Indonesian Government enacted Presidential Regulation No. 60 of 2023 concerning the National Strategy for Business and Human Rights ("**PR 60/2023**") on 26 September

32 Ibid.
33 For example, see KOMNAS HAM case in the earlier chapter.

2023.[34][35] This regulation serves as a framework for ministries, institutions, and regional governments to plan, implement, and monitor practices that uphold human rights within the business sector. It also provides guidelines for businesses and other stakeholders to ensure human rights are respected. Indonesia's ratification of this regulation makes Indonesia the third country in ASEAN after Thailand and Vietnam and the eighth country in Asia after Thailand, Korea, Japan, Taiwan, Pakistan, Mongolia, and Vietnam to have National Action Plans on Business and Human Rights.[36] The initiative aligns Indonesia with the UNGP, thus reflecting a commitment to integrating human rights into corporate governance.

The National Strategy for Business and Human Rights is designed to provide clear directives for both central and regional governments to integrate human rights considerations into business practices effectively. The establishment of the National Task Force on Business and Human Rights (*Gugus Tugas Nasional Bisnis dan Hak Asasi Manusia* or GTN BHAM), underscores Indonesia's proactive approach to implementing this strategy.[37]

Looking forward, the Ministry of Law and Human Rights aims to establish Regional Task Forces for Business and Human Rights (*Gugus Tugas Daerah Bisnis dan Hak Asasi Manusia* or GTD HAM) at the provincial level with a pivotal role in implementing the principles of "Respect, Protection, Fulfillment, Enforcement, and Promotion of Human Rights" at the regional level.[38] These task forces will involve regional government bodies, vertical agencies overseeing legal and human rights affairs, and non-governmental partners.[39] These initiatives set the stage for effective collaboration between central and regional authorities, alongside vertical agencies and non-governmental partners, to create frameworks that uphold human rights standards.

The concept of human rights due diligence involves assessing the potential impacts of business activities on human rights and implementing measures to mitigate any identified

34 The preamble of PR 60/2023 reads as follows: "*In accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, national development is conducted based on the principles of sustainable development, upholding the values of human rights. As the primary agent of national development, the state has the obligation and responsibility to protect and restore human rights to achieve the welfare, peace, security, and justice of society. Every individual, including business actors, also has the responsibility to respect and restore human rights in accordance with the laws and regulations to ensure the welfare, peace, security, and justice of society. To guarantee legal certainty and a sense of justice in obtaining the respect, protection, fulfillment, enforcement, and advancement of human rights in business activities, a National Strategy on Business and Human Rights is required. Based on these considerations, it is necessary to establish a Presidential Regulation on the National Strategy on Business and Human Rights.*"

35 Serafica Kartikadjati, "Business and Human Rights: Harmonizing Prosperity and Humanity: A Blueprint for Advancing Business and Human Rights in Indonesia," *Friedrich Naumann Foundation*, March 8, 2024, https://www.freiheit.org/indonesia/harmonizing-prosperity-and-humanity-blueprint-advancing-business-and-human-rights (accessed 2 August 2024).

36 Ibid.

37 Article 2 of the Presidential Regulation No. 60 of 2023

38 Annex C. (6) of the Presidential Regulation No. 60 of 2023

39 Article 7 (4) of the Presidential Regulation No. 60 of 2023

risks.[40] Companies are now required to integrate human rights considerations into their policies and operations, ostensibly ensuring they respect and protect human rights in their business practices. This process includes evaluating how company activities affect human rights, monitoring performance, and establishing mechanisms for addressing human rights complaints.

However, while the concept may seem fashionable and ethical, it is impractical in the business world to prioritize something as abstract as human rights. Indonesia can indeed incorporate human rights principles in business, just as it has with CSR. Yet, the inherent conflicts between human rights and business objectives, coupled with the vague nature of the concept, may result in the mere cosmetic legislative implementation of human rights in Indonesian business.[41]

Rather than imposing such an ambiguous obligation on businesses, this research argues that specific human rights topics must be developed for each sector. In line with this perspective, the following chapters will focus on more defined areas, such as human-right due diligence, the protection of women in the workplace and the safety and health of workers.[42]

b. Human Rights Due Diligence

1) Framework

Following the aforementioned discourse and the global trend that legislate human rights due diligence, Indonesia also introduced a tool, Business and Human Rights Risk Assessment (*Penilaian Risiko Bisnis dan Hak Asasi Manusia* or "**PRISMA**"), designed to help businesses identify and mitigate potential human rights impacts arising from their operations.[43] Managed by the Directorate General of Human Rights, PRISMA is a web-based application enabling companies of all sizes to self-assess their human rights impacts, devise action plans based on findings, and track implementation progress. As of April 29, 2024, around 300 companies have used PRISMA for self-assessment, indicating a strong start to a commitment to evaluating and improving their human rights practices.[44] Among them, only 31 have

40 United Nations Development Programme, *Human Rights Due Diligence: An Interpretive Guide*, October 2022, https://www.undp.org/sites/g/files/zskgke326/files/2022-10/HRDD%20Interpretive%20Guide_ENG_Sep%202021.pdf (accessed 2 August 2024).

41 For the details on CSR, Edgar Soonpeel Chang, "Has Indonesia's Unique Progressivism in Mandating Corporate Social Responsibility Achieved Its Ends?" *Sriwijaya Law Review* 2, no. 2 (July 2018): 131-151.

42 Human rights include a vast spectrum of norms, embracing virtually all conceivable rights, including civil, political, economic, social, and cultural rights. It is virtually impossible to include all the possible aspects of human rights. Thus, this research paper examines two notable areas regarding human rights in business.

43 Biro Humas, Hukum dan Kerjasama, "Luncurkan Aplikasi PRISMA, Kemenkumham Kawal Pemenuhan HAM Dalam Praktik Bisnis," *Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia*, February 21, 2021, https://www.kemenkumham.go.id/berita-utama/luncurkan-aplikasi-prisma-kemenkumham-kawal-pemenuhan-ham-dalam-praktik-bisnis.

44 Walda Marison, "KemenkumHAM RI: Banyak Perusahaan Tidak Lolos Daftar Aplikasi Prisma," *Antara News*,

successfully met all prerequisites and received approval to proceed, indicating the rigorous standards set forth by the PRISMA.[45]

While emphasizing the need for companies to register with PRISMA, the Director of Cooperation on Human Rights at Indonesia's Ministry of Law and Human Rights noted that many businesses failed to qualify.[46]

2) Implication

Indonesia can indeed incorporate human rights principles in business, just as it has with CSR. Yet, the inherent conflicts between human rights and business objectives,[47] coupled with the vague nature of the concept, may cause the legislative implementation of human rights in Indonesian business to remain merely cosmetic.

In connection with the aforementioned result of PRISMA, interpreting the numbers requires careful consideration. While the intent behind such measures is commendable, it imposes a substantial burden on businesses. For instance, to qualify for registration, companies must answer 12 main indicator questions and 140 detailed sub-indicator questions, providing documented proof of established measures to uphold human rights. Furthermore, these questions cover a wide range of topics, including company policies on safeguarding employee rights, provisions for labor unions, workplace environment protection, complaint mechanisms, and corporate social responsibility. Preparing responses to the extensive questions and providing all the necessary documentation and follow-up clarifications demands considerable effort and resources. In order to externally submit this type of intensive document about its status, a company should typically verify whether there are no legal or contractual issues by disclosing detailed information and consider whether certain disclosures could impact pending lawsuits and disputes or lead to other managerial failures. Such an extensive set of redundant burdens from the authorities significantly burdens the company's operations. Therefore, it is uncommon for developed countries to impose such onerous jobs on their private companies unless there is a serious allegation against them.

The process is not only extremely labor-intensive but also poses risks to their business. Uploading corporate documents accessible by the authority without any contractual or legal obligations may lead to breaches of confidentiality as well as misunderstandings or troubles that could have been avoidable. Besides, using resources for unnecessary jobs means not

April 29, 2024, https://www.antaranews.com/berita/4080135/kemenkumham-ri-banyak-perusahaan-tidak-lolos-daftar-aplikasi-prisma.

45 Ibid.

46 Walda Marison. 2024. "KemenkumHAM RI: Banyak Perusahaan Tidak Lolos Daftar Aplikasi Prisma." Antara News. April 29, 2024, https://www.antaranews.com/berita/4080135/kemenkumham-ri-banyak-perusahaan-tidak-lolos-daftar-aplikasi-prisma.

47 See Milton Friedman, "The Business of Business Is Business," *The New York Times*, September 13, 1970.

only a waste of money and time but also the potential loss of a business opportunity that could have been found and realized if the resources were used for valuable jobs.

In modern countries, companies are already obligated to engage extensively with authorities, including corporate filings, preparing financial statements, handling audits and taxes, filing for labor, licenses, permits, and other business matters, disclosing information for listed companies, and substantial reporting for state-owned enterprises. Indonesia has added further administrative and economic burdens to companies, such as creating corporate deeds and filing any changes to articles of association.[48] Considering these existing massive burdens beyond the general requirements in other jurisdictions, demanding another massive burden can lead to unintended violations of human rights.

Indonesian companies are not culprits that thrash the whip on their workers. When there are 28 million registered businesses in Indonesia, and only 300 companies have registered, with only 31 being able to submit the required data, it does not mean that only 31 companies are ethical and the other almost 28 million companies are potential criminals that harm human rights.

This disparity highlights the excessive administrative burdens imposed, rather than a lack of commitment to human rights among the majority of businesses. The statistic should not be interpreted as a compelling reminder of the pressing need for businesses to prioritize human rights considerations, but rather a compelling reminder of the potential authoritative power imposing administrative burdens under seemingly good reasons.

The major opinions in academic research regarding human rights in business warn that adapting regulations for human rights in business must avoid undue burdens on business.[49]

c. Protection for Women in Job Place

1) Legal Frame

Promulgated on May 9, 2022, Law No. 12 of 2022 on Sexual Violence Criminal Acts ("**Law 12/2022**") acts as the first legal instrument that regulates many forms of sexual violence and unifies previous sectoral laws and regulations related to

48 Unlike many developed countries, where articles of association are considered private matters and do not require costly formal deeds or filings with authorities, Indonesia's requirements increase the administrative load on businesses.

