



INDONESIA

by:

Patricia Rinwigati Waagstein

BASELINE REPORT: INDONESIA

SNAPSHOT BOX

Number of Multinational Business Enterprises operating in the country	Not clear ¹										
Number of Micro, Small and Medium Business Enterprises operating in the country per 1,000 people	53,823,732 units ²										
Number of State-owned Enterprises and the industries in which they operate	141 State-owned Enterprise. ³										
Flow of Foreign Direct Investment from 2008 to 2012 (or other recent 3 to 5 year range)	OECD ⁴ <table border="1"> <tr> <td>Inflow FDI</td> <td>2008</td> <td>2009</td> <td>2010</td> <td>2011</td> </tr> <tr> <td>Mln USD</td> <td>5 900</td> <td>2 249</td> <td>2 664</td> <td></td> </tr> </table>	Inflow FDI	2008	2009	2010	2011	Mln USD	5 900	2 249	2 664	
Inflow FDI	2008	2009	2010	2011							
Mln USD	5 900	2 249	2 664								
Main industries in the country	Extractive (natural resources), manufacture, agriculture, financial services, real estate, hotel and tourism, education, and commodities.										
Number of cases involving business-related human rights violations reported to (i) NHRIs,(ii) other national human rights bodies(e.g. ombudsmen) , and/or (iii) international human rights bodies	National Human Rights Commission (KOMNAS HAM) received complaints involving corporations: ⁵ <ul style="list-style-type: none"> - 2010: 1119 complaint received ⁶ - 2011 : 1068 cases received⁷ 										
Have the Framework and/or the Guiding Principles been translated into the country's languages and published in the country?	ELSAM (Institute for Policy Research and Advocacy) has translated the Guiding Principles into Indonesian. ⁸										

1 It is quite difficult to get references on how many multinational enterprises are operating in Indonesia.

2 The statistic is based on the estimation in 2010. The number is a total unit and NOT based on per 1,000 people. See further: "Perkembangan Data Usaha Mikro, Kecil, Menengah (UMKM) Dan Usaha Besar (UB) Tahun 2009 - 2010," Ministry of Cooperation, <http://www.depkop.go.id/phocadownload/data%20usaha%20mikro%20kecil%20menengah%20umkm%20dan%20usaha%20besar%20ub%20tahun%202009%20-%202010.pdf>.

3 "Daftar BUMN [List of State-Owned Enterprise]," Ministry of State-owned Enterprise, <http://www.bumn.go.id/daftar-bumn/>.

4 "Country Statistical Profile: Indonesia 2012-2012," OECD, <http://www.oecd-ilibrary.org/docserver/download/fulltext/191100401e1t003.pdf?expires=1341173472&id=id&accname=freeContent&checksum=AFA6B245016450AC4A0EAAEB72087D57>. Further explanation will be discussed in Question 10.

5 Further discussion on the statistic, see the Question no. 10 on KOMNAS HAM

6 Compliance Unit of KOMNAS HAM received 1119 complaints from victims to the violation of human rights in 2010. See : "Klasifikasi Kasus Pelanggaran HAM Oleh Korporasi Tahun 2010 dan 2011," (Jakarta: KOMNAS HAM, 2012). Further explanation will be discussed in Question 10

7 *Ibid.* Further explanation will be discussed in Question 10.

8 Lembaga Studi dan Advokasi Masyarakat (ELSAM), "Prinsip-Prinsip Panduan Untuk Bisnis and Hak Asasi Manusia: Kerangka Perserikatan Bangsa-Bangsa: Perlindungan, Penghormatan, Dan Pemulihan," (2012).

OVERVIEW OF THE COUNTRY'S BUSINESS AND HUMAN RIGHTS LANDSCAPE

Indonesia is the largest economy in Southeast Asia. It is market-based, but also has a significant degree of State involvement as there are a large number of State Owned Enterprises (SOEs), several of which are dominant within their respective fields. While there are many types of businesses operating in Indonesia, the main industry sectors are those of extraction, agriculture/plantation/forestry, and manufacturing.

The National Human Rights Commission (KOMNAS HAM) has stipulated that the main human rights issues in relation to business concern rights surrounding environment, health, water, life, ownership of property and land, indigenous people's rights, labour rights, and the right to information.

Indonesia has responded to emerging trends in business and human rights, as well as Corporate Social Responsibility (CSR), through various activities and regulations at national, sub-national, and corporate levels. As will be demonstrated in this study, several laws have been passed in relation to human rights for business, and some policies have been implemented on the national and sub-national level. The 2007 Corporate Law, for example, imposes mandatory duties to every limited liability corporation working directly or indirectly with natural resources in order to limit the environment and social impact of its activities. Several laws have also been passed since 2006 designed to prevent hazards and environmental damage. These regulations do not specifically address the issue of human rights *per se*, but rather deal with broad social issues which in many ways touch upon elements of human rights.

At the sub-national level, the issue of social responsibility among corporations, including human rights in business, has also begun to be discussed. Several cities or regencies have responded to this trend by issuing regulations implementing the 2007 Corporate Law. A forum devoted to planning and implementing CSR was also established in several cities and provinces.

At the international level, Indonesia has ratified several human rights treaties, namely: International Covenant on Civil and Political Rights; International Covenant on Economic, Social, and Cultural Rights; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Forced Labour Convention; ILO Conventions (No. 19, 27, 29,45,69,81,87,88,98,100,105,106,111,120,138,144, 182,& 185).

At the corporate level, several companies have adopted national and international voluntary initiatives. Moreover, in response to public pressure, a few extractive companies have established human rights departments within their corporate structures to deal with compliance. Others have begun conducting human rights impact assessments prior to their investment, or annual human rights audits. These are purely corporate initiatives, which go beyond what is required by law.

The study attempts to cover a wide range of material on business and human rights, including state and corporate practices in Indonesia. As a legal research, the sources of material are derived mainly from laws and regulations, court decisions, books, journal, as well as supporting articles from various medias. It is important to note that this study was written at a time when several issues concerning the operation and effects of the regulatory framework for human rights and business were being dealt with by national and sub-national bodies. Moreover, some regulations and institutions are being reviewed by related institutions in Indonesia. Therefore, this study covers only the materials that were publicly available and applicable at the time of completion namely August 2012.

Types of Business Enterprises in the Country

Name of the Type of Business Enterprise <i>E.g. company, partnership, business trust etc.</i>	Description of the Legal structure of the Type of Business Enterprise	Does incorporation of the business enterprise require any recognition of a duty to society, including human rights responsibility?	Any legislation specifically applicable to the Type of Business Enterprise <i>(E.g. Corporations Law)</i>
1. A limited liability corporation	<ul style="list-style-type: none"> • Important organs of a limited liability corporation: General Meeting of Shareholders, Supervisory Board (<i>Komisaris</i>), and Board of Directors. • Applies the concept of limited liability • A corporation is a legal subject carrying rights and obligations. It implies that it can sue and be sued as a separate entity. • To become a legal entity, a corporation requires Minister's Decree on the ratification of a company. Article 9 of the Company Law obliges the founders of the Company to submit an application to the Minister by filling in a form containing at least the basic information for the Company such the name of the company, the company's full address, purpose, objectives, and business activities of the Company, etc. 	<ul style="list-style-type: none"> • The 2007 Corporate Law No. 40: • Art. 74 on Corporate Social and Environmental Responsibility • Article 66: reporting the implementation of social and environmental responsibility • 2012 Government Regulation No. 47 on Corporate and Environmental Responsibility • 2007 Law No. 25 on Investment • Article 15 : obligation to implement social responsibility • Article: 16: obligation to any investor to protect environment and provide health, comfort, and safety environment for their workers. • Art. 17: obligation to allocate fund for non-renewable environmental damages 	<ul style="list-style-type: none"> • 2007 Corporate Law No. 40 • <i>Burgerlijk Wetbook (BW)</i> or Indonesian Civil Code

<p>2. Limited partnership (<i>Commanditaire-Vennotschaap/ CV</i>)</p>	<ul style="list-style-type: none"> • It is a business entity but it is not a legal subject meaning CV does not have separated rights and obligations. • Important organs: • Silent/sleeping partners (if any) • General /active partner/ directors • Applies 'limited liability' in the limited sense: • Silent/sleeping partners are only responsible for its shares • General partner(s) is/are liable personally for any debts and obligations of the CV (personal and unlimited liability) 	<ul style="list-style-type: none"> • 2007 Law No. 25 on Investment Articles. 15, 16, & 17. 	<ul style="list-style-type: none"> • Indonesian Civil Code. • Indonesian Commercial Code
<p>3. Partnership (<i>persekutun perdata</i>)</p>	<ul style="list-style-type: none"> • It applies personal and unlimited responsibility 	<ul style="list-style-type: none"> • 2007 Law No. 25 on investment: Articles. 15, 16, & 17. 	<ul style="list-style-type: none"> • Indonesian Civil Code
<p>4. Associate (<i>Persekutuan Firma</i>)</p>	<ul style="list-style-type: none"> • It is a business entity but it does not carry a legal entity status. • It is similar with CV but it usually applies to certain professions such accountants or lawyers. 	<ul style="list-style-type: none"> • 2007 Law No. 25 on Investment, Articles. 15, 16, & 17 	<ul style="list-style-type: none"> • Indonesian Civil Code
<p>5. Proprietorship/ Individual company (<i>Perusahaan perseorangan</i>)</p>	<ul style="list-style-type: none"> • It is a business entity runs by individual • It does not carry a legal entity status. • The owner is responsible personally for any debt or obligations of his/her company (unlimited liability) 	<ul style="list-style-type: none"> • 2007 Law No. 25 on Investment: Articles. 15, 16, & 17 	<ul style="list-style-type: none"> • Indonesian Civil Code

<p>6. Cooperative (Koperasi)</p>	<ul style="list-style-type: none"> • It is a business entity with a legal entity status. • As a legal entity, the Cooperative has rights and obligations separated from its shareholders/ members. It can sue and be sued. • Different from limited liability corporation, the Cooperatives are established based on the principles of mutual cooperation, increasing community welfare and voluntary membership. • Requires endorsement/ ratification from related Ministry(Ministry's Decree) for its establishment as a legal entity. • Cooperatives are divided into two forms: <ul style="list-style-type: none"> • Primary cooperative with the minimum of 20 members • Secondary cooperative with the minimum of 3 cooperatives • Organs of Cooperative (Koperasi): <ul style="list-style-type: none"> • General meeting of all members (shareholders) • Directors (or caretaker) • Supervisory board 	<ul style="list-style-type: none"> • 2007 Law No. 25 on Investment Articles. 15, 16, & 17 	<ul style="list-style-type: none"> • 1992 Law no. 25 on Cooperative (currently being amended at the Parliament) • 1994 Government Regulation No. 4 on the Requirement and Procedure for the establishment of a Cooperative • The Regulation of Ministry of Cooperative and Small and Medium Enterprise No. 01/Per/M. KUKM/I/2006 on the Guidelines for Establishment and Endorsement of Cooperative.
<p>7. Foundation (Yayasan)</p>	<ul style="list-style-type: none"> • It is a business entity which carries a legal entity status. • Its establishment requires endorsement/ratification from related Ministry (Ministry's Decree). 	<ul style="list-style-type: none"> • Not clear whether 2007 Law No. 25 on investment applies to investors/ donors/testators in the context of Foundation. 	<ul style="list-style-type: none"> • 2001 Law No. 16 on Foundation • 2004 Law No. 28 on the amendment of 2001 Law no. 16

<p>7. Foundation (Yayasan)</p>	<ul style="list-style-type: none"> • Different from any other business entities, Foundation is established for social, religious, and humanitarian purposes. • There is a separation between foundation assets and private assets. • The sources of assets: endowments, grants, donations or other ways which are not in conflict with laws and their charter. • The organs of Foundation: <ul style="list-style-type: none"> • Trustee • The executive board • The supervisory board 		<ul style="list-style-type: none"> • Indonesian Civil Code (BW) • The 2008 Gov. Implementing Regulation No. 63 on Foundation • 1998 Presidential Order No. 20 on the financial sources of Foundation
<p>8. State owned corporation (BUMN)</p>	<p>Divided into three types of BUMN:</p> <p>1. Public corporation / PERUM</p> <ul style="list-style-type: none"> • An entity that is wholly owned by the State. • The organs is: <ol style="list-style-type: none"> a. Ministry of State-owned corporation b. Board of Director c. Supervisory Board • Responsibility: <ol style="list-style-type: none"> a. Minister of State-owned Corporation is not responsible for any loss of the PERUM exceeding the value of state's assets. b. Board of Director is responsible for planning and implementing the corporate management. The board of Directors are elected by Minister. c. Supervisory Board is responsible for supervising the management of the public corporation. Supervisory Board is elected by the Ministry 	<p>Not clear whether 2007 Law No. 25 on investment applies to PERUM, and PERSERO</p>	<ul style="list-style-type: none"> • 2003 Law no. 19 on the state-owned corporation • 2003 Decision of Ministry of state-owned corporation No. Kep. 236/MBU/2003 & 2007 Decision of the Ministry of State Owned Corporation NO. Per 05/MBU/2007 on the partnership with Small Enterprises and Environment Program

<p>8. State owned corporation (BUMN)</p>	<p>2. PERSERO</p> <ul style="list-style-type: none"> • A limited liability company wherein at least 51 % shares are owned by State of the Republic of Indonesia and which has as its principle objective to seek profit) • Organs of the PERSERO: <ol style="list-style-type: none"> a. Shareholders meeting in which Ministry of State-Owned Company is the decision maker. b. Board of Directors (elected by Ministry of State-Owned Companies) c. Supervisory Board and Supervisory Commissioner. • Responsibility: <ol style="list-style-type: none"> a. Ministry is responsible for any direction of the company. He/she elects the Board of Directors and Supervisory Board including the Supervisory Commissioner. b. Board of Directors – responsible for managing the corporation. <p>3.PERSEROAN TERBUKA (or Public Listed Company)</p> <ul style="list-style-type: none"> • An entity which has been publically offered consistent with the laws and regulations of Indonesia’s capital market. • all shares are open to the public • this is the same as the Limited Liability Corporation, therefore, the Corporate Law applies to this type of orporation. 	<ul style="list-style-type: none"> • Art. 74 of the 2007 Corporate Law No. 40 • 2007 Law No. 25 on investment applies 	<ul style="list-style-type: none"> • 2003 Law no. 19 on the state-owned corporation • 2003 Decision of Ministry of state-owned corporation No. Kep. 236/MBU/2003 & 2007 Decision of the Ministry of State Owned Corporation NO. Per 05/MBU/2007 on the partnership with Small Enterprises and Environment Program <p>The 2007 Corporate Law No. 40</p>
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I. How has the State reacted to the UN “Protect, Respect and Remedy” Framework (“Framework”)?

Indonesia has responded positively to the work of Prof. Ruggie, former Special Representative of the UN Secretary-General on Business and Human Rights including the Framework of “Protect, Respect, and Remedy.” In May 31, 2011, Indonesia clearly stated to the Human Rights Council that it is willing to learn further on the impact of business activities on human rights protection. Moreover, Indonesia highlighted two issues. The first refers to the obligation of a State to take into consideration human rights when it deals with business.⁹ To implement this, Indonesia has established a national governance committee and a corporate governance sub-commission whose duties are to set up standards and monitor ethical business practises.¹⁰ Second, Indonesia pointed out the importance of an independent judicial system. Indonesia has taken steps to implement this obligation.¹¹ Special attention has been given to right of women to have access to justice.¹²

Another Indonesian response had previously been articulated in the 2007 Human Rights Council’s session after the issuance of the 2007 Ruggie’s report. In its official letter to Ruggie, Indonesia clearly stated that the Ruggie’s report provides useful insight on the roles of those transnational corporations to play in the promotion and protection of human rights.¹³ The letter also mentioned that the defining corporate responsibility at the international level would ensure that the best possible standards are created.¹⁴ It also highlighted that the gap which exists between corporate accountability and national

norms on labour laws and human rights would be bridged by establishing a balance between corporate accountability and national responsibility.¹⁵ In the end, the Indonesian government pointed to the importance of coordination among stakeholders to establish policy measures that reflect consistent national practices that protect human rights.¹⁶ At the same time the State should be given space to create policies to meet its development obligations.¹⁷

Indonesia has also given its support and endorsement to the Framework as a member of the Human Rights Council which adopted this Framework.¹⁸ Prior to this, it actively participated in consultations and discussions with the Special Representative on Business and Human Rights in Bangkok (2006) and New Delhi (2009).¹⁹

The Indonesian National Human Rights Commission, KOMNAS HAM, has referred to the Framework on several occasions. The first was during the workshop by the South East Asia Human Rights Institutions titled, ‘Human Rights and Business: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform’ in December 2011, which KOMNAS HAM hosted.²⁰ As one outcome of this workshop, the Bali Declaration on Human Rights and Agribusiness in South East Asia was adopted. The importance of

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ “Membership of the Human Rights Council,” UN Human Rights Council, <http://www2.ohchr.org/english/bodies/hrcouncil/membership.htm>.