49 For example, as to how to integrate human rights into business practices and implement the UN Building Principles without imposing excessive burdens, see **Radu Mares.** *The UN Guiding Principles on Business and Human Rights: Foundation and Implementation.* (Cambridge University Press, 2012). *As to how policymakers can balance human rights objectives with practical considerations to avoid creating excessive regulatory burdens for businesses, see* **Ruth M. Healy.** "Balancing Business and Human Rights: Key Considerations for Policy Makers." *Business Ethics Quarterly* 23, no. 2 (2013): 245-267. *Also, regarding how different frameworks affect business operations and compliance in the U.S. and EU,* **Michael J. Zimmer and Cynthia A. Williams.** "Corporate Social Responsibility and the Regulatory Framework: Lessons from the U.S. and European Union." *Journal of Business Ethics* 95, no. 4 (2010): 457-473. These studies uphold the core idea that safeguarding human rights in business should not undermine the business's operational integrity.

sexual violence. Key takeaways from Law 12/2022 include:

(a) The introduction of criminal corporate liability for any legal entity that violates the law; and

(b) The establishment of the Women and Children Protection Regional Agency (*Unit Pelaksana Teknis Daerah Perlindungan Perempuan dan Anak or UPTD PPA*) in every city/regency: This agency is responsible for women's empowerment, child protection, and providing integrated services for women and children who experience violence and discrimination.

Following the enactment of Law 12/2022, the Minister of Manpower ("**MoM**") issued MoM Decree No. 88 of 2023 on Guidelines for Preventing and Responding Sexual Violence in the Workplace on May 29, 2023. The guidelines emphasize the responsibility of employers to monitor and address cases of sexual harassment by establishing a dedicated task force. Employers are required to help victims recover and implement measures to protect them from future incidents.

2) Cases

To date, most Indonesian court decisions related to sexual violence based on Law 12/2022 have focused on determining the existence of sexual violence and punishing the individual defendant. This research has found only two cases mainly determined based on Law 12/2022 as follows:

Table 1 Latest cases of violations of any special law on sexual crimes

Case No. 1		
1	Case No.	Decision No. 848/Pid.Sus/2023/PN Jkt. Pst[50]
	Parties	**Defendant:** Andaria Sarah Dewia **Prosecutor:** General Prosecutor
	Merits of the case	PT Capella Swastika Karya held the license for the Miss Universe Indonesia 2023 event and appointed the Defendant, the Chief Operating Officer of Miss Universe, to manage the event's activities. The Defendant was responsible for ensuring finalist participation, coordinating with liaison officers, reprimanding undisciplined finalists, and executing superior orders. The Defendant was found guilty of electronic-based sexual violence by illegally and without consent taking images of the finalists: (i) Ni Kadek Natasha Lilian (1st Victim); (ii) Lola Nadya Larasati (2nd Victim); (iii) Euginia Livina Irwan (3rd Victim); and (iv) Dinda Alifah Ayudita (4th Victim). The actions included: 1. On 1 August 2023, the Defendant conducted an unauthorized body check on the 4 Victims, taking images of their body parts without consent. 2. The Defendant specifically targeted body parts covered in tattoos. 3. A total of 17 images of the 4 Victims were stored on the Defendant's smartphone. 4. The 4 Victims demanded restitution from the Institution for the Protection of Witnesses and Victims.
	Legal Consideration and Decision	The Central Jakarta District Court found that the Defendant's actions fulfilled Article 14 (1) of Law 12/2022, which includes: 1. Illegally recording or taking images with sexual content; and 2. Recording without the individuals' consent. The Court sentenced the Defendant to one year of imprisonment, a fine of IDR 100,000,000, and restitution of IDR 738,877,500 for the victims. This high-profile case significantly damaged the company's reputation, leading the Miss Universe Organization to revoke its license to organize future Miss Universe events in Indonesia.
	Explanation	This high-profile case in Indonesia gained significant attention due to the Miss Universe event's publicity. The Court ruled that workplace electronic-based sexual violence occurred within the company. The litigation significantly damaged the company's reputation, and online sources reported that the Miss Universe Organization revoked its license to organize future events.
Case No. 2		

50 *Putusan PN Jakarta Pusat Nomor 848/Pid.Sus/2023/PN Jkt.Pst* (March 7, 2024). Penuntut Umum: Tri Yanti Merlyn C P, SH. Terdakwa: Andaria Sarah Dewia. *Mahkamah Agung Republik I*ndonesia. https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeeea51741b897e9f0d303934333235.html

2	Case No.	Decision No. 1083/Pid.Sus/2023/PN Sby[51]
	Parties	**Defendant:** Wahyu Dwi Mahardika Bin Subagio **Prosecutor:** General Prosecutor
	Merits of the case	In this case, the Defendant was proven to have committed electronic-based sexual violence by secretly recording several women in their office restroom without their consent: 1. On 6 December 2022, the Defendant secretly videotaped Irene Yuarita Wira Adi (1st Victim) by positioning his phone on the toilet gaps she used. 2. On 14 December 2022, the Defendant attempted to record Amelia (2nd Victim), but she became aware of the attempt and confronted the Defendant. The Defendant admitted to videotaping several women in the office and using the videos for personal pleasure.
	Legal Consideration and Decision	In this case, the Defendant was proven to have committed electronic-based sexual violence by secretly recording several women in their office restroom without their consent: 1. On 6 December 2022, the Defendant secretly videotaped Irene Yuarita Wira Adi (1st Victim) by positioning his phone on the toilet gaps she used. 2. On 14 December 2022, the Defendant attempted to record Amelia (2nd Victim), but she became aware of the attempt and confronted the Defendant. The Defendant admitted to videotaping several women in the office and using the videos for personal pleasure.
	Explanation	This case is similar to Case No. 1, where the Court ruled that workplace electronic-based sexual violence occurred due to recording without the victim's consent.

This research could not find any cases that (a) hold corporations liable for sexual violence due to its systematic failure, such as lacking any ex-post measures at a corporate level, or (b) mandate corporations to protect victims or establish a task force to counter sexual violence. This appears different from the current trends in some of the developed countries where a concerned employer's vicarious liability

51 *Putusan PN Surabaya Nomor 1083/Pid.Sus/2023/PN Sby* (July 24, 2023). Penuntut Umum: Dicky Aditya, S.H. Terdakwa: Wahyu Dwi Mahardika. *Mahkamah Agung Republik I*ndonesia. https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee2c378736657aba8b313133393039.html

is recognized for sexual harassment or assault committed.[52] [53]

3) Implication

Nonetheless, it is noteworthy that it is difficult to eliminate the possibility that a concerned corporation will be held liable for its failure of relevant measures in the future as long as Law 12/2022 has set out the legal grounds.

Are Indonesian corporate groups adopting the trend seen in some developed countries of establishing dedicated teams for human rights or sexual misconduct? This research has not found any evidence that such practices have become mainstream among Indonesian corporate groups. However, Indonesia has begun to engage with global trends concerning human rights in the business sector. For instance, the Ministry of Law and Human Rights has been developing a national strategy on human rights in business and investment. This includes collecting legal analyses and implementing the National Strategy on Business and Human Rights (*Strategi Nasional Bisnis dan Hak Asasi Manusia* or Stranas BHAM), which was introduced by Presidential Regulation 60/2023. This regulation aims to directly implement the UNGP, outlining the responsibilities of businesses in adhering to human rights principles.

d. Protection for Workers' Health and Safety

1) Legal Frame

Acknowledging the advancements in legal frameworks regarding human rights

52 Korea: On February 6, 2018, Seoul Central District Court (**2016Gadan5234961**) recognized the employer's vicarious liability for a sexual violence incident between employees within the company, holding both the perpetrator and the employer (company) jointly responsible for damages. This ruling is significant as it highlights that merely conducting sexual harassment prevention training is insufficient for an employer to be considered as having fulfilled its duty of care to prevent sexual crimes among its employees.
United States: **Faragher v. City** of Boca Raton, the U.S. Supreme Court held that an employer can be held vicariously liable for the acts of a supervisor whose actions create a hostile work environment, especially if the harassment results in a tangible employment action, such as firing or demotion. This case established important guidelines for employer liability in sexual harassment cases. Faragher v. City of Boca Raton, 524 U.S. 775 (1998).
United Kingdom: The Supreme Court case **Catholic Child Welfare Society v Various Claimants** (The Christian Brothers case) expanded the scope of vicarious liability beyond traditional employment relationships. Here, a religious institute was held liable for the sexual abuse committed by teachers, even though the institute did not formally employ the teachers but were in a relationship "akin to employment" Lewis Silkin, 'Employer not liable for sexual assaults committed by an independent contractor,' 6 April 2020.
Canada: In **Bazley v. Curry**, the Supreme Court of Canada held a non-profit organization liable for the sexual abuse committed by one of its employees. The court emphasized that vicarious liability applies when the employee's wrongful acts are sufficiently connected to the conduct authorized by the employer. Bazley v Curry, [1999] 2 SCR 534.

53 In some countries, separate legislation was adopted to make this corporate responsibility clear. For example, Canada's recent updates to the Canada Labour Code include increased penalties for violations related to workplace safety. The amendments emphasize employer responsibilities to prevent harassment and violence in the workplace, with mandatory training and preventive measures. Jeff Landmann, at al, Modernizing the *Canada Labour Code*: What's in force now and what's coming?, *Norton Rose Fulbright*, August 10, 2023.

protection in business, particularly in workers' safety and health, several developed countries have recently enhanced their legislation. These developments require corporate officers, executives, and other bodies to be accountable for systematic failures in occupational health and safety (OHS) for their employees and extended parties.

For instance, Korea has recently implemented a new law that mandates the establishment of a comprehensive safety management system at the corporate level, encompassing not only the company itself but also its contractors and subcontractors. This law imposes joint penalties on corporate executives and the corporation for any violations.[54]

Similarly, in Australia, the Fair Work Legislation Amendment (Closing Loopholes) Act 2023 has introduced significant modifications to the Commonwealth Work Health and Safety Act 2011. Effective from July 1, 2024, these changes include new criminal responsibility provisions for corporate bodies and their officers, aiming to ensure greater accountability and enhanced workplace safety.[55]

In contrast, Indonesia's laws and regulations on this topic are not consolidated but are dispersed across various legal documents. To evaluate Indonesia's current status and compare it with the aforementioned countries, a comprehensive analysis of multiple layers of regulations is necessary. This research covers the key laws and regulations regarding OHS in Indonesia as follows:

54 For example, in Korea, the Serious Accident Punishment Act (중대재해처벌 등에 관한 법률) was passed in January 2021 and went into effect on January 27, 2022, for businesses with more than 50 employees. It will apply to businesses with 5 or more employees but less than 50 employees starting January 27, 2024. The law aims to prevent serious accidents in the workplace and protect the lives and well-being of citizens and workers. It imposes criminal liability on business owners and officers who neglect safety management.

55 Mirage News, "Closing Loopholes: Fair Work Act Changes," January 30, 2024, https://www.miragenews.com/closing-loopholes-fair-work-act-changes-1163609/ (accessed 2 August 2024); and John Love et al., "Closing Loopholes Bill Passes Parliament – Here Are the Key Changes," *Mellor Olsson*, December 19, 2023, https://www.mellorolsson.com.au/articles/closing-loopholes-bill-passes-parliament-key-changes (accessed 2 August 2024).

Table 3 *Key Indonesian laws and regulations regarding OHS*

No.	Stipulation	Application	Sanctions
1	Law No. 1 of 1970 on Occupational Safety (Law No. 1/1970)	The Law No. 1/1970 applies to workplaces where: a. machines, devices, tools, appliances, equipment, or installations that are dangerous or may cause accidents, fires, or explosions are manufactured, tested, used, or utilized; b. materials or goods that are explosive, flammable, biting, toxic, causing infection, or high temperature are manufactured, processed, used, utilized, traded, transported, or stored; c. construction, repair, maintenance, cleaning, or dismantling of houses, buildings, or other structures are carried out, including irrigation, underground ducts or tunnels, and so forth, or where preparatory works are carried out; d. the following activities are carried out: agriculture, plantation, forest clearing, forest working, processing of timber or other forest products, farming, fisheries, or health sector; e. mining and processing of gold, silver, other metals or metal ores, rocks, gases, oils or other minerals, either on the ground or underground, as well as underwater are conducted; transportation of goods, animals or humans, whether on land, through tunnels, on the water surface, underwater or in the air is conducted; f. loading and unloading of cargo is carried out in ships, boats, piers, docks, stations, or warehouses; g. diving, retrieval of objects, and other works in the water are conducted; h. work is carried out at a height above the ground or water level; i. work is carried under high or low air pressure or temperature; j. work is carried out which involves the danger of being buried by the ground, falling, hit by objects, collapsing or stumbling, drifting or bouncing; k. work is carried out in tanks, wells, or pits; l. temperature, humidity, dust, dirt, fire, smoke, steam, gas, wind, weather, light or radiation, sound or vibration are present or spread; m. trash or waste is disposed of or destroyed; n. transmitting, broadcasting, or receiving radio, radar, television, or telephone are conducted;	Violations of Law No. 1/1970 may result in criminal penalties, with a maximum imprisonment of 3 (three) months or a maximum fine of Rp100,000.00 (one hundred thousand rupiah). Note that the fine amount is quite small as this is an old regulation, and the Indonesian Government has not yet amended this law. There is no further stipulation on whether this sanction is imposed on the director or other executives of the company concerned.

		o. education, coaching, experimentation, investigation, or research using technical tools are conducted; p. electricity, gas, oil, or water are generated, modified, collected, stored, shared, or distributed; and/or q. screenings of films, theatrical performances, or other recreational activities involving equipment, electrical, or mechanical installations are conducted	
2	Manpower Law and Government Regulation Number 50 of 2012 Implementation of OHS Management System ("GR No. 50/2012")	GR No. 50/2012 stipulates that the requirement to implement an OHS management system (Sistem Manajemen Keselamatan dan Kesehatan Kerja or "SMK3") is applicable to companies that: (i) has at least 100 employees, or (ii) has a high level of potential hazard --- hazard that may result in accidents that harm humans, interfere with the production process and contaminate the occupational environment.	The Manpower Law stipulates that a failure to comply with the SMK3 implementation requirement is subject to administrative sanctions stipulated in the implementing regulation of Manpower Law. However, GR No. 50/2012 (which is one of the implementing regulations of Manpower Law) is silent on the consequences for violation of the SMK3 requirement. Since the Manpower Law has just been amended by the Job Creation Law in 2022, it is likely that the government will issue new implementing regulations regarding SMK3, which may include details of sanctions for its failure to comply. However, we have not found any update as to when the new implementing regulation will be issued by the Indonesian government.

3	MOM Regulation No. 04/ MEN/1987 on OHS Advisory Committee and Procedures for Appointing Occupational Safety Experts as partially revoked by MOM Reg. No. PER.02/ MEN/1992 on Procedures for Appointing Obligations and Authorities of OHS Experts ("MOM Reg. 04/1987")	MOM Reg. 04/1987 requires the establishment of an OHS Advisory Committee (Panitia Pembina Keselamatan dan Kesehatan Kerja or P2K3) is applicable to companies that: (i) has at least 100 employees, or (ii) has less than 100 employees but utilizes materials, processes, and installations with a high risk of explosion, fire, poisoning, and radioactive radiation.	Failure by the company to establish a P2K3 is subject to the sanctions stipulated in Law No. 1/1980, i.e., criminal penalties with a maximum imprisonment of 3 (three) months or a maximum fine of Rp100,000.00 (one hundred thousand rupiah). Note that the fine amount is quite small as this is an old regulation, and the Indonesian Government has not yet amended this law. There is no further stipulation on whether this sanction is imposed on director or other executives of the company concerned.
4	MoM Regulation No. 5 of 2018 on Workplace Occupational Health and Safety	No explicit stipulation	Any failure to comply with the obligation set out in the MOM Reg No. 5/2018 will cause the employer (in this case, the Director of the company) be imposed with sanction as stipulated in Law No. 1/1970 and Law No. 13 of 2003 on Manpower as amended Law No. 6 of 2023 on Stipulation of Government Regulation in lieu Law No. 2 of 2022 on Job Creation into Law ("Manpower Law").

Depending on the industry, additional regulations are applicable. For example, companies in heavy industry may be subject to further regulations as follows:

Table 4 Additional OHS regulations applicable in heavy industry

No.	Regulation	Required License
1.	MoM Regulation No. 8 of 2020 on OHS of Lifting Equipment and Transporting Equipment	A company must obtain an OHS-related license if it uses any lifting and transporting equipment for its business.

2.	MoM Regulation No. PER.02/ MEN/1989 on Lightning Channelling Installation Supervision as amended by MOM Regulation No. 31 of 2015	Required if a company installs a lighting channeling
3.	MoM Regulation No. 12 of 2015 on Electrical OHS in Workplace as amended by MoM Regulation No. 33 of 2015, Ministry of Energy and Mineral Resources ("MEMR") Regulation No. 10 of 2021 on Electricity Safety	A company must comply with the requirements for the electrical OHS in its workplace.
4.	MoM Regulation 38 of 2016 on OHS of Power and Production Equipment	A company must obtain an OHS-related license if there is any fixed or movable equipment used or installed to generate or transfer power or power, process, manufacture materials, goods, technical products, and components of production equipment that can cause accident hazards.
5.	Boiler Law of 1930 (Stoom Ordonnantie 1930), Boiler Rule (Stoomverordening) 1930, MoM Regulation No. PER.01/ MEN/1988 on Qualifications and Requirements for Boiler Operators, Government Regulation No. 17 of 1948 on the Inspection of Boiler, MoM Regulation No. PER.02/MEN/1982 on Qualifications of Welders in Workplace, and MoM Regulation No. 37 of 2016 on K3 of Pressure Vessels and Storage Tanks	A company must comply with the requirements set out in these regulations if it uses any boiler and pressure vessels.

However, the additional layers of regulation mentioned do not specify sanctions for non-compliance. In sum, main OHS laws and regulations, along with supplementary industrial regulations applicable to specific sectors, do not impose direct sanctions on directors or other executives of the companies concerned.

2) Cases

This research analyzes some significant cases in recent years in this field. First, the following are the selected recent court rulings punishing executives for workplace safety accidents:

Table 5 Recent cases of punishing Executives for workplace safety accidents

Case No. 1		
1	Case No.	Decision No. 2/Pid.C/2024/PN Pwk[56]
	Parties	Defendant: Eko Widodo Prosecutor: General Prosecutor
	Merits of the case	In this case, the Defendant was the Manager of Human Resources and General Affairs and the Secretary for Occupational Health and Safety at PT Indonesia Libolon Fiber System. The victim, Mr. Tsai Tung Sung, a Taiwanese citizen, and a foreign worker for the Company, accidentally slipped and fell from a 3-meter-high building on 9 December 2023. Although the victim wore a safety belt, it was not properly connected. Further investigation revealed that the Defendant failed to ensure workers had the necessary safety protection equipment and did not report the incident to the Manpower Examination Office at Karawang Regency.
	Legal Consideration and Decision	The Purwakarta District Court found the Defendant guilty of not providing the necessary safety equipment and not reporting the incident. The Court fined the Defendant IDR 5,000,000. This case highlights negligence by the Occupational Safety Officer as a cause of workplace-related accidents.
	Explanation	Our research indicates that this case is one of the rare instances where a workplace-related accident resulted from negligence by the company's Occupational Safety Officer.
Case No. 2		

56 *Putusan PN PUWAKARTA Nomor 2/Pid.C/2024/PN Pwk*, (March 28, 2024) Penyidik Atas Kuasa PU: Yusuf Saeful Maruf, S.H., M.Si, terdakwa: Eko Widodo, https://putusan3.mahkamahagung.go.id/direktori/putusan/zaef09007f62d71a9b1d313035323031.html

2	Case No.	Decision No. 11/Pid.C/2020/ PN Sos[57]
	Parties	Defendant: Christian Manikome Prosecutor: General Prosecutor
	Merits of the case	In this case, the Defendant, the senior supervisor for Health, Safety, and Environment (HSE) at PT Indonesia Weda Bay Industrial Park, failed to report a workplace accident. The victim, Chen Ji Ming, a Chinese national employed by the Company, died on 14 November 2020. The Defendant's failure to report the accident to the North Maluku Province Manpower and Transmigration Office was deemed a violation of Law No. 1 of 1970 on Occupational Safety and Ministry of Manpower Regulation No. 03/MEN/1998 on Workplace Accident Reporting Procedures.
	Legal Consideration and Decision	The Soasio District Court found the Defendant guilty and imposed a fine of IDR 20,000,000. The court ruled that Occupational Safety supervisor must report workplace accidents to the relevant Manpower Office, and failure to do so incurs criminal sanctions.
	Explanation	The District Court ruled that the Occupational Safety supervisor must report any workplace accident to the relevant Manpower Office, with failure to do so resulting in criminal sanctions.
Case No.3		