¹⁹ “Briefing Note on the Work of the Special Representative of the U.N. Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises,” United Nations (2011).

²⁰ The meeting focused on the challenges of ensuring respect for the rights of indigenous peoples and rural communities in the context of a rapid expansion of agribusiness, notably the palm oil sector, while recognizing the right to development and the need to improve the welfare and situation of indigenous peoples and rural communities. See: “Bali Declaration on Human Rights and Agribusiness in Southeast Asia,” in *Human Rights and Business: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform* (Bali: Komisi Nasional Hak Asasi Manusia (KOMNAS HAM), 2011).

⁹ “Statements by Govts at Human Rights Council Session,” 31 May 2011, see <http://www.business-humanrights.org/SpecialRepPortal/Home/ReportstoUNHumanRightsCouncil/2011#85935>.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ “State Responses to the Report by John Ruggie, Special Representative of the UN Secretary-General for Business and Human Right, at the United Nations,” United Nations (2007): 10.

¹⁴ *Ibid.*

this Declaration is that it recognized the work of the UN Secretary General's Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises, and welcomed the related Working Group to deal with various cases involving business and human rights.²¹

The second reference is found in KOMNAS HAM's report to the 2012 Universal Periodic Review (UPR), where it mentions that ensuring the implementation of corporate responsibility to respect, protect, and remedy is one of the human rights obligations that the Indonesian government is trying to fulfil.²² Nevertheless, the report does not elaborate further on where and how these corporate responsibilities to respect, protect, and remedy are being implemented.

II. Is the State duty to protect against human rights abuses by third parties, including businesses (“State Duty to Protect”), recognized by the country’s domestic legal system?

1. Do any of the State’s domestic laws, including the Constitution / basic law of the State, provide a basis for a State Duty to Protect?

There are a number of direct or indirect references to a State’s duty to protect in the laws and regulations of Indonesia:

Constitution

The 1945 *Constitution of Indonesia* and its amendments provide human rights protections as stipulated in Articles 27, 28A – 28J, and 29. Particularly Articles 28 A – I clearly address the

²¹ *Ibid.*

²² “Universal Periodic Review (UPR); 13th Session of the Working Group on the UPR,” The Indonesian National Human Rights Commission (KOMNASHAM) (2012): point 10 (g).

protection of certain human rights, which are recognized as constitutional rights. Article 28 J Paragraph (2), in contrast, sets a limitation on such rights by providing that citizens are subject to statutory limitations of these rights.

1999 Human Rights Law No. 39

Law No. 39 of 1999 concerning human rights (the Human Rights Law) establishes a series of human rights obligations applying to states and individual(s). It pledges Indonesia’s commitment to promoting a society based on respect for fundamental economic, social, and cultural rights, as well as civil and political rights. The obligation to protect is clearly articulated in the following ways:

1. Article 7(2) of the Human Rights Law provides that international human rights instruments accepted by Indonesia form a part of domestic law. This is an indirect acknowledgement of the application of an obligation to protect, as articulated in those instruments.
2. Article 69 states that the term human rights corresponds to obligations to respect other people, in which State has a duty to respect, protect, enforce, and develop such rights.
3. Articles 71 and 72 reconfirm expressly the State’s obligation to respect, protect, enforce, and develop human rights.

2008 Law No. 40 on the elimination of racial and ethnic discrimination

This law imposes the State’s obligation to provide effective protection to its citizens from any racial and ethnic discrimination, including that committed by private actors. This includes the obligation to prevent potential discrimination through the enactment of regulations and amendments to laws which are discriminatory, the obligation to bring the perpetrator to justice, and the obligation to provide access to remedies for the victims.

International human rights instruments ratified by Indonesia

Indonesia has been a party to various international human rights instruments, namely: International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Cultural Rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Forced Labour Convention; ILO Conventions (No. 19, 27, 29, 45, 69, 81, 87, 88, 98, 100, 105, 106, 111, 120, 138, 144, 182, & 185).

The next question is how those instruments are applied in the Indonesian legal context. Is Indonesia applying a monist or dualist system? The answer is not very clear. Article 13 of the 2000 Law no. 24 on Treaty only requires the enactment of a law or presidential decree for any ratification of or accession to a treaty. Although the elucidation of Article 13 states that the registration of such a law in the State Gazette will directly bind all Indonesians, it is not apparent whether or not this ratification requires an implementing regulation in order to be applicable. For some scholars, Article 13 applies a monist system.²³ Others are of the opinion that the ratification of a treaty through enactment of a law or regulation will not be directly applicable by the Court, unless there is an implementing regulation.²⁴ In this case, a dualist model would apply.

23 Damos Dumoli Agusman, "Status Hukum Perjanjian Internasional Dalam Hukum Nasional RI : Tinjauan Perspektif Praktik Indonesia," *Jurnal Hukum Internasional* 5, no. 3 (April 2008): 494-95; Mochtar Kusumaatmaja and Ety R. Agoes, *Pengantar Hukum Internasional (Introduction to International Law)*, 2 ed. (Bandung: PT Alumni, 2003), 57.

24 Hikmahanto Juwana, "Kewajiban Negara Mentransformasikan Ketentuan Perjanjian Internasional Ke Dalam Peraturan Perundang-Undangan: Studi Kasus Paska Keikutsertaan Dalam Capetown Convention," *Jurnal Hukum Bisnis* 28, no. 4 (2009).

Unfortunately, these practices vary. Some treaties require certain implementing laws to come into force. UNCLOS 1982, for example, which is ratified by 1985 Law No 17, required enactment of the 1996 Law No 6 within Indonesian waters. On the other hand, direct application of the treaty is found in the case of the ratification of Vienna Convention 1961/1963 on Diplomatic/Consular Relations, which is ratified by the 1982 Law No. 1. This law applied directly in the absence of any implementing law in the land dispute of the Saudi Arabian Embassy. Moreover, the Constitutional Court directly refers to universal practice and customary international law with respect to the case of Judicial Review of the 2004 Law No. 27 on the Truth and Reconciliation Commission. However, it does not clarify what it means by universal practice and customary international law.

What about human rights treaties? Article 10 of the 2000 Law No. 24 on Treaty requires a law, and not a presidential regulation, to ratify human rights treaties. Article 7 (2) of the 1999 Law No. 39 on Human Rights states that the various International Human Rights laws accepted by Indonesia comprise a unified national law. This article presumes a dualist system, because the law requires not only ratification but acceptance. However, neither the Human Rights Law nor the 2000 Law No. 24 provides guidelines as to what is implied by 'acceptance'. Again, the exact practice varies. For example, the Indonesian Human Rights Law, which articulates nearly all civil and political rights as well as economic, social, and cultural rights, was enacted in 1999; however, Indonesia only ratified the Covenant on Civil and Political Rights²⁵ and Covenant on Economic, Social Cultural Rights in 2005.²⁶ Since their ratification there has been no specific implementing regulation passed, but the Court - particularly the Constitutional Court - has referred to some rights from the two Covenants

25 "The 2005 Law No. 12 on the Ratification of International Covenant on Civil and Political Rights," (2005).

26 "The 2005 Law No. 11 on the Ratification of International Covenant on Economic, Social, and Cultural Rights," (2005).

in several cases.²⁷ Meanwhile, Indonesia ratified the Convention on the Elimination of All Forms of Racial Discrimination in 1999,²⁸ followed by the special law on the Elimination of Racial and Ethnic Discrimination which was enacted in 2008.²⁹ Hence, it can be concluded that an implementing law is required if such law did not exist prior to the ratification. Moreover, such law is required if it concerns sanctions or punishment. The law on ratification usually does not specify certain sanctions or punishment for certain conduct. In order to impose sanctions or punishment to certain conducts, an implementing law is required.

2. Has the State Duty to Protect been recognized by the State's courts?

The duty to protect is not a novel concept in the Indonesian legal system. At least two institutions, namely the Constitutional Court and KOMNAS HAM, have continually made reference to this duty in their cases.

In the first case, when interpreting certain articles of Indonesian law, the Constitutional Court has applied the doctrine of 'State obligation to protect' in making its verdicts. In the case of the judicial review of the 2007 Law No. 25 on Investment, which was decided in 2008, the Court interpreted Article 33 of the Constitution as requiring the State to be actively involved in respecting, protecting, and fulfilling the

²⁷ *Judicial Review of 2008 Law No. 40 on Limited Liability Corporation*, Constitutional Court Case No. 53/PUU-VI/2008 Judgment (2009), *Judicial Review of the Law No. 1/PNPS/1965 on Prevention of Religious Abuses and Defamation*, No. 140/PUU-VII/2009 Constitutional Court (2009), *Judicial Review of Article 39 of 2004 Law No. 39 on the Posting and Protection of Migrant Workers Abroad against Individual Employers Abroad.*, Case no. 028-029/PUU-IV/2006 Constitutional Court (2006), *Judicial Review of 2009 Law No. 4 on Mineral and Coal Mining*, Constitutional Court Decision Case No. 25/PUU-VIII/2010 (Decided 11 April 2012).

²⁸ "The 1999 Law No. 29 on the Ratification of International Convention on the Elimination of All Forms of Racial Discrimination 1965," (1999).

²⁹ "The 2008 Law No. 40 on the Elimination of Racial and Ethnic Discrimination," (2008).

economic, social, and cultural rights of its citizens.³⁰ The same obligation is reiterated in a later case, during the judicial review of the 2009 Law No. 4 on Mineral and Coal Mining.³¹

Another example is found in the case No 140/PUU-VII/2009, with the judicial review of Articles 1 through 4 of the Law no. 1/PNPS/1965 concerning the Prevention of Religious Abuse and/or Defamation. This case was filed by a group of NGOs and religious leaders who argued that Articles 1 through 4 were unconstitutional, as they were in conflict with the Constitution; particularly Articles 28 E (2), (3), 28 I (1) and 29 (2). In examining the case, the Court held the opinion that the Constitution's provisions relating to freedom of religion should be read differently from Article 18 of the ICCPR. The former not only recognizes rights to exercise individual belief or religion, but also impose obligations on the State and individual to respect and protect freedom of religion among others.³² In contrast, the freedom of religion mentioned in Article 18 of the ICCPR only imposes a general obligation on the State to respect, protect and fulfil civil and political rights. No reference is made to individual obligations in the ICCPR.

The Constitutional Court further stated that the Constitutional provisions in question impose another obligation on the State: namely, to ensure that the implementation of this right is not violating the freedom of religion held by others.³³ In other words, the State is obliged to prevent any violation of this freedom of religion by other individuals or groups. This is similar to the meaning of the State obligation to protect. Moreover, the Court emphasizes that the related articles in Law No. 1/PNPS/1965 essentially implement the State's

³⁰ *Judicial Review of the 2007 Law No. 25*, Constitutional Court Decision No. 21-22/PUU-V/2007 (Decided in 17 March 2008).

³¹ *Judicial Review of the 2009 Law No. 4 on Mineral and Coal Mining*, 84.

³² *Judicial Review of the Law No. 1/PNPS/1965 on Prevention of Religious Abuses and Defamation*, paras. 3.34.12 & 3.34.13.

³³ *Ibid.*, para. 3.34.19.

obligation to prevent horizontal conflict between individuals with different [religious] beliefs; therefore, they are constitutional.³⁴

The last reference concerns the case of judicial review of Article 35 (a) of the 2004 Law No. 39, on the Placement and Protection of Indonesian Migrant Workers Abroad. The case was filed by several domestic workers challenging the minimum age limit (21 years old) for working in the informal sector abroad. According to the petitioners, such a regulation is discriminatory and unconstitutional as it violates young people's right to work. To the contrary, the Court argued in its decision, the article is an implementation of the State's duty to protect its citizens from potential abuses by any individual employer.³⁵ As the State is bound to protect its citizens abroad, the age limitation is considered as a preventive measure aimed at such protection.³⁶ What is also interesting in this case is the recognition of the obligations to respect, protect, and fulfil human rights as constitutional obligations of states.³⁷

KOMNAS HAM has also clearly used the duty to protect as a foundation when investigating and mediating human rights complaints involving corporations, individuals and state institutions. In several final recommendations to public institutions such as prosecutors or other relevant bodies, KOMNAS HAM emphasized the State's failure to meet its duty of protecting its citizens from private actors. Further explanation of these cases will be given in Question 10.

III. Is the State taking steps to prevent, investigate, punish and redress business-related human rights abuses through effective policies, legislation, regulations and adjudication?

³⁴ *Ibid.*, para. 3.42.

³⁵ *Judicial Review of the 2004 Law No. 39 on Placement and Protection of Indonesian Migrant Workers Abroad*, Constitutional Court Decision on Case No. 028-029/PUU-IV/2006, 56 - 58 (Decided in 11 April 2007).

³⁶ *Ibid.*

³⁷ *Ibid.*, 70.

1. Are there government bodies and/or State agencies that have the responsibility to prevent, investigate, punish and redress business-related human rights abuses? If so, how have they done this?

There are several institutions that have the responsibility to deal with business related human rights abuses. The first such institution is KOMNAS HAM. As the national human rights institution, this institution deals with the issue of human rights abuses committed directly or indirectly by a legal entity including a corporation. Secondly, the national justice system, as a mechanism to uphold the rule of law, has the authority to examine and decide cases relating to the violation of the human rights laws or any provisions on human rights issues. Finally, there are, other institutions which do not deal directly with human rights issues, but their activities may have an impact on the protection and enjoyment of human rights.

While KOMNAS HAM will be further discussed in Question III.10, and the role of the Court further elaborated in III.2.3, this section will focus on the third category. Among all relevant institutions, this section only discusses two institutions as examples.

A. Ombudsman

Based on the 2008 Law No. 38, the mandate of this institution is limited to monitoring public services performed by public and private institutions, including state-owned enterprises.³⁸ To implement such a mandate, the Ombudsman receives complaints from individuals and/or legal persons concerning forgery, conspiracy, intervention, undue delay, in-competence, abuse of power, impartiality, corruption, illegal possession, and misleading practices of public and private institutions in providing public services. From these complaints, the Ombudsman determines whether the complaints should be followed up on or not. If they should, the Ombudsman will investigate and provide recommendations to various relevant institutions to take up the case.

³⁸ "The 2008 Law No. 36 on Ombudsman," (2008), Article 6.

It was reported in its annual reports that for the last three years around 5 to 7 % of the total complaints to the Ombudsman concern the maladministration by state-owned corporations.³⁹ The reports also reveal several issues which are commonly involved with state-owned corporations, such as the undue delay of pension payments by PT Taspen- a state-owned corporation on pension fund, labour conflicts in several state-owned corporations, environmental pollution, and discrimination against poor people by state-owned hospitals.⁴⁰ However, several kinds of cases brought to the Ombudsman indirectly involve private corporations. For example, the Ombudsman has monitored and investigated business licensees which were granted to private corporations to operate in protected forests or indigenous people's land not in accordance with the legal requirements.⁴¹ Although the main focus of the Ombudsman's investigation was the Nation Land Agency or BPN or the related institutions which issued the licenses, corporations were also involved in the cases.⁴²

In short, although the Ombudsman is not a human rights institution which specifically deals with implementation of human rights *per se*, its mandate can involve the implementation of human rights.

B. Corruption Eradication Commission (KPK)

Although the prohibition of corruption does not describe a human right *per se*, corruption undermines the rule of law, which encompasses a number of civil and political rights. Corruption can also involve a direct violation of human rights or infringe upon human rights in other ways. For example, corruption relating to a state fund may

decrease the budget for the enjoyment of human rights directly or in other sectors, such as education or health. In considering the impact of corruption on human rights protections in Indonesia, the role of KPK is central.