57 *Putusan PN SOASIU Nomor 11/Pid.C/2020/PN Sos*, (December 21, 2020) Penyidik Atas Kuasa PU: 1. Robertho Ferdinando Ongky, ST., 2. Demisius Onasis Boky, S.Pt., M.Si, 3. Jusnain Harun, S.H., terdakwa: Christian Manikome, http://sipp.pn-soasio.go.id/detil_perkara and https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeb967c0f8ea90e8d06303930313534.html

3	Case No.	Decision No. 55 K/Pdt.Sus-PHI/2021 jo. Decision No. 23/Pdt.Sus-PHI/2020/PN Bjm58
	Parties	Plaintiff: Rina Ariana Defendant: PT Habco Primatama
	Merits of the case	In this case, Plaintiff is the rightful heir of Mr. Sahminan, a sea worker who was employed by Defendant, a shipping company. While working for the Defendant, Mr. Sahminan suffered a work-related accident that resulted in his death. Consequently, the Plaintiff filed a civil lawsuit seeking compensation for death due to the work-related accident, severance pay, and holiday replacement fees. The Industrial Relations Court of the Banjarmasin District Court partially granted the Plaintiff's claim, ruling that Mr. Sahminan's death was work-related and awarding IDR 150,000,000 in compensation. Both the Plaintiff and Defendant appealed this ruling to the Supreme Court.
	Legal Consideration and Decision	The Supreme Court upheld the IRC's decision, confirming that Mr. Sahminan's death was due to a work-related accident and ordering the Defendant to pay IDR 150,000,000 in compensation. This decision was based on Government Regulation No. 7 of 2000, which requires shipping companies to indemnify work-related accidents on ships with a minimum payment of IDR 150,000,000. In this case, the Supreme Court determined that the company, rather than individual executives, should bear responsibility for the work-related accident.
	Explanation	In this case, the Supreme Court adopted a different approach compared to the previous two cases, determining that the company, rather than its executives, should be held responsible for the worker's workplace-related accident.

In addition to the aforementioned court rulings, two significant cases are currently under investigation or court proceedings as follows:

i. ITSS Case[59]

The ITSS smelter explosion case in Morowali involves allegations of negligence and violations of occupational health and safety standards that led to a significant explosion, with ongoing court proceedings. Concerning this case, this research indicates that the case is presently in court proceedings. On 24 December 2023, the Central Sulawesi Police Department named two Chinese nationals, identified by the initials ZG and Z, as suspects in the smelter explosion. According to the

58 *Putusan MAHKAMAH AGUNG No. 55 K/Pdt.Sus-PHI/2021*, (February 25, 2021), Rina Ariana, S.H., selaku ahli waris dari almarhum Sahminan, melawan PT Habco Primatama. https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec6c7cadeb5bd4bfba313730353239.html

59 Butol Post, ""Berkas Perkara Dua WNA Tersangka ledaksan smelter PT ITSS diserahkan Kejari Monowali," March 6, 2024; CNN Indonesia, " Polisi Naikkan Status Ledakan Tungku Smelter PT ITSS ke Penyidikan," January 3, 2024; Beritabersatu, "P21 Dua WNA China yang Jadi Tersangka Ledakan Tungku Smelter PT ITSS Diserahkan ke Kejaksaan," March 6, 2024.

Indonesian Police Public Relations website, ZG is a finance supervisor at PT Zhao Hui Nikel, while Z serves as the vice supervisor at PT Ocean Sky Metal Indonesia. The police investigation suggests that negligence and violations of occupational health and safety standards led to the explosion. On 27 February 2024, the Morowali District Prosecutor's Office declared the case files complete, with the next step being court proceedings.

However, no recent updates on the criminal proceedings have been found in available online sources. It is noteworthy that the Indonesian Court maintains an online case tracking system accessible to the public. Nonetheless, due to the limited information regarding the full identity of the suspects, tracing the criminal proceedings remains challenging.

ii. PT GNI Case[60]

The GNI case pertains to an explosion at the Chinese nickel smelter owned by PT Gunbuster Nickel Industry in East Petasia District, North Morowali Regency, Central Sulawesi. This incident resulted in the deaths of two employees operating the crane.

As of 30 December 2022, the police initiated an investigation into the explosion. North Morowali Police Superintendent Ade Nuramdani stated that the case is being investigated by both the Central Sulawesi Regional Police and the North Morowali Police. However, there have been no further updates, news, or court decisions imposing sanctions or punishments on the involved corporate executives to date.

Meanwhile, this research has not found any case where a company's K3 officer was criminally punished for their failure to implement the correct K3 norms.

3) Implication

Consequently, while a company is likely to bear the responsibility for a workplace-related accident that occurred to its workers, as discussed together with the relevant court rulings, the stipulations above lack provisions for holding corporate directors or executives accountable for a systematic failure. As a result, the Manager of Human Resources and General Affairs, the Secretary for Occupational Health and Safety, or the Senior Supervisor for Health, Safety, and Environment may be punished for their failure, as witnessed in Case #1 and 2 above, while corporate directors in higher position are safe as long as there is no direct evidence in their involvement to the systematic failure. However, more importantly, this does not necessarily mean that Indonesia must introduce such a provision.

60 TBNews, "Polisi Meninjau Ledakan Yang Tewaskan Puluhan Pekerja di Kawasan PT IMIP Morowali," December 24, 2023; TBNews, "Polisi: Total 18 Korban Meninggal Dunia Akibat Ledakan Smelter," December 26, 2023; CNN Indonesia, "Polisi Naikkan Status Ledakan Tungku Smelter PT ITSS ke Penyidikan," January 3, 2024.

In addition, it is noteworthy that Indonesia does not have specific regulations stipulating OHS requirements for work performed by other companies through contracts, services, or outsourcing. Generally, OHS laws and regulations apply to the company and the workplace itself. Consequently, any violation, whether it affects the company's direct employees or outsourced employees, is considered a violation by the direct employer of the affected employees.

Once again, this does not necessarily mean that Indonesia must immediately adopt such a provision. This research suggests a nuanced approach, recognizing the complexity of corporate governance and the potential unintended consequences of hastily introduced regulations for the following reasons:

Table 6 Reasons why the current absence of comparable regulations does not necessarily mean that Indonesia must immediately adopt similar stipulations

No.	Reasons	Explanation
1	Avoiding Over-Regulation	A caution is needed against imposing additional regulatory burdens that may not be necessary or effective. Over-regulation can potentially stifle business operations, create compliance challenges, and deter investment.
2	Contextual and Practical Considerations	Simply introducing new provisions might not address the root causes of issues effectively. Context-specific, practical solutions may be more appropriate than blanket regulatory changes.
3	Balancing Business and Human Rights	It is crucial to strike a balance between human rights considerations and the practical realities and operational integrity of businesses. This balance is crucial to ensure that human rights protections do not inadvertently hinder business activities.
4	Existing Frameworks and Alternatives	Existing legal frameworks and alternative measures might already provide sufficient protection. Improvements could be made within the current system without needing entirely new regulations.
5	Risk of Superficial Compliance	Introducing new regulations without thorough consideration might lead to superficial compliance, where companies follow the letter of the law without genuinely addressing the underlying issues.

D. Closing

The assessment of Indonesia's current legal framework for human rights in corporate settings shows notable progress, particularly with the adoption of international standards like the UNGPs and new laws such as Law No. 12 of 2022 and MoM Decree No. 88 of 2023. However, further development requires a more careful and nuanced approach to ensure effective integration and compliance.

Human rights encompass a vast spectrum of norms, embracing virtually all conceivable rights, including civil, political, economic, social, and cultural rights. Interpretations of

human rights can vary significantly among individuals, influenced by personal, cultural, and situational contexts. While the highest laws, such as Pancasila or the Constitution, may justifiably employ broad language to capture the essence of these rights, it is crucial for specific laws and regulations to avoid such expansive terms to uphold the principle of legal certainty, enabling individuals and businesses to understand their rights and obligations clearly. [61]

Enforcing overly broad terms in the law as obligations can grant excessive discretionary power to authorities, allowing for varied and potentially biased interpretations. This can lead to significant injustices, as authorities may wield this power unpredictably, undermining fairness and equality before the law. For businesses, such legal ambiguity erodes the essential elements of predictability and foreseeability, complicating compliance efforts and hindering effective business operations.

Furthermore, in the modern period, directors in companies already have substantial responsibilities, including managing the company to fulfill the purpose set by shareholders and complying with thousands of regulations applicable to running the business. Although a company is essentially a business entity responsible for the salaries of its directors and workers and the economic benefits of its shareholders, it is now also required to fulfill non-profit purposes such as corporate social and environmental responsibilities. If we impose additional broad burdens based on such expansive concepts, it essentially means that companies are expected to "save the world."[62] Company is not a superman. Nor are its individual directors.

Therefore, to enhance the effectiveness of human rights protection in the corporate sector, it is crucial to consider various down-to-earth factors, including the practical realities faced by businesses, the existing legal and regulatory landscape, and the capacity of companies to comply without compromising their operational integrity. A balanced approach that takes these factors into account is essential to ensure that regulations are both

61 The principle of legal certainty, as articulated in legal scholarship, underscores the necessity for laws to be clear and predictable, thereby safeguarding against arbitrary and discriminatory enforcement . When Indonesia's new company law (Law no.40 of 2007) adopted a concept of corporate social and environmental responsibility under Article 74, the Indonesian Chamber of Commerce (KADIN) instituted an unconstitutionality suit before the Constitutional Court maintaining that it was against the principle of legal certainty in Article 28 D (1) of the Constitutions. Although the Constitution Court has determined its legal certainty, the provision is still evaluated as not user-friendly, lacking any specificity and practicality. Edgar Soonpeel Chang, pp.138-140.