The KPK was established in 2002 under Law no. 30/2002 on the Corruption Eradication Commission. The KPK's mandate is very specific, namely: to prevent corruption, monitor good governance in relation to corruption, and investigate cases of corruption.⁴³ In other words, the KPK takes the roles of both police and prosecutor in any corruption cases providing that they meet the criteria set in this law.⁴⁴ However, its authority is limited only to cases which involve public officials, attract public attention, and cause the State losses of at least Rp. 1,000,000,000-.⁴⁵

The important question for our purposes is whether KPK has also dealt with corruption on the part of corporations. Indeed, as corruption can occur among both public and private actors, the organization addresses these business actors as well. Generally, the role of KPK is twofold. The first concerns prevention. The commission has coordinated and cooperated with different institutions and ministries dealing with natural resources and minerals, in order to prevent corruption. For example, in 2011, it worked with institutions in the mineral and gas sector such as BP Migas (a State oil and gas institution),⁴⁶ BPK (Financial Inspection Agency – *Badan Pemeriksaan Keuangan*), and tax authorities, to monitor the issuance of business contracts between those corporations and the State. KPK considers this sector to be especially vulnerable to corruption and has therefore prioritized prevention

39 "Pelayanan Pemda Terbanyak Dipermasalahan Masyarakat; Catatan Ombudsman Selama Tiga tahun Terakhir," *Rakyat Merdeka Online*, April 2, 2012, <http://www.rmol.co/read/2012/04/02/59431/Pelayanan-Pemda-Terbanyak-Dipermasalahan-Masyarakat->; "Yearly Report 2009," (Jakarta: Ombudsman of the Republic of Indonesia, 2009), 22.

40 "Yearly Report 2009."

41 *Ibid.*, 27 - 30.

42 *Ibid.*

43 "The 2002 Law No. 30 on the Corruption Eradication Commission," (2002), Article 6.

44 *Ibid.*, Article 10.

45 Rp. 1,000,000,000 is about US\$ 100,000. See *Ibid.*, Art. 11.

46 BP Migas was dissolved by the Constitutional Court in the case of judicial review of Law on Oil and Gas in November 2012. Its works were temporarily carried out by the Special Task Force Unit for Upstream Oil and Gas Business Activities.

in this area.⁴⁷

The KPK has also initiated an anti-corruption program, *Program Prakarsa Anti Korupsi* (SPAK), for business organizations, including State-owned enterprises. This program is aimed at assessing anti-corruption initiatives with respect to each business entity. As a follow-up to that program, the KPK has assessed four State-owned enterprises as part of a pilot project, and is planning to expand this program to private businesses.⁴⁸ In addition, it has assisted several State-owned enterprises in monitoring and supervising their transactions, namely: PT INKA, PT Semen Gresik, SPGN, PT Kertas Leces, PT DOK, and Kodja Bahari.⁴⁹

The second role of KPK is the investigation and monitoring of legal corruption cases. The organization has investigated various cases involving private and State-owned enterprise, as well as foundations and cooperatives. Those cases often concern bribery between business entities and the judiciary,⁵⁰ as well as other officials dealing with business activities such as bribery to win tenders or contracts.⁵¹

2. Are there laws and/or regulations that hold business enterprises and individuals accountable for business-related human rights abuses, and are they being enforced?

47 “KPK Bidik Korupsi Besar Di Sektor Hulu Migas,” <http://news.detik.com/read/2012/07/10/211310/1962524/10/kpk-bidik-korupsi-besar-di-sektor-hulu-migas>; “Yearly Report 2011,” Komisi Pemberantasan Korupsi (Corruption Eradication Commission) (2011).

48 “Yearly Report 2011”: 35.

49 *Ibid.*, 48.

50 A case involving the bribery to a judge at the Commercial Court in relation to the sales of all assets of PT Skycamping Indonesia, a Indonesian corporation. Another example refers to a labour case filed by the labour union. The manager of PT Onamba gave a gift to judges with the intention that judges would dismiss the case. See: *Ibid.*, 87.

51 A case involves a gift given to PT Pertamina by PT Sugih Interjaya etc. See: *Ibid.*, 85 - 87.

2.1 To what extent do business enterprises and company organs face liability for breaches of law?

2.1.1 Can business enterprises be held legally accountable as legal persons?

The concept of limited liability applies in the Indonesian judicial system. Among different types of business entities, the separate legal personality principle only applies to three classes of entities: limited liability corporations,⁵² the cooperative (*Koperasi*),⁵³ and the foundation (*Yayasan*).⁵⁴ “Separate legal personality” in this context means that such an entity can act as a legal person, holding and exercising rights as well as assuming obligations separate from the rights and duties of its owners. It also implies the legal capacity to enter into an agreement or contract, assume obligations, incur and pay debts, sue and be sued in its own right, and be held responsible for its actions. Moreover, each organ of a corporation has limited liability only in terms of its role as a shareholder, director, or supervisory board.

The separate legal personality applies in a very limited manner to CV, in the sense that the passive partner is only liable for the assets that he/she invested; the directors, meanwhile, can be held privately responsible for any debt or obligations of CV (unlimited responsibility).

The concept does not apply to other types of business entities such as partnerships, firms, or individual companies/proprietorships. These do not have any legal entity status; i.e., they do not have their own rights and obligations separate from their owners. Hence, personal and unlimited responsibility applies to the owners.

52 “The 2007 Law No. 40 on Limited Liability Corporation,” (2007), Articles 3 (1) & 14.

53 “The 1992 Law No. 25 on Cooperative,” (1992), Articles 1 (1), 9, and 31.

54 “The 2001 Law No. 16 on Foundation,” (2001).

2.1.2 Do organs of a business entity (e.g., owners – shareholders, partners, proprietors) face liability when their businesses breach laws?

Which organs are liable for wrongful acts committed by the businesses they represent varies, depending on the type of entity. Moreover, the circumstances and nature of the breach of law also determine who should be held responsible.

The first case relates to limited liability corporations. In principle, the board of directors shall be responsible for the management of their corporation, as they are its “extended hand”;⁵⁵ hence, they should face liability for all company conducts, including wrongful acts by their corporation. However, each member of the board shall be fully and personally liable for corporate losses if those losses are due to the member’s fault or negligence, and/or he/she has not managed her/his corporation with good faith and full responsibility.⁵⁶ Alternatively, the board of directors are not liable if they can prove that they have not failed to govern in such a manner, or have taken action to prevent the losses.⁵⁷

In cooperatives, where the caretakers are the decision/policy makers,⁵⁸ these people are responsible for any breach of law conducted by the cooperative.⁵⁹ This is due to the fact that all actions of the cooperative are attributed to the caretakers’ actions. The caretaker’s role in the cooperative resembles that of the board of director(s) in the limited liability corporation.

In the foundation, as in the above two examples, the caretakers as the “extended hand” are responsible for its day-to-day management with good faith and responsibility, in accordance with its purpose and

interests.⁶⁰ Thus, they also face liability when the foundation violates law.

2.2 (a) Do laws and/or regulations require business enterprises to avoid causing or contributing to adverse human rights impacts through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services?

There are several laws and/or regulations that require business enterprises to avoid causing or contributing to adverse human rights impacts through their activities.

Human rights in general (1999 Human Rights Law No. 39)

Although the term ‘corporate human rights obligation’ is absent from the Human Rights Law, such an obligation can still be found indirectly in the interpretation of several articles:

1. The way in which this law is written focuses on the rights holder rather than duty holder, as found in the beginning of almost every right: “anyone has a right to...” Hence, these rights should be read to impose obligations to anyone including individual(s), the State, and a group of individuals. In Article 1(6), the law reconfirms the interpretation above that human rights violations can be committed by individual(s), groups of people, and the State. The next question is whether business actors are also covered by this law. Although the wording, ‘corporation or business actors or legal entity’ is not specifically used, a group of people or individuals can also be interpreted as to include any entities or institution including business entities established by individual or a group of individuals.

55 “The 2007 Law No. 40 on Limited Liability Corporation,” Article 95 para (2).

56 *Ibid.*, Article 95 para (3) (4).

57 *Ibid.*, Article 95 para (5).

58 “The 1992 Law No. 25 on Cooperative,” Article 30.

59 *Ibid.*, Art. 34.

60 “The 2001 Law No. 16 on Foundation,” Article 35; “The 2004 Law No. 28 on the Amendment of 2001 Law No. 16 on Foundation,” (2004).

2. Corporate human rights obligations can also be derived from any international human rights instruments accepted by Indonesia. Article 7(2) of the Human Rights Law recognises these instruments as a part of domestic law.⁶¹

Elimination of Racial and Ethnic Discrimination (2008 Law No. 40)

Under the 2008 Law no. 40 on the Elimination of Racial and Ethnic Discrimination, corporations are subject to criminal and civil liability for discriminating against their employees based on race, religion, and ethnicity. For criminal liability, the punishment of a fine is higher if such discrimination is perpetrated by business entities rather than individuals. This law applies to all types of business entities regardless of their legal status.⁶²

Corporate Social and Environmental Responsibilities

There are several laws and regulations addressing social and environmental responsibilities at different levels.

❖ 2007 Corporate Law No. 40 and its Implementing Regulation (2012 Government Regulation No. 47)

The 2007 Corporate Law No. 40, in Article 74, clearly imposes environmental and social responsibility to limited liability corporations.⁶³ Sanctions can be imposed for failure to comply with such an obligation. After a five-year delay, the Government Regulation No. 47 was finally enacted to implement Article 74 of the 2007 Corporate Law. There are several important points highlighted in these two instruments:

61 Further discussion on the meaning of 'acceptance' will be elaborated later in this section.

62 All business entities regardless whether they carry legal personality or not can employ staff(s) to work for them.

63 "2007 Law No. 40 on the Limited Liability Corporation," Article 74.

1. The types of responsibility

There have been two types of 'social and environmental' responsibilities. First, according to Article 2 of the 2012 Government Regulation No. 47, every limited liability corporation as regulated in Corporate Law has social and environmental responsibility. This responsibility is voluntary meaning that it does not carry any punishment/sanction in the case of noncompliance. A reward may be granted to compliant institutions as an incentive.⁶⁴ Nevertheless, the law is absence of determining the type of and how a reward is given.

The second type of social and environmental responsibility is imposed on certain types of limited liability corporations, namely those doing business in the field of and/or in relation to natural resources.⁶⁵ This second form of responsibility is mandatory, and there will be sanctions in the case of violation.⁶⁶ This applies both within and outside the corporation.⁶⁷ However, the 2012 Government Regulation does not further clarify what it means by 'within and outside' the corporation. This may create a problem for implementing this regulation.

2. The reporting system

There is no obligation to report in the former scenario. In the case of mandatory responsibility, its planning and implementation should be reported in the annual company statement and approved by the General Meeting of Shareholders, the highest body within the corporate structure.⁶⁸ Here, the board of directors is the implementing agent.⁶⁹

64 "The 2012 Government Regulation No. 47 on the Social and Environment Responsibility of Limited Liability Corporation," (2012), Article 8 para (2).

65 "The 2007 Law No. 40 on Limited Liability Corporation," Article 74.

66 "The 2012 Government Regulation No. 47 on the Social and Environment Responsibility of Limited Liability Corporation," Art. 7.

67 *Ibid.*, Article 3 para (2).

68 *Ibid.*, Article 4 para (1).

69 *Ibid.*, Article 4 para. (1).

3. Implementation

While there is no requirement specifying how responsibility should be executed in the former case, the implementation of mandatory responsibility is budgeted and calculated in the form of corporate costs/expenses, which should be appropriate and reasonable.⁷⁰ This implies that a corporation has the discretion to determine necessary expenses for enforcement of mandatory responsibility, based on its financial situation and the potential risks to the environment from its business activities.

4. Sanction

This mandatory responsibility as regulated by Article 74 is not an independence norm for imposing liability on business entities. The liability must instead be founded on other existing regulations. For example, although both Article 74 and its implementing regulation impose sanctions for noncompliance, they do not specify what kind of sanctions nor how they are imposed. Instead, they effectively refer to sanctions in other laws and regulations. The discussion over the sanction was highlighted by judges at the Constitutional Court on the case of judicial review of Article 74. The case was filed by the Indonesian Chambers of Commerce and business associations challenging the legality of Article 74. The petitioners argued that mandatory responsibility is discriminative, unconstitutional, and unjust. During one of the sessions, members of Parliament testified that the mandatory social and environmental responsibility is not something new; it has already been articulated in several bodies of laws such as environmental law, forestry law, water law, and mining law. Hence, the sanctions for not implementing the aforementioned regulation are based on those applied in this latter set of regulations.

The Constitutional Court, whose mandate is to review various laws alleged to violate the Constitution ruled in April 2009 that Article 74 is correct, non-discriminatory and just, and therefore not in conflict with the Constitution. In their

⁷⁰ *Ibid.*, Elucidation of Article 5.

deliberations, the Court held that CSR is a flexible concept which is subject to the interpretation of each country. For that reason, the mandatory nature of CSR is compatible with the current social, economic and legal nature in Indonesia. It does not conflict with existing law in fact it complement them. Moreover, the Court confirmed that this mandatory nature gives legal certainty to voluntary CSR and Indonesia's weak law enforcement system. The majority of judges also argued that Article 74 does not discriminate against particular corporations, as it is based on the potential risks posed by corporate behaviour to natural resources. Thus, according to them, it is logical for those parties impacting natural resources to be the ones to bear the burden.

However, three of nine judges dissented from the majority judges' reasoning, expressing their concerns about the potential conflict of laws particularly in the context of sanction. They used Articles 5 to 40 of the 1997 Law No. 23 on environmental management as an example. These Articles prohibit "everyone" from committing a series of polluting acts.⁷¹ Article 74 of the Corporate Law, however, only prohibits a limited liability corporation. Hence, these three judges are of the opinion that articles 5 to 40 of the 1997 Law no. 23 cannot be applied in conjunction with Article 74 of the Corporate Law, as they address different legal subjects and actions, and therefore warrant different sanctions.⁷² This will probably be the most difficult problem faced in implementing this law.

❖ 2007 Investment Law No. 25

In its terminology, the 2007 Investment Law No. 25 does not use the term 'human rights' but rather applies the common terminology, 'corporate social responsibility'. It is defined as a responsibility borne

⁷¹ "Judicial Review of the 2008 Law No. 40 on Limited Liability Corporation, 106; "Verdict of Constitutional Court on the Judicial Review of Article 74 of the Corporate Law, Case no. 53/PUU-VI/2008," 106.

⁷² *Judicial Review of the 2008 Law No. 40 on Limited Liability Corporation, 108; "Verdict of Constitutional Court on the Judicial Review of Article 74 of the Corporate Law, Case No. 53/PUU-VI/2008," 108.*

by every investor to foster a relationship in which it is in harmony and balance with, and suitable to, the local community's values, norms, and culture.⁷³ The law further defines 'investor' as an individual or a business entity that makes an investment, who may be either a domestic investor or foreign investor.⁷⁴ This implies that the law applies to all type of business entities regardless of their legal status.

In addition, this law requires every investor to preserve the environment and provide safety, health, convenience, and prosperity for workers.⁷⁵ Moreover, any investors exploiting non-renewable natural resources are required to allocate funds, in stages, for the recovery of the location in question, which will fulfil standards of environmental worthiness and whose implementation shall be in accordance with the rule of law.⁷⁶ Such an obligation is aimed at reversing environmental damage caused by any investment activity.

The law also imposes obligation on all investors to respect the cultural traditions of the community around the location of their business activities.⁷⁷ This is important particularly for any investment in an area in which indigenous people or traditional people live.

Does the law impose sanction? Yes, it imposes administrative sanctions such as written warnings, the limitation of business activities, temporary termination of business activities, and the complete withdrawal of business activities in order to fulfil social responsibilities and obligations to respect the cultural traditions of the people in the area of the activity. Additional sanctions may also be imposed if these related social responsibility activities refer to other laws.⁷⁸ A similar set of sanctions is imposed in relation to the obligation to preserve the environment and provide safety, health, convenience, and prosperity to workers.

73 "The 2007 Law No. 25 on Investments," (2007), Elucidation of Article 15.

74 *Ibid.*, Article 1 point 4.

75 *Ibid.*, Article 16.

76 *Ibid.*, Article 17.

77 *Ibid.*, Article 15 point (d).

78 *Ibid.*, Article 34.