62 Kent Greenfield and D. Gordon Smith, 2007, Saving the World with Corporate" *Emory Law Journal,* 57, p947. In this paper, Professor Smith, a leading advocate of the traditional shareholder-centric model in the U.S., argued that changes in corporate law could not eradicate poverty, clean air or water, or solve the labor question. He contends that the changes in corporate law that could have a substantial effect on such issues would only make matters worse. On the other hand, Professor Greenfield, a leading proponent of progressive stakeholder governance, asserted that corporate law affects issues like the environment, human rights, and labor questions. He argues that corporate law should be expanded to take advantage of the distinctive abilities of the corporation to create wealth while preventing it from imposing costly externalities on stakeholders and communities.

effective and sustainable. Future legislative efforts should aim to provide clear, practical guidelines that support businesses in meeting their human rights obligations while fostering a conducive environment for economic growth and development.

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THE JUSTICE EROSION OF THE IMPOSITION OF ECONOMIC SANCTIONS IN INTERNATIONAL LAW ENFORCEMENT

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ABSTRACT

After the COVID-19 pandemic occurred some time ago, which paralyzed all aspects of life in the world, not long after, in 2022, an armed conflict occurred involving Russia and Ukraine, which continues to this day. In line with the armed conflicts that have emerged recently, various international economic sanctions targeting warring countries have begun to be imposed. Ironically, instead of weakening the sanctioned country's defense, the embargo imposed by a sanctioned country on a particular country turns out to have a harsh impact on all aspects of the lives of its civilians, both the sanctioned country and the sanctioning country in several cases. The imposition of various international sanctions is one of the causes. Reflecting on this, the author will analyze more deeply what is the concept of international economic sanctions. Secondly, does the imposition of international economic sanctions fulfill the basic concept of implementing economic sanctions today? The method used in this paper is qualitative research with normative juridical methods. From the discussions, It can be concluded that economic sanctions are the withdrawal of trade habits and financial relations for foreign and security policy. Sanctions can be comprehensive, prohibiting commercial activity against entire countries. However, there is uncertainty regarding the length of economic sanctions imposed on a country, which causes prolonged suffering for the people of a country. Apart from that, the dominance of countries that have significant political and economic power has led to the emergence of abuse of the imposition of economic sanctions themselves. The article recommends that countries should compose the development of international legal rules originating from international agreements that focus on three main things: management processes, and results that lead to sustainable benefits based on the principle of equality in creating agreements between countries.

Keywords: International sanctions, economic sanctions, International Law

A. Introduction

After the COVID-19 pandemic some time ago, which paralyzed all aspects of life in the world, not long after in 2022, on February 24, 2022, it was reported that there was an armed conflict involving Russia and Ukraine, which continues to this day. It did not stop there; the international conflict occurred again in another place, namely in Gaza, where this armed conflict involved Israel and Palestine. These international conflicts have attracted much criticism of the conflicting countries from other countries. Along with this international criticism, various international sanctions emerged targeting the warring countries. For example, recently, the United States announced sanctions against 500 Russian companies to target the Russian war machine, and export restrictions were imposed on almost 100 companies or individuals to limit Russia's ability to produce weapons. [1] Likewise, Britain imposed sanctions in the form of a ban on exporting metals, gems, and energy from Russia, followed by the European Union freezing around 70% of Russian bank assets. Apart from these countries, Japan, Canada, and Australia have also imposed similar sanctions on Russia, intending to weaken the Russian economy. Apart from Russia, international sanctions are also planned by the United Nations (UN) to be imposed on Israel.[2]

As we understand, international sanctions are a policy tool often used by international organizations, especially the United Nations (UN), to resolve conflicts and maintain global peace and security. *International sanctions* are coercive measures implemented by one or more countries or international organizations against a country, individual, or other entity to force a desired change in behavior. *International sanctions* are an instrument the international community uses to respond to behavior that violates international law or recognized international norms.[3] Therefore, in theory, all UN member states should believe that the application of international sanctions carried out by various countries has a solid legal basis, so there is no need to doubt whether to accept and recognize them. International law is essential apart from providing international sanctions, especially in developing a country's legal system. In particular, it regulates the protection of society in conflicts that occur within a country. International law is also one of the tools and

1 BBC News Indonesia, *Apa Saja Sanksi Terhadap Rusia Dan Apa Dampaknya? (What are the sanctions against Russia, and what are their impacts?)*, https://www.bbc.com/indonesia/articles/c1d1dl4vyk8o (accessed 9th July, 2024)

2 *Ibid.*

3 Alamsyah, Syukur, A. D., & Putra, E. A.,. *Penegakan Hukum Humaniter Internasional Terhadap Partisipasi Tentara Bayaran Dalam Konflik Bersenjata (Enforcement of International Humanitarian Law Against the Participation of Mercenaries in Armed Conflicts). (*Hukum Dinamika Ekselensia, *06*(2), 2024). 56

methods that every peaceful and neutral country can use to participate in reducing the suffering experienced by society due to conflicts that cause torture, rape, and murder in a country. The impact of international conflict can be harmful, either directly or indirectly. These international conflicts have made many civilians victims who bear the negative impacts of international conflicts that occur in a country. International law places an embargo on a country to make it difficult for the country to obtain various commodities, especially necessities. It was triggered by a conflict created by a country where several embargoed countries hoped that this embargo policy would be able to force other countries to come together to resolve conflicts that occurred in the country that created the conflict. [4]

An economic embargo is a form of economic sanction imposed by a country or group of countries against another country by prohibiting or limiting the import and export of goods and services between the two countries. One of the methods used is the blockade method, which is often used during conflicts. [5] A blockade is a siege (closure) of an area (country) so people, goods, and ships cannot enter and exit freely. A country uses a blockade by closing specific areas of the opposing country to weaken that country's defenses. Ironically, the sanctioning country's embargo imposed on a particular country, instead of weakening the defense of the sanctioned country, turns out to have a hard impact on all aspects of the lives of its civilians, both the sanctioning country and the sanctioning country in some instances. One example is what is currently happening in Cuba. It is classified as a developing country, where over the six decades of the embargo has cost Cuba trillions of dollars; from March 1, 2022, to February 28, 2023, the blockade carried out by the United States is detrimental to Cuba, about $4.87 billion. Not only that, the impact of the embargo increased exponentially after Cuba was added to the United States list of countries suspected of sponsoring terrorism. Banking and financial operations have become very difficult for Cuba because of this. The embargo even affected Cuba's ability to obtain essential medicines and food.[6]

4 Mangisi Simanjuntak, *Hukum Internasional "Perjuangan Negara-negara Berkembang dalam Mencapai Persamaan Hak" (International Law "Struggle of Developing Countries in Achieving Equal Rights"),* (edisi I, Mitra Wacana Media, Jakarta, 2018), 54.

5 Marthin Ellon Hattu, etc., *Embargo Terhadap Negara Dalam Keadaan Darurat Dan Pemenuhan Hak Asasi Manusia(Embargo on Countries in Emergency Situations and Fulfillment of Human Rights)*, (Pattimura Law Study Review Volume 1 Nomor 2 December, Ambon, 2023) 167

6 UN Press, *Economic, Commercial Embargo Imposed by United States Against Cuba Harmful, Violates UN Charter, Speakers Underline in General Assembly*, https://press.un.org/en/2023/ga12552.doc.htm, (accessed 9th July, 2024)

When economic sanctions are imposed by countries with political or economic solid power on qualified countries in lower-middle-income countries, it will have a tremendous impact on aspects of the lives of civilians in the country receiving the sanctions. This condition will be different if economic sanctions are imposed on a country that has strong political or economic power; of course, the effect of economic sanctions can be a boomerang for the country giving the sanctions. Especially when the country giving the sanctions is still economically dependent on the country receiving the sanctions. Such as the condition currently, Russia, where Western sanctions-bearing countries are also affected by the sanctions they have imposed on Russia, is like the United States, which experienced an economic decline of around 9% on March 7, 2022, [7] with an 18 percent oil surge that occurred in a matter of minutes. The surge in Brent oil increased natural gas prices, which affected manufacturing and transportation costs in many US industries. This situation is predicted to continue because the US is sending more gas to Europe to compensate for Russian supplies lost due to sanctions. In addition, rising oil and gas prices have made Americans angry at the US energy industry and government. It has given rise to many disputes, including the fact that the US, which was once a large importer of natural gas, was forced to stop exporting gas and prioritize its own needs.

In contrast, gas production in critical locations in the US slowed in 2022, partly due to insufficient pipeline capacity. What happened to the United States also happened to Western countries that depend on Russia. Based on IMF records, some European Union countries have an impact on economic growth stalling and the risk of a new recession emerging, which makes it increasingly difficult for Europe to get out of the debt crisis. On the other hand, financial markets are also volatile with high-cost loans made by European Union countries. [8]

The descriptions of the facts regarding economic sanctions arise from the implementation of Article 39[9] and Article 41,[10] Chapter VII concerning Action with

7 Putri, A. M., *Waspadalah Negara-Negara Eropa, Resesi Dimulai (Beware European Countries, Recession is Starting)*, https://www.cnbcindonesia.com/news/20220715102428-4-355874/waspadalah-negara-negara-eropa-resesi-dimulai?page=all**,** (accessed 10th July, 2024)

8 *Ibid.*

9 Chapter VII, Article 39 stated: *"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."*

10 Chapter VII UN, Article 41 stated: "*The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."*

Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression. These two articles describe actions that the Security Council can take in maintaining and realizing international security. However, the other articles do not provide mechanisms, limitations, or concrete steps the Security Council must take to carry out its duties. Based on articles 39 and 41. It has led to allegations of abuse of power carried out by member countries of the Security Council who want to take action, including imposing economic sanctions on a particular country. Reflecting on these, the author will try to analyze more about the justice deterioration to economic sanctions imposition in International Law enforcement. The author does not intend to criticize these obstructions but hopes that in the future, this article can produce a more certain construction of International Law development, particularly regarding regulating economic sanctions imposition. Some important things from this presentation form the basis of this article's discussion: First, what is the concept of international economic sanctions? Second, does the implementation of international economic sanctions fulfill the basic concept of implementing economic sanctions today?