❖ The Local Regulations on Corporate Social Responsibility (CSR)

To implement CSR at the sub-national level, several local governments⁷⁹ have initiated the enactment of a local regulation addressing this issue. East Belitung Regency, for example, has enacted the 2011 Local Law no. 13 on CSR. While the law restates Article 74 of Corporate Law and its elucidation, it also regulates specific issues: First, relating to the content, it specifies certain areas of CSR: namely, the development of infrastructure for social and public facilities, participation in the public sector, and engagement in or support to various religious, educational, health, sport, and cultural activities⁸⁰ Although the wording 'human rights' is absent from this law, the law indirectly regulates certain elements of human rights particularly economic, social, and cultural rights. Second, although this law distinguishes between business entities and limited liability corporations, the CSR obligations are imposed on any business entities residing in East Belitung regardless of legal status. Third, unlike the 2007 Corporate Law, the local law does not require a business entity to report its CSR activities. Fourth, the local government is mandated to monitor the implementation of CSR. To this end, it may establish a forum consisting of representatives from different business entities to assist the government in its efforts.

Another example is the 2012 Batam Regulation No. 2 on CSR. Similar to the East Belitung Local Regulation on CSR, this regulation covers several issues. First, it imposes obligations to all business entities operating or having an office in Batam, regardless of their legal status. The second concerns the content of the law. Like other CSR regulations, it does not mention the wording 'human rights'

79 Indonesia has 33 provinces and 497 cities/regencies. The autonomy law defines the local government as the head of province/cities/regencies and the local parliament. Local government at the cities or regencies level has autonomy to rule its own city/regency on certain issues such education, health, etc. See further information on "The 2004 Law No. 32 on Local Government," (2004).

80 "The 2011 Law of East Belitung Regency No. 13 on Corporate Social Responsibility," (2011), Article 6.

expressly but it does specify certain areas of business-related human rights such: education, health, public participation, sports, culture, religion, environmental sustainability, and other activities that may prove to increase the quality of human life.⁸¹ This law further enumerates CSR programs relating to public empowerment, promotion, partnership, subsidies, social and financial assistance, public services, and social protection.⁸² Last, like the East Belitung Law, this Batam Law also establishes a CSR Forum consisting of corporate representatives. It is designed to plan, monitor, evaluate and report on CSR to local government and parliament.⁸³

Labour issues

Labour law in general

In general, labour is regulated by the 2003 Law No 13 on Manpower. The law addresses issues such as equal opportunity among workers, manpower planning and information, job training, job placement, extension of job opportunities, employment of foreign workers, employment and industrial relations, protection, wages, welfare, and sanctions.⁸⁴

There are two main issues which are important to highlight in regards to this law. The first concerns its applicability. The law applies generally to any type of employer, including individuals, entrepreneurs, legal entities, or other entities that employ manpower by paying them wages or other forms of remuneration.⁸⁵ Although the law covers different types of work, its application is limited to employees and employers residing within Indonesia.

The second issue concerns its content, which establishes the rights and obligations of workers as well as employers. Here, the rights of the workers correspond to the rights of the employers, and *vice*

versa. This law also prohibits discrimination and child labour (with some exceptions), and regulates working hours and other necessary conditions of employment. In short, although the term ‘human rights’ is not expressly used, elements of certain rights such as the right to work, to a healthy working environment, to be free from discrimination, etc. are articulated in the law.

As the 2003 Law No. 13 is a basic law designed to cover basic conditions for employment, there are some other issues not covered here but instead addressed by other specific laws, such as migrant workers, outsourced labour, labour unions, and conflict settlement. Of these, especially important in relation to ASEAN is women and children as well as the issue of migrant workers.

Female Workers

In relation to women, the Indonesian labour law mainly regulates three different issues: The first refers to discrimination. The Law on Manpower clearly prohibits any discrimination based on sex, ethnicity race, religion, and political orientation by entrepreneurs.⁸⁶ Moreover, the 1999 Law No. 21 on the Ratification of ILO Convention No. 111 clearly states that all workers should have the same opportunity and should be treated equally particularly in regard to job placement and job position including training, privileges, and promotion.

Secondly, in relation to working hours, this law has a special chapter on the requirement for employing female workers at night. Article 76 mainly prohibits female workers and labourers aged less than 17 years old from working between 11 pm to 7 am. However, an exception is allowed providing that employers meet some obligations namely: to provide nutritious food and drink to the female workers, to maintain decency/morality and security in workplace, and to provide roundtrip transport for female workers. Those requirements are further required in the

81 “The 2012 Batam Law No. 2 on Corporate Social Responsibility,” (2012), Article 10.

82 *Ibid.*, Article 11.

83 *Ibid.*, Articles 17-19.

84 “The 2003 Law No. 13 on Manpower,” (2003).

85 *Ibid.*, Article 1 points (4) & (5).

86 *Ibid.*, Articles 5-6.

Ministerial Decision on the Obligations of Employer to Employ Female Labour at Night.⁸⁷

The third issue refers to the specific gender issues. Article 153 (2) of the 2003 Law No. 13 prohibits entrepreneurs from terminating the employment of a worker because she is getting married, or is pregnant, giving birth, having a miscarriage, or breast-feeding her baby. At the same time, they are also prohibited from employing pregnant female/workers/labourers who, according to a doctor's certificate, are at risk of damaging their health or harming their own safety and the safety of the baby if they work between 11 pm to 7 am.⁸⁸

Moreover, female workers/labourers who feel pain during their menstruation period and notify the entrepreneur about this are not obliged to come to work on the first and second day of menstruation. In practice, this type of obligation creates tension.⁸⁹ Some corporations refuse to grant these two days of leave; some make it harder for female workers to demand this right by requiring a letter from a doctor stating that the female workers feel pain during their menstruation.⁹⁰

In relation to the maternity leave, every woman is entitled to have 3 (three) months maternity leave or 1,5 months leave due to miscarriage.⁹¹ Entrepreneurs are also obligated to provide proper opportunity to female workers whose babies need breastfeeding during working hours.⁹² Article 128 of

87 The food should contain 1,400 calories which is provided in break time and it cannot be substituted with money. The menu should be changed regularly. The maintain decency employer should provide security guard on the working place and provide a clear sanitary room with light separated between female and male. For further information see: "Ministerial Decision on the Obligations of Employer to Employ Female Labour between 23.00 to 07.00," (KEP.224/MEN/2003: Ministry of Manpower, 2003), Articles 3-4.

88 "The 2003 Law No. 13 on Manpower," Article 76.

89 Yusuf Wibisono, "Tuntut Cuti Haid, Buruh Demo Disnaker," *Berita Jatim*, July, 5, 2012, http://www.beritajatim.com/detailnews.php/8/Peristiwa/2012-07-05/140421/Tuntut_Cuti_Haid_Buruh_Demo_Disnaker

90 "Kesetaraan Gender Melalui Perundingan Bersama," (Jakarta: International Labour Organisation, 2004): 29.

91 "The 2003 Law No. 13 on Manpower," Article 82.

92 *Ibid.*, Article 83.

the 2009 Health Law No. 39 clearly states that family members, government, local government, and society should support the mother by providing time and special rooms for breastfeeding in work places and public places.⁹³ To implement such provision, the Ministry of Manpower, the Ministry of Women Empowerment, and the Ministry of Health passed a joint regulation to encourage entrepreneurs to provide breastfeeding places.⁹⁴

Child Labour

One chapter of the 2003 Law No. 13 specifically deal with child labour. In principle, an entrepreneur is prohibited from employing children. However, some exceptions are allowed for children aged between 13 years old and 15 years old for light work to the extent that such a job does not disrupt their physical, mental, and social development.⁹⁵ The law further lists certain requirements which have to be met in order to employ child labour namely: the entrepreneurs must have written permission from the parents or guardians of the children, the maximum working time is 3 hours a day, the job does not disturb school time, and entrepreneurs should provide occupational safety and wages in accordance with the prevailing provisions.⁹⁶ In the case children are employed together with adults, the children should be separated from the workplace for adult workers.

Another exception is found in Article 71 of the 2003 Law No. 13 in which children may work in order to develop their talents and interests in such activities as singing, dancing, etc. For this type of work, entrepreneurs should also meet some requirements such as that the work should be supervised by the parents or guardians, the children can only work 3 hours a day, and the working conditions and

93 "The 2009 Law No. 36 on Health," (2009), Article 128.

94 "Joint Regulation between Ministry of Women Empowerment, Ministry of Manpower and Transmigration, and the Ministry of Health on the Breastfeeding During Working Hours in Work Places," in *No. 48/MEN.PP/XII/2008, PER.27/MEN/XII/2008, 1177/MENKES/PB/XII/2008* (2008).

95 "The 2003 Law No. 13 on Manpower," Article 69.

96 *Ibid.*, Articles 69, 52.

environment should not disrupt their physical, mental, and social development, or interfere with school time.⁹⁷

Article 74 lists different forms of child labour which are completely prohibited namely: slavery, prostitution, production of pornography, pornographic performances, gambling, trade in alcohol, narcotic, psychotropic and other additive substances, as well as some other harmful jobs. The list was further added to by the 2009 Regulation of the Ministry of Home Affairs No. 6 to include trafficking, debt bondage, and forced labour, including force labour in conflicts or war time. Article 3 of the Regulation also specifies certain sectors which are considered to be dangerous and harmful for children such mining, construction, offshore labour, production of exploded materials, working on the street, etc.⁹⁸

In implementing these laws and regulations the Government has taken intensive actions directly or indirectly to eliminate child labour. The Direct Cash Transfer Programme in 2005 for example was designed to help poor and near-poor households to compensate for increased fuel prices. Every household received Rp. 100,000⁹⁹ per month for a period of one year. The programme was finally stopped in 2010 due to the strong debates over its efficiency and effectiveness in society.¹⁰⁰ In 2009, the President has enacted Presidential Regulation No. 6 addressing the coordinating mechanism to tackle poverty. At the same time, the Ministry of Home Affairs also issued a ministerial regulation No. 6 setting up the guidelines for the establishment of local action committees, the designation of regional action plans, and community empowerment in the elimination of the worst forms of child labour. This regulation has been accepted as a guideline for local

97 *Ibid.*

98 "Regulation of the Ministry of Home Affairs on Guidelines for the Establishment of Local Action Committee, Local Planning, and Society Empowerment for the Eradication of Worse Job for Child Labour," (Jakarta: 2009), Articles 16-21.

99 Rp. 100,000 is equivalent with US\$ 10 (2012)

100 Nina Triningsih and Masaru Ichihashi, "The Impact of Poverty and Educational Policy on Child Labor in Indonesia," (Hiroshima: Hiroshima University, 2010): 3.

governments to develop actions in their respective authorities. Nusa Tenggara Timur Province for example has developed a scholarship program called '*Program Bantuan Penanggulangan Pekerja Anak di Desa Tertinggal (P2ADT)*' as a follow up to those regulations.¹⁰¹

Despite all these programmes to eliminate child labour, it is not an easy problem to tackle in the Indonesian context. Besides poverty, many factors influence the incidence of child labour, such as unemployment, lack of social security, indebtedness, and other situations where families become dependent on their children's work.¹⁰² Moreover, many children are working in informal sectors which are difficult to identify and regulate. Hence, what is required is an integrated approach by all institutions including private and public to eliminate child labour.¹⁰³ Such a program, however, has yet to be realized by the State.

Migrant workers

In relation to migrant workers, the 2004 Law No. 39 addresses their placement and protection. With respect to this law, certain points need to be highlighted. First, it does not address conditions of work or protection for migrant workers in other countries; it only regulates private recruitment agencies and the recruitment process in Indonesia, as well as certain requirements for migrant workers before being sent abroad.

Article 13 requires limited liability corporations to obtain a license as a private recruiting agency. Moreover, this agency should have had a

101 Peter, "Kebijakan Dan Program Pemerintah Ntt Dalam Pemberdayaan Masyarakat," Kompasiana, <http://birokrasi.kompasiana.com/2012/01/16/kebijakan-dan-program-pemerintah-provinsi-ntt-dalam-pemberdayaan-masyarakat/>.

102 Nina Triningsih and Masaru Ichihashi, "The Impact of Poverty and Educational Policy on Child Labor in Indonesia," (Hiroshima: Hiroshima University, 2010): 3.

103 Agustiyanti, "New National Movement Aims to Tackle Child Labor in Indonesia," *Jakarta Globe*, January 18, 2012, <http://www.thejakartaglobe.com/home/new-national-movement-aims-to-tackle-child-labor-in-indonesia/492014>

representative office or partner in a destination country for at least three years.¹⁰⁴ This representative office or partner, in turn, must be a legal entity consistent with the law of the country where it is located. The agency in Indonesia should have a training centre, bank deposit, operating license, and meet other administrative requirements. The failure to meet such requirements will result in the rejection or withdrawal of its recruitment license.¹⁰⁵

A second point relating to migrant workers concerns human rights. This term is mentioned in Articles 29 and 30, which require that the placement of migrant workers should include considerations of dignity, human rights, legal protection, working opportunities and work availability. However, it is not entirely clear how those articles can be implemented due to a lack of elaboration.

Third, this law puts more emphasis on the placement of migrant workers than their protection. Only eight out of a total of 109 articles, i.e. Articles 77 – 84, deal with protection, while 66 of them address the placement of migrant workers. Hence, there is a policy gap here.

Fourth, the law lacks a supervisory system, particularly during the post-placement period. Who should monitor the private recruitment agencies after they place migrant workers with different employers? Who should provide assistance to migrant workers when there are problems? Unfortunately, there is no clear provision guaranteeing protection for migrant workers at the post-placement level. Supervision of the private recruitment agencies is also absent from the law. Article 92, for example, generally requires the government to be responsible for protection at all levels (pre-placement, placement, and post-placement); however, it is not clear how this is to be conducted.

The fifth issue concerns the complexity of actors involved in the placement of migrant workers. The law assigns three institutions: namely, central and

local government, as well the Monitoring Agency for Placement and Protection Services for Migrant Workers (at both national and provincial levels). However, it does not specify how these are to be coordinated.¹⁰⁶ The situation is complicated due to the application of the Autonomy Law, which grants extensive autonomy to local governments in deciding and managing many local issues, including manpower,¹⁰⁷ but does not clearly address the division of labour between the local and central governments.¹⁰⁸ In the end, the lack of clarity on this question creates ambiguity in the law's use.

For all these reasons, there is a strong demand to amend the law.¹⁰⁹ The recent ratification of the International Convention on the Protection of Migrant Workers and their Families in 2012 has been a driving force for amendment.

Labour Union

Labour unions have been regulated specially in the 2000 Law No. 21 and its implementing regulation such as the Ministerial Decision concerning Procedures for the Official Recording of Workers Unions/Labour Unions (No. KEP 16/MEN/2001). These regulations basically highlight three different issues: The first of these concerns the law's applicability. The 2000 law No. 21 clearly states that it applies to all types of business entities residing in Indonesia.

106 "Supporting Local Government in Governing Indonesian Migrant Worker Abroad," (Smeru Research Institute, 2011).

107 "Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragrah 5 of the Annex to Human Rights Council Resolution 16/21: Indonesia," (A/HRC/WG.6/13/IDN/2: Working Group on the Universal Periodic Review, Human Rights Council 12 March 2012).

108 "The 2004 Law No. 32 on Local Government," Arts. 13, 14.

109 Agustinus Supriyanto, "The Amendment Proposal to Law No. 39/2004 on the Placement and Protection of Indonesian Migrant Workers," *Smeru Newsletter* May- July, no. 31 (2011); "Perlu UU Tentang Penempatan Dan Perlindungan TKI Di Luar Negeri Direvisi Atau Diganti?," *Seputar Indonesia*, July 8, 2011, <http://www.seputar-indonesia.com/edisicetak/content/view/411382/>.

104 "The 2004 Law No 39 on the Placement and Protection of Indonesian Migrant Workers Abroad," (2004), Article 13.

105 *Ibid.*

Second, the law regulates the administrative and procedural requirements to establish trade unions. The Ministerial Decision concerning Procedures for the Official Recording of Workers Unions/Labour Unions (No. KEP 16/MEN/2001) further provides procedures and forms to be used in respect of notifications to the government agency responsible for manpower affairs in the district where the union is registered and the recording and reporting functions of the local government agency as well as receipt of financial assistance from overseas.