B. Methodology

The right methodology must be used in research to guarantee a scientific truth because it is a guideline for conducting research, including analysis of research data. The methodology is a way of finding obtaining, or carrying out an activity to obtain concrete results. The use of legal research methods in writing this article can explore, process, and formulate legal materials obtained to obtain conclusions following scientific truth to answer the legal issues faced. The right method is expected to provide a sequential flow of thought to achieve the assessment.

The method used is descriptive, a research method to obtain an overview of the situation and circumstances by presenting the data obtained as they are. Then, through various analyses, several conclusions are drawn. In contrast, the research is carried out with a normative juridical approach. An analysis is carried out by first identifying legal facts and setting aside irrelevant matters to determine the content of the law to be resolved. Second, relevant legal materials and non-legal materials must be collected. Third, the issues should be studied based on the collected legal materials. Fourth, conclude in the form of arguments that answer legal matters. Fifth, provide the ideas that have been built in conclusion. The conclusion is based on the analysis of the main problem.

In this study, the author uses international and Indonesian research journals related to economic sanctions as the primary source in writing this article. In addition to these sources, the author also relies on sources from books that specifically strengthen the legal concepts used. At the same time, the data and facts used as the background for this research are obtained online.

In this data, the data that has been obtained is then analyzed using a qualitative analysis approach. This approach involves observing the data and connecting each piece with the relevant provisions and legal principles. We employ inductive logic, which is the process of thinking from the specific to the general, using normative tools, interpretation, and legal construction. The data is then analyzed using qualitative methods, leading to conclusions drawn using deductive methods. This process allows us to produce general conclusions regarding the problems and objectives of the research.

Researching **the justice erosion of the imposition of economic sanctions in international law enforcement** was conducted by targeting the development of new legal thinking for nations that prioritize life values rather than merely the interests of a particular country. It has created obstacles for the author in conducting the research itself.

C. The Economic Sanctions and the Current Imposition Practice

1. The Concept of Economic Sanctions

Chapter VII of the UN Charter empowers the UN Security Council to implement sanctions (Article 41), a responsibility that all UN member states respect. These sanctions, which are the most potent peaceful means of the international community to prevent threats to international peace and security or to resolve them, do not include the use of military force. However, if sanctions do not lead to a diplomatic resolution of the conflict, the Security Council can authorize the use of force separately. It is crucial to distinguish UN sanctions from unilateral sanctions imposed by individual countries to further their strategic interests. Unlike the latter, which are typically intended as strong economic coercion, UN sanctions are a collective effort to maintain global peace and security, with the UN Security Council playing a pivotal role. This distinction is important for a comprehensive understanding of the global political landscape.

Understanding the three forms of international legal sanctions: diplomatic, economic, and military, is crucial in the field of international relations. The softest sanctions, namely

diplomatic sanctions, can reduce or terminate diplomatic relations, such as reducing diplomatic relations from an embassy to a consulate, withdrawing an ambassador, or even assigning a *charge d'affaires* to replace the ambassador. Economic sanctions, which include trade embargoes or boycotts, asset freezes, cash transfer bans, technology transfer bans, and travel warnings, are also of great importance. However, it is the understanding of the implications of military sanctions, the most severe form of military intervention, for example, invasion or military aggression that truly underscores the gravity of the situation.[11]

Economic sanctions are the withdrawal of customary trade and financial relations for foreign and security policy purposes. Sanctions can be comprehensive, prohibiting commercial activity against an entire country, such as the long-standing US embargo against Cuba, or they can be targeted, blocking transactions by and with specific businesses, groups, or individuals.[12] At its core, economic sanctions are a strategic manifestation of a country's use of economic instruments in its foreign policy, a concept commonly known as economic statecraft. As Baldwin articulates, the art of international relations lies in a state's ability to influence targeted international actors, both state and non-state, through the strategic deployment of various economic instruments.

Economic statecraft can generally be divided into positive and negative instruments. Positive instruments are carried out by providing incentives, rewards, or what could also be termed carrots to the intended or targeted actors.[13] Examples of positive instruments include providing foreign aid, reducing import tariffs, providing favorable treatment in trade, export and import subsidies, granting licenses, reducing or eliminating taxes in foreign investment relations, and so on. Meanwhile, negative instruments are implemented by imposing economic sanctions as a form of punishment or what could also be termed sticks to international actors. Negative instruments in the form of economic sanctions usually take the form of embargoes, boycotts, freezing assets, suspension of aid, imposition of increases in import tariffs, imposition of import quotas, dumping, revocation of ownership, unpleasant tariff discrimination, and so on.[14] Those giving

11 Andre Jordi Pakekong,etc., *Tanggung Jawab Negara Sebagai Subjek Hukum Internasional Dalam Menjaga Perdamaian Dunia (State Responsibility as a Subject of International Law in Maintaining World Peace),* (Jurnal Fakultas Hukum Universitas Sam Ratulangi Lex Privatum Vol.XII/No.2/sep/2023)

12 Masters, Jonathan, What Are Economic Sanctions?, (https://www.cfr.org/backgrounder/what-are-economic-sanctions), Accessed on July 20th, 2024

13 Kaminski, T. (2017). Political Significance of Sovereign Wealth Funds. In T. Kaminski, P. Wiśniewski, D. Urban, M. Obroniecki, & T. Jurczyk, Political Players? Sovereign Wealth Funds' Investments in Central and Eastern Europe (pp. 27-28). Łódź University Press.

14 Baldwin, D. (1985). Economic Statecraft. Princeton University Press.

economic sanctions, commonly called senders, come from international organizations, countries, and groups of countries. Meanwhile, the party sanctioned or referred to as a target is usually the state, but it can also be individuals.[15] Sending countries generally have a more significant or higher economic level than the target country.

Economic sanctions as a negative instrument of economic statecraft are nothing new in the international political constellation. World countries, especially Western countries, have widely practiced economic sanctions during the Cold War era. During this period, economic sanctions became a popular foreign policy instrument. In other words, economic sanctions in foreign policy increased, inviting academics to discuss it.[16] In addition, western countries now prefer economic sanctions rather than military force. Economic sanctions are coercive or threatening in nature and generally aim to change the behavior or policies of the targeted party. Economic sanctions are sometimes claimed to be economic forces controlled by certain national interest groups through the withdrawal of aid undertaken by the government or other activities occurring in the target country, or the threat of trade and financial relations withdrawal. The motives behind economic sanctions are to punish, prevent, and restore. Sanctions can be imposed to punish a country for actions taken or to prevent a country from carrying out specific actions in the short term.[17]

From 1960 to 1980, a frequently arose regarding sanctions studies: whether economic sanctions were an effective foreign policy instrument. In the 1990s, researchers finally researched when and how economic sanctions can be successful or effective, why countries impose sanctions, and why some sanctions last longer than others. Regarding the effectiveness of economic sanctions, *Hufbauer* et al. in the 1990s concluded that the percentage effectiveness of economic sanctions against targeted countries only showed around 33% at that time.[18] Robert Pape emphasized *Hufbauer* et al.'s opinion that economic sanctions will almost certainly not work. The success of economic sanctions is only around 5%, not 33%, so economic sanctions are a sad form of failure.[19] According to him, military sanctions or coercion are more effective

15 Hufbauer, G. C., Jeffrey, S., Kimberly, E., & Barbara, O. (2009). Economic Sanction RECONSIDERED. Washington DC: Peterson Institute.
16 Losman, D. L. (1979). International Economic Sanctions: The cases of Cuba, Israel, and Rhodesia. Albuquerque: University of New Mexico Press.
17 Andréasson, G. (2008). Evaluating the Effects of Economic Sanctions Against Burma. Lund: Lund University.
18 Hufbauer, G., Schott, J., & Elliott, K. (1990). Economic Sanctions Reconsidered: History and Current Policy. Washington DC: Institute for International Economics.
19 Pape, R. (1998). Evaluating Economic Sanctions. International Security, 195-198.

than economic sanctions. The pessimism of *Hufbauer* et al. and Pape (1990 & 1998) also confirms *Wallerstein's* (1968) opinion that economic sanctions are very effective in drawing resistance from the sanctioning country but are almost useless as a means of changing the policy or behavior of the targeted country. For instance, the economic sanctions against South Africa during the apartheid era were largely successful, while those against Cuba have been largely ineffective.

Morgan and Schwebach,[20] who focus more on when economic sanctions are successful or effective than whether economic sanctions are successful, conclude that sanctions are very rarely successful. This rarity of success underscores the need for a more nuanced approach to the use of economic sanctions. Economic sanctions can be effective if they cause high costs to be paid by the target, thereby increasing success. On the other hand, the high costs that must be paid by the sanctions giver can reduce the sanctions' effectiveness. Following the conventional wisdom that the greater the destructive power of a sanction, the greater its effectiveness, Morgan and Schwebach[21] proposed imposing sanctions on the target country's population or domestic community. In other words, economic sanctions are more effective than targeting the government in power if they are aimed at the target country's domestic society. However, sanctions against domestic communities in target countries also hurt the sanctioning country. The stronger the power of sanctions, the more detrimental it is to the economic interests of the sanctioning country, for example, the domestic industrial group of the sanctioning country. In addition, the longer the sanctions are imposed, the longer the target country can be immune to sanctions.

2. The Imposition of Economic Sanctions: A Current Form of Justice Deterioration

Before discussing further developments in the current imposition of economic sanctions, we must look at the history of the imposition of economic sanctions themselves. Imposing economic sanctions as a foreign policy has lasted for at least 2500 years. One of the first recorded economic sanctions in history was the *Megarian* Decree (circa BCE 432) imposed by Athens on the Megara. Athens did this as a diplomatic step against the *Megarians,* who had cultivated Athenian land and killed an Athenian herald. The sanctions imposed by Athens are: barred trade with Megara at the decree and denied

20 Morgan, C., & Schwebach, V. (1997). Fools Suffer Gladly: The Use of Economic Sanctions in International Crises. International Studies Quarterly, 27-35.