The third refers to the protected right of workers to organise. Here, the law prohibits entrepreneurs and/or persons from preventing workers to form a union, joining or leaving a union or carrying out union activities. The prohibited conduct includes: dismissal, suspension, or otherwise prejudicing a worker in his/her employment, withholding or reducing wages, intimidation, and campaigning against the establishment of a union.¹¹⁰ Employers must allow union officials and members outside of participate in union activities as provided under a collective labour agreement or as agreed between the parties.¹¹¹

This law's enactment has resulted in massive union formation. However the law is not free from problems. Commentators argue that the law mainly concerns administrative and procedure on the establishment of union rather than protecting the freedom of unionism itself. Even in its procedural aspects the law lacks clarity on the responsibilities of central, provincial, and local governments to register unions. As a result, discrepancies and inconsistencies in the registration process of unions at different levels occur.¹¹²

The ILO has also highlighted the absence of representation in collective bargaining negotiations particularly in dealing with labour

disputes.¹¹³ Reference to other rights, such as the right to express opinions freely and the right to strike are not mentioned either. Thus, although the number of trade unions has increasingly significantly, it is not clear how this impacts the position of labour in industrial relations. Industrial actions still often result in the arrest of union activists as happened in the past.¹¹⁴

Land Issues

Protection of Land Rights in Indonesia

The land issue in Indonesia is basically regulated by the Basic Agrarian Law No.6 of 1960 which has a dualistic nature, given that *Adat* [customary] law is also effective in addition to the national law. Article 33 (3) of the Constitution of Indonesia has influenced the underlying foundation of the Agrarian law namely that the land, the waters and the natural resources within Indonesia shall be under the power of the State and shall be used to the greatest benefit of the people. This reflects the socialist perspective of the Indonesian land law as it acknowledges that the right to control land is vested in the State. However, Article 4 of this law further acknowledges that several kinds of rights may be granted to and owned by person(s) and/or corporation(s).

In short, the law highlight several points. The first regards the title of the land. The law creates an array of categories of land rights including the right to ownership or freehold title (*Hak Milik*), the right of building (*Hak Guna Bangunan*), the right of use (*Hak Pakai*), cultivation right (*Hak-hak Guna Usaha*), forestry rights (*Hak Memungut Hasil Hutan*), and etc. Individuals or corporations may possess all titles. Each right is further regulated in a specific implementing regulation.

113 *Ibid.*

114 "2012 Annual Survey of Violations of Trade Union Rights - Indonesia," Tefworld, <http://www.unhcr.org/refworld/country,ITUC,IDN,,4fd8894730,0.html>; Riani Rachmawati, "Trade Unions Behaviour toward Multinationals in Indonesia," University of Birmingham (2009): 42.

110 "The 2000 Law No. 21 on Labour Union," (2000), Article 28.

111 *Ibid.*, Art. 29.

112 "The 2000 Law No. 21 on Labour Union: User Guide," (Jakarta: International Labour Office Jakarta and the Ministry of Manpower and Transmigration, 2000): 12-13.

Second, the Agrarian Basic Law also requires land registration. The 1961 Government Regulation No. 10 on land registration which was amended by 1997 Government Regulation No. 24 regulates the registration process of land which includes some activities:

- the measuring, mapping and recording of land;
- the registration of the rights on the land and the transfer of these rights;
- the issue of certificate of rights on land, which will be valid as strong evidence.

The registration is expected to guarantee the legal certainty to the land owner and society. Unfortunately, until 2006, only 30% of 85 million properties have been registered.¹¹⁵ Hence, disputes concerning claims over ownership still remains a problem and can have significant impacts upon human rights.

The third issue is the usage of land for the public interest. Article 18 of the Agrarian Basic Law states that in the public interest, including the interest of the Nation and State as well as the common interest of the people, rights on land may be annulled with due compensation and according to a procedure laid down by this Law. However, the law does not clarify what it means by public interest or compensation.

The 2012 Law No. 2 on the Land Acquisition for Public Interest and the 2012 Presidential Regulation No. 71 provides some clarification on land acquisition for public interest. Law No 2 lists public places which fall under the category of this law namely: roads, toll roads, railways, stations, public communication facilities, etc. Both regulations impose an obligation on all institutions that want to acquire land for public infrastructure to formulate land-acquisition documents, which consist of planning, spatial suitability, land location, land area, land status and land appraisal estimates.

115 Pidato Juyo Winoto, Head of National Land Agency on the opening session of the national symposium and workshop in Tiara Hotel Medan, 13 November 2006

The documents will then be submitted to governors in those respective areas. The governor also must establish a preparation team consisting of the regent or mayor, a provincial apparatus working unit (SKPD) and other relevant institutions. The team will be in charge of conducting a public consultation on the planned land acquisition by inviting all stakeholders, including affected local communities, to determine the location of an infrastructure project.¹¹⁶ Finally, compensation can be given in the form of cash, relocation, stock ownership or other forms based on the agreement made by all the stakeholders.¹¹⁷

The new regulation was welcomed by different parties. For State-owned construction companies, this regulation means increased potential for their projects and will assist with the acceleration of project completion.¹¹⁸ For people, it provides more legal certainty of the compensation and time frame for land acquisition. This law is expected to eliminate arbitrary and forced land acquisition without adequate compensation in the name of the public interest as often occurred in the past.

In addition to the 1960 Basic Agrarian Law no. 6, several related land issues are also regulated in various different laws and regulations. For example, water is further articulated in 2004 Law No. 7 on water resources. The 2004 Law no. 19 particularly concerns forestry and the 2009 Law no. 4 regulates mining. The diversity of laws on land related issues leads to the conclusion that the land issue is not an isolated one as it relates to various other matters such mining, forestry, plantation, environment, water, building, apartment, and etc. Human rights can be impacted in all of these areas.

116 "The 2012 Presidential Regulation No. 71 on the Land Acquisition for Public Interest," (2012).

117 *Ibid.*

118 Natalia Sutanto and Anthony Alexander, "Analysis: Land Acquisition Law: Light at the End of the Tunnel," *Jakarta Post*, August 16 2012, <http://www.thejakartapost.com/news/2012/08/16/analysis-land-acquisition-law-light-end-tunnel.html>

In regard to this multiplicity of laws and regulations, legal harmonization is a significant issue. Each area of concern has different laws and regulations and such laws and regulations also mandate different institutions to implement them. Hence, legal harmonization as well as coordination between different institutions is the key to implement those laws and regulations effectively. Without these, conflicts of law as well as an unclear division of labour between different organizations will lead to land disputes and hinder their effective settlement in a way that will protect the rights of affected populations.

Traditional people's rights¹¹⁹ and land rights

The protection of traditional peoples and the recognition of their rights are articulated in the Constitution and in various laws and regulations at the national and sub-national levels. Article 18B (2) of the Constitution acknowledges the existence of traditional societies, including their *adat* law (customary law). Such recognition is also mentioned in Article 67 (1) of the 1999 Law No. 41 on Forestry, Article 5 of the 1960 Agrarian Law No. 5, Article 9 (2) of the 2004 Law No. 18 on Plantations, and Article 15 (d) of the 2007 Law No. 25 on Investment. These laws imply that everyone, including every investor, should respect the application of *adat* law in all situations. However, among those articles, only Article 15(d) of the 2007 Law No. 25 on Investment penalizes business entities for the failure to meet such obligations. This sanction is administrative in nature, and is comprised of four progressive stages: a written warning, restriction of business activity, freezing of business activity and/or investment, and at the most severe level, closure of the business entity and/or investment facilities.¹²⁰

119 As there is no official translation of 'masyarakat asli' and 'masyarakat tradisional', for the purpose of this research, the word indigenous people and traditional people are used interchangeably.

120 "The 2007 Law No. 25 on Investments," Article 15 para. (d).

Special attention is given to *adat* land rights (*Hak Ulayat*), as this type of land is always problematic in practice due to its collective nature of ownership and the absence of any ownership deed. This issue will be further discussed later in the section.

Definition

What is *Hak Ulayat*? The Agrarian Law provides neither a definition of *Ulayat* land nor of "traditional society." However, the Regulation of the Agrarian State Ministry/National Land Agency¹²¹ No. 5 of 1999, on the Guidelines for Dispute Settlement of *Hak Ulayat*, defines *Ulayat* land as land which has been granted *Hak Ulayat* status by a group representing traditional society. It implies that the traditional society itself should determine its own land. Article 1 of this regulation further defines *Hak Ulayat* as a communal right, based on *adat* law, to use the land and its natural resources for the survival of a certain traditional society. This right is recognized due to a close existing relationship between such traditional people and their land.

At the sub-national level, the regulations of several cities and regencies have provided some clarification on the definition. The 2001 Lebak Regency Regulation no. 32 on *Hak Ulayat*, for example, defines it as a right to utilize land and natural resources for the welfare of a traditional society.¹²² Unlike the previous regulations, the 2008 Law no. 16 of the West Sumatra Province considers it to be a collective right of traditional people to own *Ulayat* land and to benefit from such land and the natural resources it contains.¹²³ In other words, the West Sumatra Law goes further by adding the right of ownership to *Hak Ulayat*.

121 Agrarian Ministry (Menteri Negara Agraria) was changed to 'National Land Agency' (Badan Pertanahan Nasional).

122 "The 2001 Lebak Law No. 65 on the Protection for Hak Ulayat of Baduy People," (2001), Article 1 point 4.

123 "The 2008 West Sumatra Province Law No. 16 on Hak Ulayat," (2008), Article 1 point 7.

The Ownership of Land

The question of ownership is important, particularly in the case of land acquisition for purposes including businesses. The 1999 Regulation of the Agrarian State Ministry/National Land Agency No. 5 states that a traditional society may transfer its land ownership to any parties. For some types of business such as farming, plantations, etc., which requires certain titles - namely the right to use land (*Hak Pakai*) or the right to build (*Hak Guna Bangunan*) - a traditional people may hand over their right to use *Ulayat* land on a temporary basis through an agreement. The State should respect and comply with this agreement between traditional people and the land user/business actor.¹²⁴ Consequently, the State cannot issue licenses to use the land on a temporary basis in the absence of such an agreement.¹²⁵

In the context of plantations, Article 9(2) of the 2004 Law No. 18 on Plantations states that people or business enterprises who intend to build a plantation on land owned by traditional people must obtain those people's consent for handover of such land. However, the law does not impose any sanction for non-compliance.

In the context of forestry, the specific rights of traditional people are limited. The 1999 Law on Forestry effectively mandates that the State holds primary ownership of all forests in Indonesia. *Hak Ulayat* is defined as a right to collect forest products and cultivate forest for the welfare of the traditional people.¹²⁶ The law also restricts the application of *Hak Ulayat*, stating that these rights are only recognized if such *Ulayat* land still exists and they are not contrary to the national interest. However, it does not clarify how to determine the existence of *Ulayat* land.

In addition to national law, various sub-national laws have been enacted to require business actors

to respect the lands of traditional people. The West Sumatra province, for example, has a special law governing *Hak Ulayat* which specifies the rights-holders and regulates its definition, function, registration, and the procedure for its transfer to another party. The law allows investor(s) to use *Ulayat* land, provided that there is a formal agreement between rights-holders and investor (s). The law also imposes an obligation on investors to give a certain share of company profits to these traditional people.¹²⁷ However, there is no sanction for non-compliance. Similarly, the Regency of Kampar in Riau province also adopted a law requiring land users to obtain consent from all members of traditional society if they wish to use the *Ulayat* land.¹²⁸ Once again, no sanction is imposed for the failure to meet such an obligation.

Land Dispute Settlement

The Agrarian State Ministry/National Land Agency, as mentioned earlier, has passed a regulation on the Guidelines for Dispute Settlement of *Hak Ulayat*. However, the regulation is very general covering only two points: ownership and determination of *Hak Ulayat*. It does not deal with the issue of mechanisms to transfer ownership or to settle land disputes. The National Land Agency has provided a mechanism to settle any complaints relating to the land, however, it only refers to disputes regarding the title of the land. The 1999 Law No. 30 on Arbitration and Alternative Dispute Settlement offers a dispute settlement mechanism by using a mediator or arbitration providing that parties to dispute agree to do so.¹²⁹ In regard to arbitration, the requirements of the law can only be applied in disputes regarding commercial issues. Moreover, the alternative dispute settlement mechanism in this law can only be exercised in disputes concerning

124 "The 1999 Regulation of Ministry of Agrarian No. 5 on Guidelines of Dispute Settlement of *Hak Ulayat*," (1999).

125 *Ibid.*, Article 4.

126 "The 1999 Law No. 41 on Forestry," (1999), Article 67.

127 "The 2008 West Sumatra Province Law No. 16 on *Hak Ulayat*," Article 10.

128 "The 1999 Law No. 12 of Kampar Regency on Land with *Hak Ulayat*," (1999), Article 7.

129 "The 1999 Law No. 30 Arbitration and Alternative Dispute Settlement," (1999).

civil matters.¹³⁰ However, in its general elucidation, this law recognises others type of alternative dispute settlements including reconciliation, experts' opinions, etc. Specific government regulations have also been issued to implement this law in regard to different issues.¹³¹

Has this alternative dispute mechanism been applied in the context of land disputes? Dispute settlement outside the court system (non-litigation mechanism) has been applied in various land disputes prior to the passing of 1999 Law on Arbitration and Alternative Dispute Settlement. The law basically legitimises non-judicial dispute resolutions outside the court system as part of legal system. It also set up the time frame for mediation and arbitration processes. This law is supported by the 2007 Law No. 17 on the Long Term National Planning Year 2005 – 2025 which focuses on the development of dispute settlement on land issue through the administrative and court system as well as through other means of alternative dispute resolution.

In the case of land disputes, negotiation or mediation usually involves the customary leaders, officials from National Land Agency, activists, or KOMNAS HAM as a mediator.¹³² Although the mediation mechanism provides a speedy and inexpensive mechanism to settle a land dispute, it can only work effectively if parties to a dispute have good faith, as its nature is voluntary and depends on the consent and good will of the parties.¹³³

Problems on land right and right of traditional society

Although the protection of traditional societies and their culture, including land rights and particularly *Hak Ulayat*, has been regulated, some challenges remain. First, the land laws concerning *Hak Ulayat*

130 *Ibid.*

131 For example: 2000 Government Regulation No. 54 on the Agency for Settling Environmental Disputes.

132 Irin Siam Musnita, "Penyelesaian Sengketa Tanah Ulayat Masyarakat Malamoi Di Kabupaten Sorong," University of Diponegoro (2008): 88.

133 *Ibid.*, 104.

are very complicated in term of ownership. Who are the traditional people? The decision of the Director General of Forestry and Plantation No. 922/VI-PHT/2000 on the Guidelines for Dispute Settlement for *Hak Ulayat* defines traditional society as a group of people who are bound by traditional law based on a similarity of residence or descent. This law states that it applies only if that society is still bound by traditional law, and if the traditional law applies to such land.¹³⁴

In practice, it is not easy to determine which traditional society holds this right due to the process of integration and transmigration.¹³⁵ It is commonly found that a tribe controls a certain area for the purpose of living, cultivating and producing for future generations, but it not really clear whether such land carries *Hak Ulayat* or not.¹³⁶ The local government attempts to define what traditional society means in the local context; nevertheless, as mentioned earlier, this is not easy due to the diversity and mobility of these people.

This speaks to the second problem: namely, a lack of proof of ownership. The national law on land rights requires a property right deed as a proof of ownership; however, traditional (*adat*) law does not.¹³⁷ Although there have been efforts by some local governments to register this type of land in order to obtain a deed,¹³⁸ the practice varies. Not all local governments require such formal registration. The difference between State and customary

134 Letter of Director General of Forestry and Plantation No. 922/VI-PHT/2000 on the Guidelines for Dispute Settlement for *Hak Ulayat*.

135 Laurens Bakker, "Can We Get *Hak Ulayat*?: Land and Community in Pasir and Nunukan, East Kalimantan," Center for Southeast Asia Studies, UC Berkeley (2008).

136 I Ketut Gunawan, *The Politics of the Indonesian Rainforest : A Rise of Forest Conflicts in East Kalimantan During Indonesia's Early Stage of Democratisation* (Bonn: Civillier Verlag Gottingen, 2004), 76.

137 There have been an effort to register the *Ulayat* land but not all traditional society understands and registers the land. Moreover, there are few regencies which do not want to register *Hak Ulayat*. See : "The 2001 Lebak Law No. 65 on the Protection for *Hak Ulayat* of Baduy People."