21 *Ibid.*

the *Megarians* access to Athenian ports. The *Megarian* Decree is viewed by many as a major cause of the *Peloponnesian* War. One view is that these sanctions imposed costs on the *Megarians* without resorting to war, in which case they failed to achieve their goal. On the other side, many believe that Pericles persuaded the Athenians to adopt the *Megarian* Decree precisely because he intended to foment war, in which case they would count as a success in achieving a dubious goal.[22]

After World War I ended, many nations wanted to use economic sanctions as an alternative to war. Although several sanctions were imposed and did not achieve maximum results, one example was the League of Nations imposing sanctions on Italy in 1935 in response to their invasion of the Abyssinia region in Ethiopia. However, at the time, Italy was seen as a counterweight to Nazi expansionism in Germany, which made countries such as Great Britain and France unwilling to implement such sanctions. Ultimately, these sanctions were considered a major failure that weakened the League's standing. Apart from these examples, the United States also imposed strict trade restrictions on Japan to prevent Japanese military conquest in East Asia. However, the results obtained reaped the opposite results; these sanctions contributed to Japan's decision to expand the war by attacking Pearl Harbor in 1941.[23] These two examples illustrate that the imposition of sanctions does not stop a conflict but becomes the cause of armed conflict in the end.

After World War II, the imposition of economic sanctions increased very rapidly. The imposition of sanctions has also undergone many changes, not only in the purpose of imposing them but also in the type and who imposes them. The imposition of economic sanctions can be divided into four eras, namely:[24]

1. Cold War Era (1950-1975)

In this period, the United States imposed one-third of the sanctions unilaterally. The United States does this because of its role in many of the sanctions imposed by the UN and ad hoc multilateral coalitions. The United States is active in imposing the most sanctions, making it responsible for expanding the use of sanctions. These sanctions are most often implemented to destabilize political regimes or to influence

22 Kagan, Donald. 1969. *The Outbreak of the Peloponnesian War*. Ithaca, NY: Cornell University Press.
23 Boudreau, Donald G. 1997. "Economic Sanctions and Military Force in the Twenty-First Century." *European Security* 6 (2): p. 28–46.
24 Morgan, T. Clifton, et. al., Economic Sanctions: Evolution, Consequences, and Challenges, *Journal of Economic Perspectives—Volume 37, Number 1—Winter* 2023: p. 7-9

the course of a military conflict (either by pressuring combatants to end fighting or to support the messenger's territorial claims). Increasing economic prosperity for everyone, but also creating asymmetrical power relations; That is, when countries depend on each other through trade, the less dependent country can use restrictive trade policies to increase its power by gaining advantage in disputes over other issues. After the end of World War II, the Cold War between the Soviet Union and the United States became a major feature of international politics, and the United States frequently used sanctions to support its Cold War policies.[25]

This era saw the United States play an active role in international sanctions, and trade sanctions and arms sanctions remained the instruments of choice, and sanctions were often used in efforts to bring about regime change. The US sanctions against Cuba, which exist to this day, are a clear example of this. Apart from that, the United States also frequently imposed sanctions on Soviet bloc countries in Eastern Europe, as well as refusing to allow China to integrate into the global economy, and often sanctioned countries deemed to be "going communist."

2. Late Cold War (1975–1990)

In this era, the United States, as the single largest economy in the global system, played a pivotal role. Despite the economic recovery of Western Europe and Japan from World War II in the early 1970s posing a challenge to the United States' economic hegemony, the nation remained resilient. The European Economic Community (EEC) was beginning to fulfill its promise of allowing its members to act with one voice. Politically, the United States was weakened by the long and unsuccessful war in Vietnam. However, it continued to be a significant player in the global political landscape, albeit with some loss of position as a supporter of democratic values and human rights.[26] In most countries of the world, coercive dictatorships and military juntas have replaced colonial governments and fledgling democracies. The Cold War was a period of détente between the United States and the Soviet Union, except after the Soviet invasion of Afghanistan, which was subject to significant economic sanctions. In addition, many guerrilla organizations (such as the *Baader-Meinhof* gang in West Germany, the Red Brigades in Italy, and the *Symbionese* Liberation Army in the United States) began to use terrorist tactics.

25 Barber, James. 1979. "Economic Sanctions as a Policy Instrument." *International Affairs* 55 (3): 367–84.
26 Eichenberg, Richard C. 2005. "Victory Has Many Friends: U.S. Public Opinion and the Use of Military Force, 1981–2005." *International Security* 30 (1): 140–77.

The impact of these factors is seen as the accelerated use of sanctions continues, with the United States remaining the country that sends sanctions most frequently. Notably, the International Emergency Economic Powers Act of 1977, a significant milestone, gave the US president broad authority to regulate various economic transactions following the declaration. This act, and the frequent use of economic sanctions by the United States, had a profound global impact, despite being contrary to customary international law at the time.

Indeed, this law became an "all-in-one" law for US sanctions, and the frequent use of economic sanctions by the United States was contrary to customary international law at the time. However, European states also emerged in this period as coordinated sanctions. Throughout the period, trade sanctions continued to be used consistently. However, they became a smaller proportion of overall sanctions, marking a significant shift in international relations. A steady increase in financial and military sanctions had begun. Although the use of sanctions for regime destabilization continues at a fairly constant level, there has been a significant increase in the use of sanctions to protect human rights. By the end of the period, sanctions were widely used to combat international terrorism.

3. Post-Cold War: 1990–2000

In the early 1990s, the Cold War abruptly ended with the collapse of the Soviet Union, and a wave of democratization swept much of the world. This significant shift was accompanied by a strengthening of the global order. International organizations such as the United Nations played a pivotal role in promoting multilateralism, increasing respect among nations, and reassuring the world about the strengthening global order.

During this period, the United States emerged as a key player, significantly influencing the global political landscape. The US played a crucial role in incorporating China into the international economic system.[27] The Maastricht Treaty of 1992, which created the European Union, set Europe on a path to greater economic coordination, marking a significant strengthening of the economic front. In 1995, the World Trade Organization replaced the 1947 General Agreement on Tariffs and Trade (GATT), further regulating trade relations and making it more challenging to implement trade sanctions.

27 Jacobson, Harold K., and Michel Oksenberg. 1990. *China's Participation in the IMF, the World Bank, and GATT: Toward a Global Economic Order*. Ann Arbor, MI: University of Michigan Press.

Even though these changes look perfect, the seeds of opposition are still planted and spread. International terrorist organizations, especially Al Qaeda, began to gather strength. At the same time, there was a backlash and protests against globalization, a process of interaction and integration among the people, companies, and governments of different nations. These forces became particularly prominent after 2000. During the 1990s, the frequency of sanctions implementation remained constant at historically high levels, and the 1990s became known as the 'decade of sanctions'.[28] However, it was just a very short period.

4. Post-9/11: 2001–Present

The September 11, 2001, terrorist attacks on the United States sparked two decades of war. This period also saw a shift away from democratization and towards nationalism. The world has recently experienced massive economic upheaval following the profound impact of the 2008 financial crisis and the ongoing global pandemic. Once again, we have interstate war in Europe, which has triggered the most sweeping sanctions ever imposed on a relatively powerful economic power.

In the ten years after 2001, the use of sanctions increased, the majority of which were financial, travel, and other sanctions targeting specific individuals and companies. Although the use of sanctions to support human rights continues to increase, the use of sanctions to support democracy is decreasing. Sanctions have rarely been used to effect regime change in this period, but their application to combat international terrorism has increased substantially.

Several factors play an essential role in driving this change. First, the increasing reliance on targeted sanctions follows theoretical advances suggesting they should be more effective.[29] Second, the United States enacted several changes to its constitution, making implementing and enforcing financial sanctions easier.[30] To weaken the activities of terrorist organizations, the United States now requires financial institutions to track and report financial transactions. It has prompted the United States to target sanctions on specific companies and individuals and pushed most of the application of those sanctions to financial institutions. The United States has also exercised extraterritorial jurisdiction over foreign entities that conduct

28 Cortright, David and George A. Lopez. 2002. *Smart Sanctions: Targeting Economic Statecraft*. Lanham, MD: Rowman and Littlefield.

29 Cortright, David and George A. Lopez. 2000. *The Sanctions Decade: Assessing UN Strategies in the 1990s*. Boulder, CO: Lynne Rienner.

30 Hufbauer, Gary C., and Thomas Moll. 2007. "Using Sanctions to Fight Terrorism." In *Terrornomics*, edited by Sean S. Costigan and David Gold, 179–94. London: Routledge.

business in US dollars and channel payments through US financial institutions.[31] The United States has also implemented secondary extraterritorial sanctions against companies, including foreign companies, for doing business with entities on their sanctions list. Third, extraordinary advances in information technology have made it possible to process information on the many financial transactions that occur every day. It has caused a change in the pattern of imposing economic sanctions itself to date.

Even though there have been changes in the patterns of imposing sanctions, such as the shift from comprehensive sanctions to targeted sanctions, on the other hand, there is also something that has not changed, namely, the role of certain countries that impose sanctions is still dominated by countries that have very strong economic and political power in the world. Although often the country that imposes sanctions is also affected, as happened in 2022. In 2022, the sanctions imposed on Russia, as described in the introduction section of this article, were initiated by the United States imposing economic sanctions, which the EU followed. However, the impact reversed on sanctioning countries by decreasing the economic growth of the countries themselves. It happens because of economic dependence on countries that impose sanctions on recipient countries.

Apart from that, based on the description of the four eras to date, what needs to be underlined is that the imposition of sanctions currently does not have a precise time limit. This lack of clarity is caused, in part, by the external politics of the sanctioning countries, such as geopolitical interests or domestic political considerations. According to the author, this is one of the consequences of the implementation of the UN Charter, where the UN Charter and other conventions relating to the imposition of sanctions do not specifically contain the duration of the sanctions imposed themselves. It will be detrimental to the people of countries receiving sanctions if the imposition of sanctions is carried out arbitrarily without any restrictions, as is the case in Cuba.

While international law is a product of agreements between member countries and other forms of international cooperation, these agreements must be built on the foundation of justice for all parties. The key to maintaining international justice is the principle of equality in creating agreements between countries. This principle

31 Hufbauer, Gary C., and Euijun Jung. 2020. "What's New in Economic Sanctions?" *European Economic Review* 130: 103572.

ensures all states have the same rights and obligations, fostering fairness and balance in international relations.

In other words, every country must be able to put common interests ahead of their political interests. When countries take this path, it will undoubtedly positively affect the development of international law itself. However, international law enforcement itself must align with "law enforcement's" definition. The law itself cannot be separated from law enforcement itself, which law enforcement must, of course, be able to reflect the existence of legal certainty because, in essence, the law exists to provide a sense of justice for all parties. Likewise, it hopes that international law itself will be able to provide a sense of justice for every country involved in it in the future.

There are so many theories that state that international law is not real law. All of these theories have their basis for thinking, but it has become a fact that international law in its implementation, specifically regarding the imposition of international sanctions itself, is sufficient to illustrate that it is true that international law itself is not a law, because it is the basis for enforcement. A law is visible in the method of imposing sanctions, and it should be able to reflect legal certainty. We need to realize that countries should sit down again to discuss it to improve the mechanism for imposing fair sanctions based on an agreement between member countries if there is equality between these countries during discussions towards the agreement.

D. Conclusion

The discussion above concludes that economic sanctions are the withdrawal of trade habits and financial relations for foreign and security policy. Sanctions can be comprehensive, prohibiting commercial activity against entire countries. Economic sanctions are a strategic manifestation of a country's use of economic instruments in its foreign policy, a concept commonly known as economic statecraft. Economic sanctions themselves as a negative instrument of economic statecraft are nothing new in the international political constellation. However, what is new is the increasing use of economic sanctions in foreign policy. World countries, especially Western countries, have implemented many economic sanctions during the Cold War era until now. In this period, economic sanctions became a popular foreign policy instrument. In other words, economic sanctions in foreign policy are evolving and increasing over time. In addition, Western countries now prefer economic sanctions rather than military force.

Economic sanctions imposed are always coercive or threatening in nature and generally aim to change the behavior or policies of the targeted party. They are not just economic forces but punitive measures controlled by certain national interest groups through the withdrawal of aid undertaken by the government or other activities taking place in the target country or the threat of withdrawal of trade and financial relations. The motive behind economic sanctions is to punish, deter, and remediate, underscoring the seriousness and gravity of the consequences. Sanctions can be imposed to punish a country for actions taken or to prevent a country from taking specific actions in the short or long term.

Another conclusion that can be drawn in the discussion of this article is that the application of economic sanctions as a foreign policy has been going on for at least 2500 years. Later in its development, economic sanctions continued after World War I ended when many countries wanted to use them as an alternative to War. However, several sanctions were imposed and did not achieve maximum results. Experts note that the application of modern economic sanctions is classified into four eras, namely the early Cold War era (1950-1975), then the Late Cold War era (1975-1990), the post-cold War (1990-2000), and finally, post-cold War (1990-2000), the tragedy of 9/11.2001 until now. The 'tragedy of 9/11.2001' refers to the terrorist attacks on the United States, which significantly influenced the global political and economic landscape, leading to changes in the application of economic sanctions.

The imposition of economic sanctions has negatively affected countries receiving sanctions, one of which is Cuba, which is still undergoing prolonged economic sanctions. Uncertainty regarding the length of economic sanctions imposed on a country causes prolonged suffering for the people of a country. Apart from that, the dominance of countries that have significant political and economic power has led to the emergence of abuse of the imposition of economic sanctions themselves. With the large number of economic sanctions imposed against such a background, the author concludes that there is a setback in the enforcement of international law itself. This setback can be seen in instances where powerful countries impose sanctions without the approval of international bodies, thereby undermining the principles of international law and justice. The article finds that the justice deterioration of the imposition of economic sanctions came up because the principle of equality in creating agreements between countries is more often sidelined.

Ideally, countries in the future need to place international economic sanctions in an international agreement that regulates economic sanctions in more detail. This agreement, with a strong emphasis on justice, must include when, how, the period, and various provisions that reflect justice for all parties involved. However, the most important thing is that the preparation of the agreement must prioritize the principles of international law rather than the political interests of a country. By prioritizing this, an international agreement is expected to become a law that has certainty.

E. Suggestion

While international law is a product of agreements between member countries and other forms of international cooperation, these agreements must be built on the foundation of justice for all parties. The key to maintaining international justice is the principle of equality in creating agreements between countries. This principle ensures all states have the same rights and obligations, fostering fairness and balance in international relations. In other words, every country must be able to put common interests ahead of their political interests. When countries take this path, it will undoubtedly positively affect the development of international law itself. However, international law enforcement itself must align with the "law enforcement" definition. The law itself cannot be separated from law enforcement itself, which law enforcement must, of course, be able to reflect the existence of legal certainty because, in essence, the law exists to provide a sense of justice for all parties. Likewise, it hopes that international law itself will be able to provide a sense of justice for every country involved in it in the future.

Based on the author's observation, in developing a rule of international law originating from international agreements, it is necessary to give more attention to three main things: management, process, and results that lead to sustainable benefits. The steps to fulfill it that must be applied here refer to several stages, i.e.:

1) Development of data on the situation and parties to a particular international agreement;
2) Identification of behavioral habits that have the potential to cause disobedience problems;
3) Formulating the provisions in the agreement that do not cause multiple interpretations in its implementation leads to difficulties in being obeyed by the parties.
4) Diagnose the causes of different behavior outside the norm;

5) Testing the ability of the parties, both obedient and disobedient to the agreement, to fulfilling their obligations (aligning the parties/equality);
6) Offer technical assistance to parties who are unable to carry out their obligations (under-capacity);
7) Threats or use of dispute resolution mechanisms;
8) Ensure the use of dispute resolution mechanisms, leading to the implementation of results that satisfy both parties in a proportionate portion
9) Conclude and suggest modification of the agreement to accommodate the aspirations and interests of the parties to the agreement

Of the nine stages, it is further classified into three main parts, which are referred to as Sustainable Law Management. We can use the three main parts as the main key to analyzing a legal provision. The three main keys are as follows:

a. The pre-analysis stages.

It needs to take the initial step to explore the problems related to enacting an international provision. The data used here are balanced data, including the history of an international provider and the conditions before and after the provision exists. In addition, data on the implementation of these international provisions are no less important from time to time. These problems arise when these provisions have been implemented through cases arising from applying these international provisions from all member countries and various supporting data related to implementing specific international provisions. It is done when reviewing existing international regulations in preparation for improving or amending them. This stage also needs to be carried out when international provisions will be formed according to existing needs. This stage also needs to be carried out when existing needs will form international provisions, grouping specific problems from all countries to be discussed and agreed upon before formulating and forming provisions.

b. The analysis and development stage

After completing the pre-analysis stage, the next stage is identifying behavioral habits that can cause disability problems; Making an inventory of behavioral habits that have caused potential disobedience problems to analyze existing data. With the results of the inventory, then the makers of the provisions can more easily formulate

the desired provisions. Regulators can see these potential factors as opportunities for problems that require safety locks. It makes it easier for policymakers to minimize the chances of non-compliance from users of these provisions. However, the makers of these provisions must guide that the provisions made do not cause multiple interpretations in their implementation, which leads to difficulties in being obeyed by the parties.This stage also cannot discharge from diagnosing the causes of different behavior outside the norm; the point is that the makers of the provisions must also consider other factors that can lead to different behavior towards the emergence or enforcement of a provision. It also needs to be done to form provisions with comprehensive and sustainable output results. Indeed, the author knows that the formation of provisions cannot be separated from the many political interests of each country involved. However, this does not mean that countries' political interests are higher than the law itself. It will cause the provisions formed to more or less deviate from legal principles in general for sure. This stage is one of the important stages to be carried out in making a legal provision itself. The limitation in the formation of international provisions lies at this stage, with the hope that the provisions of international law that will occur in the future have sustainable results and that every country that binds itself to these international provisions can implement it.

c. *The post-development* stage.

This stage includes five essential things that are mutually sustainable and cannot be separated from each other, first testing the parties' ability, both obedient and disobedient to the agreement, to fulfill their obligations (aligning the parties/equality). It is done to review or evaluate the implementation of international provisions that have been made by examining the ability of the parties, both compliant and non-compliant, with these provisions, reviewing the constraints of parties who cannot comply, and also studying parties who can comply with these provisions, whether indeed these provisions have been able to answer the interests of countries in general. By evaluating, we can take an inventory of the obstacles when these provisions apply. With provisions made in a balanced or impartial manner, the provisions of international law can provide a tool to offer technical assistance to parties unable to carry out their obligations (under-capacity), which is the second step. It should also be taken to equalize the parties' points of view or balance the positions of the parties in the international provisions so that they have the same rights and obligations before the provisions of international law. If later in the analysis of the implementation of

the international provisions, it turns out that one of the parties still cannot follow or does not comply with the legal provisions that have been agreed upon, then the last option falls to the third step. It is a dispute resolution mechanism that appears in the stages of threats or use of dispute resolution mechanisms. As a bridge to strengthen the position of the legal provisions that have been made, note that the sanctions rules or dispute resolution mechanisms in the provisions themselves have been balanced and absorb the general principles of law related to sanctions and do not leave the principle of measurable justice. The principle of justice that is measured here is that it is more proportional, not excessive, and can be carried out if the guilty or non-compliant party is proven to have violated the provisions of international law that they have agreed upon. Put forward the fourth step solution, namely using dispute resolution mechanisms, leading to the implementation of results that satisfy both parties in a proportionate portion, which is the main thing in resolving disputes arising from non-compliance with these provisions so that the parties involved in the dispute get the best answer and feel that their interests are well represented through these provisions. Justice that benefits all parties in the provisions of international law that have been made is the best justice. With the four stages results, in the end, all these stages must be concluded, then suggestions are given for modification of the agreement to accommodate the aspirations and interests of the parties. It is the ultimate step for the existing legal provisions to always be open to evaluations and new ideas that continue to refresh the legal provisions. It will also make the provisions last and renewable. The sustainable concept will form legal provisions that are directed and sustainable and can be used along with the times. As for the record, we can use The Post Development Stage when reviewing existing provisions. Because this section is the evaluation stage of the implementation of a provision.

With these three main keys, we can analyze the provisions that we think need to be studied more deeply so that from the results of the analysis, we can get an idea of whether these provisions are feasible to be maintained using their initial conditions or maintained by changing the whole or partially repaired, or deleted because it is not relevant to the conditions of the times. It applies to a provision that already exists and has been applied before. Meanwhile, the three main keys can be used sequentially if you want to formulate new legal provisions.

Apart from that, by applying the concept, it is hoped that the international community will adhere to the rules of international law especially economic sanction itself, which is to stimulate awareness and a common need for the rule of law. This need for awareness and order is crucial in providing justice, and legal certainty as to what can be done, and what cannot be done in international relations practice legal context. Obedience that arises internally results in far better results than obedience triggered only by the fear of punishment.

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