138 "The 1999 Law No. 12 of Kampar Regency on Land with *Hak Ulayat*."

laws often leads to a problem in the case of land acquisition.

Third, the aforementioned laws are sporadic and lacking in harmonisation. Hence, there is always the risk of a conflict of laws. For example, the Decision of Agrarian Ministry [National Land Agency], which applies throughout the country, only defines *Hak Ulayat* as the right to use *Ulayat* land, while according to the Law of West Sumatra as mentioned earlier, *Hak Ulayat* means the right to own and use land. The question, then, is which should be applied: the national regulation or local law or *adat* law? The complexity of regulatory bodies and institutions involved, and the lack of coordination among such bodies, further complicates the situation.

❖ Environmental Protection (The 2009 Environmental Law No. 32)

This law relates to the control of pollution and environmental damage, and has three major areas of focus: prevention, countermeasures, and recovery. As an environmental law, it does not make any direct reference to human rights as such. However, it does touch upon several aspects, particularly living conditions.

There are three interesting points which need to be highlighted. First, this law applies to any business entities such as corporations, associations, foundations, or other organisations in whose name unlawful action is committed, and to the individuals who ordered that the act be performed.¹³⁹

Second, the law refers to obligations. It not only imposes an obligation on the State to prevent and control pollution and environmental damage, but also on certain kinds of business activities which tend to cause significant environmental impact. For such high-risk activity, any legal entity must provide an environmental impact assessment

(AMDAL)¹⁴⁰ or environmental management and monitoring plan (UKL-UPL) depending on its business activities.¹⁴¹ The implementing regulations further elaborate the requirements and elements to be assessed in carrying out the AMDAL or UKL-UPL.¹⁴² Although an assessment of human rights violations is not specifically required, certain aspects are included; namely, the impact of business activities on environment, public health, and human safety. Without either of these documents, a business license will be not granted.

In addition to the environmental assessment, the law specifies further obligations: to provide prompt and correct information to society, pursue environmental sustainability, and meet all environmental standards as provided in the existing regulations.¹⁴³ Sanctions may be imposed for noncompliance.¹⁴⁴

Third, the law gives legal standing for anyone to bring a civil or criminal action against a business whose activities have given rise to a significant adverse environmental impact, which uses hazardous or toxic waste, or has polluted the environment.¹⁴⁵ Any violation can carry prison terms and fines.¹⁴⁶

140 Articles 22 & 23 of the 2009 Environment Law No. 32 requires certain types of business activities to carry out environmental impact assessments; namely, any business/activities which: (a) alter landform or landscape; (b) exploit natural resources; (c) potentially cause pollution and/or environmental damage, and waste or degrade natural resources; (d) affect the natural, manmade, and social-cultural environment; (e) affect the preservation of natural resources and/or protection of cultural heritage; (f) use certain type of plants, animals, and micro-organisms; (g) manufacture and use biological and non-biological materials; (h) have highly affected the state security; (i) apply sophisticated technologies which may affect the environment

141 "The 2009 Law No. 32 on Protection and Management of the Environment," Articles 23-35.

142 *Ibid.*, Articles 22-41.

143 *Ibid.*, Article 68.

144 *Ibid.*, Article 116.

145 *Ibid.*, Articles 84 - 93.

146 *Ibid.*, Articles 97 - 120.

139 "The 2009 Law No. 32 on Protection and Management of the Environment," (2009).

Mining and Extractive Issues

The 2009 Law No. 4 on Minerals and Coal Mining is an amendment to the previous 1967 Law No. 11 on Mining, which was considered insufficient to meet the current situation and future challenges of the globalisation era. This law applies to individual and/or business entities, including corporations, which conduct mining operations of any scale and have a mining license.

The law does not impose any specific human rights obligation to business, but it defines three types of obligations – concerning the environment, labour, and public protection – which either directly or indirectly relate to the enjoyment of human rights. In this case, that includes labour rights, the right to a healthy environment, and the right to life. With respect to environmental protection, this law requires business entities to carry out mining in a safe and healthy manner; monitor the mining environment, including reclamation and post-mining activities;¹⁴⁷ maintain the sustainability and capacity of water resources;¹⁴⁸ and finally, allocate reclamation and post-mining deposit funds.¹⁴⁹ Administrative sanctions such as a written warning, temporary termination of business/mining activities, and/or withdrawal of the mining license will be imposed to such an entity in the case of noncompliance.

The second set of obligations regards workplace and labour conditions. The business entity is required to ensure the occupational safety and health of its workers in accordance with existing laws.¹⁵⁰ Moreover, it is expected to foster societal development and empower the community surrounding the mining operations by employing local workers and engaging local entrepreneurs.¹⁵¹ The failure to give priority to local labour will lead to administrative sanctions.

147 “The 2009 Law No. 4 on Mineral and Coal Mining,” (2009), Article 96.

148 *Ibid.*, Article 98

149 *Ibid.*, Article 100.

150 *Ibid.*, Articles 70, 79, 96.

151 *Ibid.*, Articles 701, 79, 96, 107.

The third obligation concerns public protection, as stipulated in Article 145. This provision grants a right to those in society who are directly and negatively impacted by mining business activities to receive a reasonable remedy for any violations of law, and to bring a legal suit against mining businesses before the court.¹⁵²

2.2 (b) Do laws and/or regulations require individuals to ensure that their business enterprises avoid causing or contributing to adverse human rights impacts through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services?

As mentioned earlier, there is no direct reference addressing the duty of an individual to ensure that his or her business will respect human rights. However, there are several laws that directly or indirectly impose certain obligations to individual(s) to respect and protect business-related human rights.

First, the Human Rights Law imposes obligations to individuals in Indonesia to obey written or customary law as well as international law accepted in that country relating to human rights.¹⁵³ Under this law, the protection of human rights implies that all individuals are obliged to respect the human rights of others.¹⁵⁴ This obligation is perceived as a general obligation of individual toward human rights.

Second, in relation to discrimination, a business entity or anyone in the capacity to act on its behalf are prohibited from discriminating against certain people or groups based on race, religion, and ethnicity. In the case of noncompliance, the business entity and/or its directors are liable for criminal charges.¹⁵⁵

152 *Ibid.*, Article 145.

153 “The 1999 Law No. 39 on Human Rights,” (1999), Article 67.

154 *Ibid.*, Article 69.

155 “The 2008 Law No. 40 on Elimination of Discrimination,” Article 16-19.

Third, in the context of the environment, the 2009 Law No. 32 on Environmental Protection generally prohibits any person from causing an environmental hazard. The law also forbids anyone to bring hazardous waste into Indonesian territory, conduct unlawful genetic experiments, carry out deforestation, and provide false information on environmental hazards to the public.¹⁵⁶ Criminal and administrative punishments may be imposed for noncompliance. Moreover, if such prohibitions are violated by business actors, the board of director(s) or caretakers of the entities in question are liable for such damages.

Fourth, regarding labour rights, the 2003 Law No. 13 on Manpower sets several obligations for employers to comply with certain labour standards when employing workers. Article 1 of this law clearly defines ‘employer’ as an individual(s) and/or business entity, and covers both formal and informal sectors of employment. The law further regulates the rights and obligations of workers and employers, including working hours,¹⁵⁷ annual leave,¹⁵⁸ health and safety in the workplace environment,¹⁵⁹ and certain requirements relating to the employment of women (and more specific requirements covering pregnant women) and children as discussed earlier. Moreover, employers are prohibited from employing children.¹⁶⁰ Exceptions are granted under certain conditions required by law.

If the aforementioned laws are binding on individual(s), can it be assumed that he/she must also ensure that his/her business will not violate human rights? The answer is yes. As the law prohibits certain conduct that directly or indirectly violates another person’s enjoyment of human rights, the individual should ensure that his/her daily actions are in accordance with the law, including when running her/his business.

156 “The 2009 Law No. 32 on Environment,” Article 69.

157 “The 2003 Law No. 13 on Manpower,” Article 77.

158 *Ibid.*, Article 79.

159 *Ibid.*, Article 89.

160 *Ibid.*, Articles 68-74.

2.3 To what extent, how, and by whom have the laws and/or regulations identified in Question 2.1.2 above been enforced by the State?

Different laws and regulations establish different institutions to implement and monitor their compliance. Such implementation may involve various governmental bodies, private-public institutions, or civil society. In human rights, for example, KOMNAS HAM is the primary body which monitors potential human rights abuses and initiates investigations. In addition, the police, prosecution service, and the court each play an important role when further investigating, following up, and settling human rights cases. On environment-related issues, the 2009 Law No. 32 requires a number of different institutions to monitor compliance, such as local government at the provincial and city levels, the Ministry of Environment and other related ministries, the Commission for Environmental Impact Assessment, the National Bank for the reclamation budget, police, prosecutors, and courts. When a law requires many institutions to enforce it, coordination among them may become a problem. Finally, related institutions dealing with mining or business licenses such as the governor’s and mayor’s administrations, and related ministries like the Ministry of Mining, National Land Agency, etc.,¹⁶¹ also play an important role in imposing administrative sanctions such as written warnings, temporary termination of business activities, or withdrawal of the business license.¹⁶²

Despite these differences, all laws mandate the courts to deal with their implementation. In general, the court’s role can be seen as twofold. First, it deals with the question of interpretation and related conflict of law. The Constitutional Court, for example, has dealt with the interpretation of Article 74 of the 2007 Limited Liability Corporation Law on social and environmental responsibility. This article requires companies conducting their business activities in or related to the field of natural

161 Related institutions to issue mining license may vary depending on the type of mining sectors.

162 “The 2009 Law No. 4 on Mineral and Coal Mining.”

resources to implement social and environmental responsibility, which can be considered a corporate cost. The petitioners, consisting of business associations and the Indonesian Chamber of Commerce, argued that such an article creates legal uncertainty as it is not in accordance with the CSR movement's voluntary emphasis; it is unjust and discriminatory, particularly towards corporations, and by creating an additional burden will negatively impact the economic situation in general.¹⁶³ The Court, however, was of the opinion that Article 74 is correct, non-discriminatory, and just; therefore, it is not in conflict with the Constitution.¹⁶⁴ Moreover, the Court confirmed that this mandatory nature gives legal certainty to voluntary CSR in the context of Indonesia's weak law enforcement system.

In short, the Indonesian courts, particularly the Constitutional Court and Supreme Court, are playing an important role in interpreting the Constitution and other existing laws. They are also expected to give a definite meaning to ambiguous laws and to solve conflict-of-laws issues. This indeed has served to directly develop the application of human rights to business in the Indonesian legal system.

The second role of the court system is an adjudicatory function, in which courts rule on business-related human rights cases brought before it. The civil (including tort cases), criminal, and administrative courts, as well as more specialised courts, may be consulted to assess the responsibility of a corporation for the failure to meet its relevant obligations under certain laws; particularly in the context of environmental, labour, and land issues. Here, the court is expected to be a place where victims can seek justice and obtain remedies for any violation by corporations. Unfortunately, there is no comprehensive data on how many cases are dealt with by each court. Hence, it is difficult to conclude whether the laws mentioned earlier are being enforced. Nevertheless, some limited numbers

¹⁶³ *Judicial Review of 2008 Law No. 40 on Limited Liability Corporation*.

¹⁶⁴ *Ibid.*

can be found at the Supreme Court website, which mentions 303 cases under the category of environmental harms committed by individuals and corporations.¹⁶⁵ In the case of the Human Rights Court, a special court dealing with cases involving gross violations of human rights like genocide and crimes against humanity,¹⁶⁶ statistics compiled by a human rights NGO reveal that this institution has never dealt with any such violation conducted by a corporation or corporate personnel.¹⁶⁷ This is probably due to multiple reasons: the jurisdiction of Human Right Court is limited to individual(s) and its focus has been on state actors; no extensive interpretation on this legal subject has yet been carried out; the human rights courts have not functioned for several years.¹⁶⁸

3. Is the State periodically assessing the adequacy of the laws and/or regulations identified in Question 2 above, and addressing any gaps?

No.

4. Is the State using corporate governance measures to require or encourage respect for human rights?

4.1 Is the State requiring or encouraging directors of business enterprise to exercise due diligence in ensuring that their enterprises respect human rights?

Before answering this question, it is important to understand the concept of "directors" within the Indonesian legal system. The terminology of "director" or "board of directors" is commonly used in the context of limited liability corporations. The 2007 Law No. 40 on the Limited Liability Corporation defines board of directors as the

¹⁶⁵ Further discussion see: "Pidana Khusus," accessed July 12, 2012, <http://putusan.mahkamahagung.go.id/pengadilan/mahkamah-agung/direktori/pidana-khusus>.

¹⁶⁶ "The 2000 Law No. 26 on the Human Rights Court," (2000).

¹⁶⁷ "Pengadilan HAM," <http://www.pengadilanham.or.id/>.

¹⁶⁸ "Pengadilan HAM," <http://www.pengadilanham.or.id/>.

organ of a corporation that has the authority and full responsibility to manage the corporation in accordance with its purposes and objectives, as well as represent it either within or outside the court.¹⁶⁹ Director (s), according to this law, can be either one or more than one individual. A similar concept is applied for other business entities like cooperatives and foundations, although both use the term ‘caretakers’ instead of ‘director (s)’ or ‘board of directors’.

In addition, the term “director” is often used in the context of CV, firms and partnerships to identify the owner(s) or business partners. In individual companies, the owner acts as the director. For firms or partnerships which have been established by more than one person, the owners or partners can act as a ‘board of directors’ in which every partner has the same authority to decide their firm’s policy and day-to-day management. They are also responsible, both personally and collectively, for any action taken by their firm. In the case of CV, the term ‘director’ is usually used to designate the caretaker (the active partner). However, this person’s duties and responsibility is different from the director of limited liability corporations, as he/she is personally responsible for all actions of the CV.

4.1.1 What are the general legal due diligence obligations with which directors have to comply?

Generally, the main task of the director, as stated in the 2007 Corporate Law No. 40, is to manage her/his corporation with good faith and reasonable care in accordance with corporate interests and objectives.¹⁷⁰ This implies that the board of directors are obliged to take any actions to avoid corporate losses. If the board either intentionally or negligently fails to perform its duties, each member shall be fully and personally liable for the resulting losses.¹⁷¹

169 “The 2007 Law No. 40 on Limited Liability Corporation,” Article 1 point 5.

170 *Ibid.*, Articles 95 para. (3) & para. 97 (5).

171 *Ibid.*, Article 97.

As mentioned earlier, a similar concept is applied in the context of cooperatives and foundations. Article 35 of the 2001 Law No. 16 on the Foundation clearly imposes an obligation to the caretakers to fulfil their duties with good faith and full responsibility in line with the interests and purposes of the foundation. Moreover, the caretakers are personally responsible for any loss that occurs due to their actions which are not in accordance with the aim of the foundation. This regulation is the consequence of the fiduciary relationship between the foundation and its caretakers.

For cooperatives, there is no clear reference to the duty of care; the law simply imposes the obligation to caretakers to manage the cooperative in accordance with its interests and purposes.¹⁷²

For other types of business entities such as the CV, firm, and partnership, there is no clear provision in either the Indonesian Civil Code or Indonesian Commercial Code specifying that the business entity must be managed with good faith and reasonable care. The Indonesian Commercial Code simply states that partners should not take any actions which are not in the line with the business entities and/or agreements among the partners/owners.¹⁷³ Hence, they should be personally responsible for any loss due to such actions. Additionally, Article 1619 of the Indonesian Civil Code requires that all partners should conduct their activities with *halal* ways and in accordance with the interest of all partners.¹⁷⁴

172 *Ibid.*, Article 30.

173 “Indonesian Civil Code : Burgerlijk Wetboek”; “Kitab Undang-Undang Hukum Dagang / Wetboek Van Koophandel Voor Indonesie [Indonesian Commercial Code],” (1847-23), Article 17.

174 “Indonesian Civil Code: Burgerlijk Wetboek,” Article 1619.

4.1.2 Do directors have specific legal obligations to consider their business enterprises' human rights impacts in carrying out their duties?

There is no direct reference to any obligations of directors to consider human rights impacts in carrying out their duties. However, there are several laws that address certain obligations in regards to issues such as social responsibility and environment.

As articulated in Article 74 of the 2007 Law No. 40 on Limited Liability Corporations, the board of directors is the implementing organ of such responsibility. The board must plan and budget activities related to this area, as well as account for them in the corporate annual report and at the General Meeting of Shareholders.¹⁷⁵

In the area of environment, managers or directors of certain types of businesses that may cause environmental hazards have special obligations. A director must make an environmental impact assessment prior to exploration activity, hold regular environmental audits, and provide remedies for people affected by environmental damage.¹⁷⁶ The director should also publish any information relating to environmental protection and organisation, pursue environmental sustainability, and comply with environmental standards as provided in the law.¹⁷⁷

The last instance deals with corruption. The 1999 Corruption Law prohibits corruption by business entities or any person on behalf of a business entity. In the event of corruption, it is treated as a separated legal entity, and/or its caretaker/directors can be held liable for such actions.¹⁷⁸ Where a business entity is made liable for corruption, the punishment is 1/3 greater than the maximum punishment for an

175 "The 2007 Law No. 40 on Limited Liability Corporation"; "The 2012 Government Regulation No. 47 on the Social and Environment Responsibility of Limited Liability Corporation".

176 "The 2009 Law No. 32 on Protection and Management of the Environment," Articles. 48 - 50.

177 *Ibid.*, Article 68.

178 "The 1999 Law No. 31 on the Eradication of Corruption," (1999), Article 1 point 1.

individual.¹⁷⁹

4.1.3 Do directors have specific legal obligations to take into account the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?

There is no specific legal obligation for directors to take into account the human rights impact of subsidiaries, suppliers, and other business. However, in the context of mining contractors and suppliers, the BP Migas [The Upstream Activity of Oil and Gas Agency] - the supervisory body for oil and gas mining - provides guidelines for working together with suppliers.¹⁸⁰ The guidelines are aimed to provide integrated technical and administrative requirements for all oil and gas companies in Indonesia in organising the supply chain, including dispute settlement issues.

While the guidelines focus more on the technical details of contract, pricing, recording, there is also one chapter referring to ethical business practices. Here, the relevant parties or procurement body in organising and monitoring supply chain should comply with ethical standards, namely: to work in accordance with the existing laws, to avoid any unhealthy competition and conflict of interest, any potential lost to the company and corruption. Moreover, they also are also obliged to create a healthy and safe work environment.¹⁸¹ However, the guideline does not further elaborate what it means by a healthy and safe work environment.

179 *Ibid.*, Article 20.

180 BP Migas was dissolved by the verdict of the Constitutional Court in November 2012. It was replaced temporarily by SKK Migas. (Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi - Special Task Force for Upstream Oil and Gas Business Activities Republic Indonesia). For further information see: <http://www.skspmigas-esdm.go.id/en/>

181 Guidelines on the cooperation with suppliers, BP Migas No. 007/Revisi-II/PTK/2011, pp. 6 & 7

It is important to update here that BP Migas was dissolved by the verdict of Constitutional Court on the case of judicial review of 2001 Law No. 22 on Oil and Gas in November 2012. Its role has been temporarily replaced by SKK Migas (*Satuan Kerja Khusus Pelaksana Kegiatan Hulu Minyak dan Gas Bumi* – Special Task Force for Upstream Oil and Gas Business Activities in the Republic of Indonesia). Until the time of the research completion, it is not clear whether all regulations/guidelines adopted by the previous institution are still applicable or not.

4.1.4 Have any of the directors' duties identified above been enforced by the State in relation to business-related human rights abuses?

There have been several cases brought before public institutions involving the responsibility of directors for business-related human rights abuses. As it is difficult to obtain statistics on the number of cases dealt with by the Court or other institutions, just one example will be highlighted here. This is a high-profile criminal case, reported by some environmental activists that involved environmental degradation in the Buyat area by PT Newmont Minahasa Raya. The activists claimed that Newmont had exceeded the acceptable mining waste level under the existing regulation, and had contaminated the area with hazardous materials. The President Director of Newmont, Richard Ness, was brought before the court by the Public Prosecutor to hold him liable for the action of his company under Articles 41 (1), 45, 46 (1), and 47 of 1997 Environmental Law No. 23.¹⁸² In addition to the director, the Public Prosecutor also held the corporation responsible, considering PT Newmont to be a legal entity which has its own rights and obligations. On April 24, judges at the District Court in Medan decided to exonerate PT Newmont Minahasa Raya and the President Director, Richard

Ness, finding them innocent of all charges.¹⁸³ Judges were of the opinion that the environmental pollution and destruction caused by PT Newmont had not been proven, and that the public prosecutor had misinterpreted the facts.

4.1.5 Has the State provided non-binding guidelines encouraging directors to take into account (a) their businesses' human rights impacts in carrying out their duties, and/or (b) the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?

See 4.1.3.

4.2 Does the State require or encourage business enterprises to communicate about their human rights impacts, as well as any actions taken to address those impacts?

The State requires the business entity to communicate or disseminate information on any action taken to address business-related human rights impacts, in two different contexts. The first concerns social and environmental responsibility. Article 66 of the Corporate Law requires all limited liability corporations to place the implementation of such responsibility, including planning and budgeting, into their annual report presented before the annual shareholders' meeting.

The second context refers to the Environmental Impact Assessment (AMDAL). As mentioned earlier, this environmental assessment is a compulsory element of certain business activities which carry a high risk of damaging the environment. Prior to any operation/activities, an environmental assessment should be conducted and reported to the authorities

¹⁸² The 1997 Law No.23 on Environmental Law was later amended by the 2009 Law No. 32.

¹⁸³ PT Newmonth Minahasa Raya, *The Appeal Is against Law and Baseless; Newmont Files Counter Memorandum against Public Prosecutor's Appeal to the Supreme Court*, (2007).

in order to gain an approval and recommendation for a business license. Without an AMDAL, any license, including mining licenses, will not be issued. In conducting the assessment, the law requires transparency and public participation in order to provide inputs and criticism.¹⁸⁴ In the end, as AMDAL is a public document, the law requires that it be made accessible to everybody whose participation is needed at any stage of assessment.

4.3 Is/are the country's stock exchange regulator(s) taking steps to require or encourage business enterprises listed on the stock exchange to respect human rights? If so, what are these steps?

There is no regulation specifically requiring business enterprises listed on the stock exchange to respect human rights. The only instance in which such social issues are taken into account is the publication of the annual corporate report at the stock exchange. Bapepam-LK (Capital market and financial institution supervisory agency), the supervisory body for capital market and funds, has required certain information to be included in the annual corporate report. One of them is the report on corporate ethics, the whistle blowing system in a company regarding activities that may put company or stakeholders in the risk, and activities and budget spent to enforce social and environment responsibility.¹⁸⁵ Bapepam-LK in its new decision further does not set a particular reporting format but it does specify the content of information to be published. The first reporting requirement refers to the environment. The Bapepam-LK lists some examples such green energy, energy saving, the usage of recycle materials, waste system,

certification for environmental product, etc.¹⁸⁶ The second concerns labour issues consisting of the safety and health of the working environment, gender perspectives in the company policy, workplace opportunities, employee turnover, training, prevention of accidents at the working place, etc.¹⁸⁷ The third category involves social and community development including the preference to employ local labour, community development in areas surrounding a company, improving public infrastructure, donation, etc.¹⁸⁸ The last category refers to any information regarding the company's responsibility for the product affecting the health and safety of the consumer, as well as product information, facilities, statistic and settlement of consumer's complaints, etc.¹⁸⁹ This information can be articulated in the annual corporate report or a separate report, such as a sustainability report or corporate social responsibility report, but it should be submitted together with the annual corporate report to Bapepam-LK.¹⁹⁰

5. Has the State adopted other non-binding measures to foster corporate cultures respectful of human rights?

5.1 Is the State implementing any non-binding initiatives requiring or encouraging business enterprises to respect human rights?

There is no incentive system provided for a business entity to specifically respect human rights. However, in the context of social and environmental responsibility, as mentioned earlier, Article 74 of the 2007 Corporate Law No 40 on limited liability corporations and its implementing regulation provides a reward for any limited liability corporations other than those required specifically under this law that can be shown to be

¹⁸⁴ Article 26 of the 2009 Environmental law

¹⁸⁵ Decision of the Head of Supervisory Body for Capital Market and Funds No.KEP -134/BL2006 on the obligation to submit annual report for financial corporation and public corporation. P. 10 which was amended by "Decision of the Head of Capital Market and Financial Institution Supervisory Agency No. Kep-431/Bl/2012," ed. Capital Market and Financial Institution Supervisory Agency Ministry of Finance (2012).

¹⁸⁶ *Ibid.*, Appendix, point h (1a).

¹⁸⁷ *Ibid.*, Appendix, point h (1b).

¹⁸⁸ *Ibid.*, Appendix, point h (1c).

¹⁸⁹ *Ibid.*, Appendix, point h (1d).

¹⁹⁰ *Ibid.*, Appendix, point h (2).

implementing corporate social and environmental responsibility.¹⁹¹ Nevertheless, the laws are silent when it comes to determining the type of reward and the mechanism for granting that reward.

In addition to a reward system, the same law imposes a punishment or sanction for non-compliance, although the type of sanction and its implementing mechanism are not yet clear. This is due to the fact that Article 74 on CSR is not an independent provision; its implementation depends on other existing laws.¹⁹²

Regardless of this absence of incentives and punishment, many business entities have adopted various national and international non-binding initiatives on various issues including labour standards, environmental protection, human rights, security in mining operations, etc. British Petroleum, for example, has adopted human rights instruments into their operations, such as: Universal Declaration of Human Rights; UN Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights; OECD Guidelines of Multinational Enterprises; International Labour Organisation Concerning Indigenous and Tribal People in Independent Countries; World Bank Operational Directive with Respect to Indigenous People; US-UK Voluntary Principles on Security and Human Rights; Equator Principles; Global Compaq Principles; UN Code of Conduct for Law Enforcement Officials; and UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.¹⁹³ These standards, and BP's own Code of Conduct, have become operational principles to be universally applied to BP's operations throughout the world. Another example is Freeport Indonesia,

191 See the discussion on Q. 2.2.

192 See Question II.2.2.

193 "BP's Code of Conduct Makes It Clear That Certain Provisions, Such as BP's Stance On the Rights and Dignity of Communities, Relate Directly to Human Rights," <http://www.bp.com/sectiongenericarticle800.do?categoryId=9040217&contentId=7073401>.

which has adopted the Universal Declaration of Human Rights and US-UK Voluntary Principles on Security and Human Rights.¹⁹⁴ Freeport has taken an additional step by establishing a Human Rights Compliance Unit to oversee the process of documenting any allegations and assigning an internal team to conduct an assessment.¹⁹⁵ The outcome of the assessment process is reported to the Corporate Human Rights Legal Counsel, Corporate Human Rights Compliance Unit, site management, the complainant, and the individual respondent.¹⁹⁶

These are examples in which corporations have voluntarily adopted various business-related human rights instruments, and taken necessary actions to protect human rights when conducting their business. Although it is true that the main driving force for adopting regional or international non-binding initiatives is public or consumer pressure, some corporations are pursuing this out of goodwill and a genuine desire to respect human rights.¹⁹⁷

From the discussion above two conclusions can be made. First, State incentives to respect human rights or disincentives for non-compliance are just one aspect shaping corporate behaviour. Pressure from society is another crucial element in monitoring corporate compliance, and to be effective, both should work in tandem. Second, corporate initiatives - either through self-regulation (corporate code of conduct) or corporate participation in various voluntary standards - are important for filling the gap in the absence of any explicit government regulation or incentives to respect human rights. In this case, corporate commitment can actually act as

194 "Voluntary Principles on Security and Human Rights; 2011 Report to the Plenary," (Ottawa: Freeport-McMoRan Copper & Gold Inc., 2012).

195 *Ibid.*

196 *Ibid.*, p. 4.

197 "APP to Conduct Company Human Rights Audit," Agroasia, <http://www.agroasianews.com/news/society-environmental/11/09/15/app-conduct-company-human-rights-audit>.

a co-regulation and reaffirm existing standards.¹⁹⁸

5.2 Is the State providing guidance to business enterprises on how to respect human rights throughout their operations?

There have not been specific guidelines issued by a government body encouraging business to respect human rights. However, there are a few guidelines adopted by certain government institutions or universities that address broader issues such as good governance and/or CSR. For example, the National Commission on Governance Policy – a state body established by Coordinating Ministry for Economics – adopted a General Guidelines on Good Governance in Indonesia on October 7, 2006. While the wording of ‘human rights’ or ‘corporate obligation to protect human rights’ is absent from the guidelines, they do mention an obligation of directors to implement corporate social responsibility: namely, the duty to care for society and the environment surrounding business operations.¹⁹⁹

Moreover, the guidelines enumerate a list of corporate ‘obligations’ in the field of community development, labour, and prohibition of corruption.²⁰⁰ They encourage corporations to respect the interest of shareholders as well as other stakeholders, based on principles of reasonableness, non-discrimination, and fairness.²⁰¹ Corporations are expected to treat their workers professionally, and without any discrimination based on ethnicity, religion, race, gender, or physical disability.²⁰²

198 The joint regulation between BP Migas and Indonesian police on the security measures in the oil and gas operations was inspired by the case of Tangguh Project. Further discussion see: Patricia Rinwigati Waagstein, “From ‘Commitment’ to ‘Compliance’: The Analysis of Corporate Self-Regulation in the BP Tangguh Project, Indonesia,” *Unpad Journal of International Law* (2006).

199 National Commission on Governance Policy, *General Guidelines on Good Governance in Indonesia* (2006), 26.

200 *Ibid.*, 16

201 *Ibid.*, 14

202 *Ibid.*, 16

Finally, the Guidelines suggest that a corporation be liable for any negative impact resulting from its business activity in the place of operation.²⁰³

Another such instance is the Implementation of Security Measures for the Upstream Oil and Gas Activities, following the MOU between BP Migas and POLRI in 2003.²⁰⁴ A Guidelines on Joint Security Measures for the Upstream Oil and Gas Activities was adopted by BP Migas and the Indonesian police. This provides a mechanism for police to safeguard oil and gas activities in Indonesia, including in areas of conflict. A respect for human rights is one of the elements articulated therein. Although the Guidelines is not a legal document and hence lacks a binding nature and sanction, it has been accepted by local police and the private security arms of various companies as a basis for developing security strategy in mining operations.²⁰⁵ One example can be found in British Petroleum’s operation at the Tangguh Project. British Petroleum (BP), together with Indonesian Police in Papua, have adopted their own Guidelines on Security Measures Strategy to safeguard gas operations at the Tangguh Project. These are based on the aforementioned MOU between BP Migas and the Indonesian police, as well as their own Guidelines.²⁰⁶

As the BP Migas was dissolved and its role is replaced by SKK Migas, it is not clear whether such guidelines are still applicable or not. Even if the instrument is no longer applicable, it may still be used as a reference for the new institution to

203 *Ibid.*, 31

204 MOU Between BP Migas and Indonesian Police No. 251/BP00000/2003-S0 and No. Pol: B/1228/v/2003 dated 20 May 2003 on the Implementation of Security Measures for the Upstream Oil and Gas Activities

205 MOU between BP Migas and Indonesian Police No. 251/BPD000/2003 – B1 and No. Pol: Skep/592/VIII/2003 dated 22 August 2003 on the Implementation Guidelines for Joint Security Measures.

206 “Joint Decision between Head of the Indonesian Police in Papua and the Head of the Country Bp Indonesia on the Guidelines of Security Measure Strategy in LNG Tangguh Project,” in No. Pol. SKEP/196/VIII/2009 & No. 0072/POLRI/BERAU/8/2008 (Papua: 2009).

develop similar guidelines in the future.

6. Is the State taking steps to require or encourage respect for human rights in its own relationships and dealings with businesses?

6.1 Does the State require or encourage State-owned or State-controlled business enterprises to respect human rights?

As mentioned earlier, there are three different types of State-owned enterprises:

1. PERUM or Public State-owned enterprise, in which all shares are owned by the State.
2. PERSERO or Private-public enterprise, in which more than 51 % of total shares are owned by the State.
3. *Perusahaan Terbuka* or Public Listed Corporation as a legal entity which has been publically offered consistent with the laws and regulations of Indonesia's capital market

The type of corporation will determine the applicable law, the organs of the enterprise, and their responsibility. The 2003 Law No. 19 on State-owned Enterprise applies to all types of State-owned enterprises. However, the 2007 Law No. 40 on Limited Liability also applies to *Perusahaan Terbuka* or Public Listed Corporation, as it is essentially a limited liability corporation. Therefore, all obligations and responsibilities articulated in that law, including social and environmental responsibility, are also imposed on open enterprises. As the limited liability corporation has been discussed in earlier sections, this section will focus on PERUM and PERSERO.

As with the limited liability corporation, there is no direct obligation of a PERUM or PERSERO to respect human rights. However, the 2003 Law No. 19 on State-owned Enterprises regulates certain obligations in relation to social issues. First, in

regard to labour, the Law on Manpower should also be applied to the employees of State-owned corporations. This implies that PERUM and PERSERO should respect and protect labour rights as articulated in the Law on Manpower. Second, corruption is strictly prohibited. Third, in regards to CSR in State-owned enterprise, the business must donate 2% of its net profit for the implementation of partnerships and capacity-building in social programs throughout Indonesia.²⁰⁷ As part of this partnership program, State-owned enterprises are obliged to empower small businesses by providing training, loans, etc. In addition, they must contribute to improvement of social conditions by developing and providing assistance to educational and health programs.

Moreover, under the Regulation of the Ministry of State-owned Enterprises No. PER.01/MBU/2011 regarding the implementation of good governance by State-owned enterprises, issued on August 1st, 2011, the board of directors is required to implement CSR and take into consideration the interests of all stakeholders - including society as a whole - in corporate decisions and policies.²⁰⁸ The directors should also ensure that their corporation meets labour standards, particularly in regards to a safe and healthy working environment as described in the existing regulations.²⁰⁹ However, the Regulation does not provide any sanction in the case of non-compliance.

Regarding environmental protection, all requirements and standards regulated in the 2009 Law no. 32 on Environmental Protection are applicable to all State-owned enterprises. This implies that all of their activities that are likely to create significant environmental impact require an

²⁰⁷ "The 2003 Law No. 19 on the State-owned enterprise & Regulation of the Ministry of State-owned enterprise NO. PER-05/MBU/2007."

²⁰⁸ "Regulation of Ministry of State owned enterprises No. PER.01/MBU/2011 issued on Agustus 1st 2011 on the implementation of good governance on state owned enterprises," Article 19 para. (1).

²⁰⁹ *Ibid.*, Article 36.

environmental impact assessment. Similarly, in the mining sector, State-owned enterprises must meet the requirements and obligations articulated in laws and regulations on mining, like the Law on Mineral and Coal Mining.

6.2 Does the State require or encourage businesses that receive substantial support and services from State agencies (“beneficiary enterprises”) to respect human rights?

There is no clear reference on whether the State requires or encourages businesses that receive substantial support and services from State agencies to respect human rights.

6.3 When services that may impact upon the enjoyment of human rights are privatized, is the State taking steps to ensure that the business enterprises performing these privatized services respect human rights?

The process of privatisation is governed by the 2003 Law No. 19 on State-owned Enterprises, as well as its implementing regulation, the 2005 Government Regulation No. 33 on the Procedure of Privatisation for State-owned Enterprise (PERSERO). Those regulations govern the requirements, procedure, assets, and management related to privatisation. However, they do not regulate private service providers or the outcome of privatisation for society, such as pricing and accessibility – particularly when it comes to privatisation of public services and public goods. Hence, other laws should also be applied in order to fill this gap. To clarify the issue of privatisation and human rights, it will be helpful to highlight an example involving the privatisation of a public good: namely, water.

In Indonesia, water services can be provided by private business enterprises. In Jakarta, such services are managed by two large corporations: PT Palyja and PT Aetra. While the privatisation

process was regulated by the 2003 Law no. 19 on State-owned Enterprise, the private water service provider is regulated by Government Regulation No. 16/2005 on Drinking Water Supply Systems. This regulation imposes several obligations on the service provider: to provide drinking water to customers in accordance with existing regulations, provide clear information on any changes in quality and quantity of either the service or drinking water, provide a remedy to customers for any loss that they have suffered due to water service, and protect and preserve the environment.²¹⁰ Moreover, the suppliers are obliged to develop specific plans for their water supply system that include infrastructure, pricing, and customer access to water. The planning should take into consideration any poor and dry areas, the larger goal of improving the welfare of society, and possible ways of avoiding any negative social impact.²¹¹ For these reasons, the regulation also specifies pricing policies. Article 60 establishes some principles that need to be considered when determining price, namely: fairness, quality of service and goods, total expenses, efficiency, transparency, and availability of water supply.²¹²

6.4 Does the State require or encourage respect for human rights in carrying out public procurement?

There are no specific guidelines or regulations in which the government requires and encourages respect for human rights on public procurement. Due to the issue of corruption, State procurement contracts are made through an open tender system. Nevertheless, the contracts are usually not available for the public scrutiny.

²¹⁰ “The 2005 Government Regulation No. 16 on the Drinking Water Supply System,” (2005), Article 68 para. (2).

²¹¹ *Ibid.*, Article 14.

²¹² *Ibid.*, Article 60.

7. Is the State taking steps to support businesses' respect for human rights in conflict-affected and high-risk areas?

7.1 Is the State engaging with business enterprises operating in conflict-affected and high-risk areas in relation to identifying, preventing and mitigating the human rights-related risks of their activities and business relationships?

The conflict mentioned here refers to two different conditions. The first concerns conflict that exists due to the presence of corporations; for example, the clash between corporations and society over land ownership. The second refers to any situation of conflict which already existed prior to business activities, but is further complicated by their presence.

There is no clear reference or regulation found which requires states agencies to distinguish between conflict-prone and non-conflict areas for business and investment. The 2007 Investment Law only requires investors to respect the rights of local people in the surrounding area. Hence, it can be concluded that whether one is in a conflict or non-conflict area is not deemed to be a special condition when it comes to investment activity.

However, the same does not hold true regarding security measures for business activities. Special treatment is applied to business operations that are considered nationally important. The question is who should provide security measures to safeguard such business activities.

The 2004 Presidential Decree No. 63 on the Security Measure for National Vital Objects regulates two layers of security. The first responsibility falls to the manager of such a "vital object," who is expected to provide internal security personnel to safeguard its compound. Second, the Indonesian police can provide assistance to these internal personnel, depending on the level of need and the threat/

attack faced. Here, the police will regularly assess the security measures being taken, and if required, can ask for assistance from the Indonesian military (TNI).

What are these national vital objects? The Decree defines them very broadly as covering any area/place/building/operation of business activities which concerns society's welfare and/or national interests, and is considered to carry strategic value for the State. Furthermore, the Ministry of Energy and Natural Resources has issued a list of business activities which are considered national vital objects.²¹³ According to this list, only business activities which provide significant income for the State can be deemed to be vital objects. For the others, only internal security personnel employed by corporations are responsible for security.

Prior to the 2004 Decree, the responsibility for safeguarding fell under the authority of the Indonesian military. As reported in various media, there have been a number of allegations of human rights abuses committed by TNI personnel in the course of carrying out their duties securing mining areas, as in the cases of Freeport in Papua,²¹⁴ and PT Arun and Exxon Mobile in Aceh.²¹⁵ Bearing this in mind, President Megawati Soekarno Putri issued this Decree to limit the military's involvement in providing security for business activities.

The Decree highlights two issues. First, it is true that it has filled the gap resulting from an absence of security strategies for important business activities. However, it does not mention conflict-prone border areas between Indonesia and other countries. This

213 "Ministerial Decree No. 2288/K/07/Mem/2008 on the Amendment of Ministerial Decree No. 1762/07/Mem/2007 on the Security Measure of National Vital Objects in Energy and Natural Resources Sector," ed. Ministry of Energy and Natural Resources (2008).

214 "Too High a Price: The Human Rights Cost of the Indonesian Military's Economic Activities," Human Rights Watch (2006).

215 Ross Clarke, "A Matter of Complicity? Exxon Mobil on Trial for Its Role in Human Rights Violation in Aceh," International Center for Transitional Justice (2008).

issue is important, as many national vital objects – particularly business activities – are located in these areas or at borders which the TNI has a responsibility to safeguard. Currently, the Decree is not very clear on the division of labour between private security, police, and the TNI. If there is a violation, it may be difficult to pinpoint who should be responsible.

Second, it fails to mention the source of funding for these security personnel: is it the national/local or corporate budget? This financial question is important, as it is necessary to avoid any conflict of interest faced by law enforcement officers who are assigned to safeguard business activities. Is the goal to secure the interests of the corporation, or to protect society? The absence of clarity on this issue may lead to the situation in which human rights abuses are at risk.

7.2 Is the State providing assistance to business enterprises operating in conflict-affected and high-risk areas to assess and address the heightened risks of human rights abuses, including gender-based and sexual violence?

There is no clear reference to the State providing assistance to business enterprises operating in conflict areas that is specifically aimed at assessing and addressing the heightened risk of human rights abuses including gender-based and sexual violence. However, as mentioned in the earlier Questions – particularly 2.2, 2.3 and 7.1 – the State has been engaged when it comes to solving problems related to security measures, land conflict, environmental degradation, and labour conflict including the protection of women that often lead to the violation of human rights by state or non-state (business) when business enterprises are operating in conflict-affected or high-risk areas. This action consists of the issuance of new legislation, or amendment of regulations considered problematic and ambiguous.

7.3 Is the State denying access to public support and services for business enterprises operating in conflict-affected and high-risk areas which are involved with human rights abuses, and refuse to cooperate in addressing the situation? Are there laws, regulations and/or policies that have the effect of doing so?

No references found.

7.4 Has the State reviewed its policies, legislation, regulations and enforcement measures with a view to determining whether they effectively address the risk of business involvement in human rights abuses in conflict-affected and high-risk areas, and has it taken steps to address any gaps?

Yes. However, reviews are made on an *ad hoc* basis; usually in response to public pressure. One area of improvement has been in the context of security measures related to mining or national vital objects, as mentioned earlier in Question 7.1. Although the Decree has some weaknesses, it shows the State's commitment to addressing human rights abuses in conflict-affected areas.

8. Is the State taking steps to ensure coherence in its policies domestically and internationally, such that it is able to implement its international human rights obligations?

8.1 Is the State taking steps to ensure that governmental departments, agencies and other State-based institutions shaping business practices are aware of and observe these human rights obligations when fulfilling their respective mandates?

Indonesia does not have a formal procedure for ensuring coordination between State bodies when it comes to human rights in business activities. In fact,

this issue is not even a regular item of discussion in meetings between governmental departments, agencies, or other institutions. However, Indonesia has several formal and informal bodies for coordinating certain elements of human rights. The three mentioned below are examples of how coordination between different state agencies has been set up to deal with certain social issues.

Coordinating Ministry for Political, Law and Security Affairs

The mandate of this Ministry is quite broad, namely: to coordinate the planning and drafting of policies in the fields of politics, law, and security; to synchronize the implementation of these policies; and, to conduct evaluations and studies that help guide this coordination process.²¹⁶ In other words, the Ministry coordinates the work of other relevant Ministries that deal with issues relating to politics, law and security, such the Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Law and Human Rights, Indonesian police, Indonesian military, Intelligence Agency, etc.

Does the issue of human rights fall under the Ministry's authority? The answer is yes. In addition to its participation in developing the National Strategy for Implementing Human Rights in 2011 – 2014, it has also been actively engaged in responding to human rights cases. For example, the Ministry has publicly promised to resolve the shooting incident that took place in the Freeport region of Papua, through coordination with other relevant institutions. Another example is the incident in Mesuji involving the massacre that resulted from the land conflict between the Palm Oil Company and people of Mesuji. The Ministry was assigned by the President to coordinate relevant institutions in investigating the case, and bring the perpetrators to

216 Coordinating Ministry for Political, Law and Security Affairs, "Rencana Strategis Kementerian Koordinator Bidang Politik, Hukum Dan Keamanan Tahun 2010 - 2014," <http://www.polkam.go.id/LinkClick.aspx?fileticket=fS6FybPguF8%3D&tabid=63&language=id-ID>

justice.²¹⁷

The Forum of MAKHUMJAPOL

This forum was initiated in 2010 by the Ministry of Law and Human Rights as a place for coordination and consultation on all enforcement institutions; namely: the Supreme Court, Ministry of Law and Human Rights, Attorney General's Office, and Indonesian National Police.²¹⁸ The forum was designed to discuss and settle various issues relating to law enforcement and justice; in particular: corruption, legal mafia, justice for victims, political intervention, reintegration of convicts into society, and crime prevention.²¹⁹

Many commentators have doubts as to the effectiveness and efficiency of this forum, due to negative experiences associated with a similar effort in the past.²²⁰ During the Suharto period, there was a coordination forum named MAHKEJAPOL. Many commentators questioned its efficiency as in several cases members of the forum tried to intervene in the on-going judicial process separately

217 Asep Dadan Muhandan, "Presiden Minta Kasus Mesuji Diselesaikan," *Bisnis Indonesia*, December 15, 2011, <http://en.bisnis.com/articles/presiden-minta-kasus-mesuji-diselesaikan>.

218 Aliyudin Sofyan, "Pemerintah Bentuk Sekber Mahkumjakpol," *Jurnal Nasional*, January 11, 2012, http://www.ham.go.id/modul.php?md=mod_artikel&modnews=3&mnnow=0&data=982468&modeseach=.

219 Sulaksana, "Koordinasi Aparat Penegak Hukum Melalui Forum Mahkumjakpol."

220 "Komisi Yudisial: Mahkumjakpol Undang Kecurigaan Publik," *Tempo*, May 6, 2010, [Jambi Independence, May 8, 2010, \[http://www.jambi-independent.co.id/jio/index.php?option=com_content&view=article&id=8866:mahkumjakpol-menuai-kritik&catid=25:nasional&Itemid=29\]\(http://www.jambi-independent.co.id/jio/index.php?option=com_content&view=article&id=8866:mahkumjakpol-menuai-kritik&catid=25:nasional&Itemid=29\).](http://www.tempo.co/read/news/2010/05/06/063246057/Komisi-Yudisial-Mahkumjakpol-Undang-Kecurigaan-Publik; JPNN,)

instead of utilizing the forum.²²¹ Moreover, some alleged that the forum has been used as a venue for corruption and collusion.²²² However, due to a great need for coordination - particularly in terms of expanding access to justice to everyone, including the poor - the similar forum was established.²²³ MAHKUMJAKPOL is expected to operate not only at the national level, but also the sub-national level, where all law enforcement institutions in a city or province will work together on court management as well as on the harmonization of different laws.

Has the forum discussed the issue of human rights and business? There are no official references found to this subject and the forum is still at an early stage of development. Hence, it is quite difficult to assess which direction that the forum will go. However, the possibility remains open in the future for discussing high-profile human rights case involving corporations.

221 J.E. Sahetapy, *Runtuhnya Etik Hukum* (Jakarta: PT Komnas Media Nusantara, 2009), 88; Suhartono, "Denny: Penahanan Anak Jalan Terakhir," January 20, 2012, <http://nasional.kompas.com/read/2012/01/20/19594297/Denny.Penahanan.Anak.Jalan.Terakhir>.

222 Hifdzil Alim, "Mahkumjakpol," *Kompas*, 18 May 2010, <http://cetak.kompas.com/read/2010/05/18/0255268/mahkumjakpol>; "Satgas Tanpa Gas," *Kompas*, January 14, 2010, <http://lipsus.kompas.com/grammyawards/read/2010/01/14/0302340/Satgas.Tanpa.Gas>; "Forum Mahkejapol Sebaiknya Dibubarkan," *Kompas*, February 24, 2000, <http://www.kompas.com/kompas-cetak/0002/24/nasional/foru08.htm>.

223 Recently, there are robust public debates, including in public media and TV shows, on cases involving the right to justice of the poor, rooted between procedural justice and the community sense of justice. Cases at hand are, for examples, the theft of three cacao and peanuts by an old lady in Banyumas, theft of a pair of sandals by a 15 year-old in Palu, and the theft of 1 kilo oxtail and 6 plates by an elderly domestic helper in Ciputat. Those cases exemplified the dilemma of pursuing justice in its real terms, especially after being exposed in the media. These cases have been pushing the Government to find the policy how to tackle petty crimes. One of the solutions is to establish this forum. See further discussion in: "National Report Submitted in Accordance with Paragrah 5 of the Annex to Human Rights Council Resolution 16/21: Indonesia," (A/HRC/WG.6/13/IDN/1: Working Group on the Universal Periodic Review, Human Rights Council, 7 March 2012), para. 57.

CSR Coordination Forum

There have been forums established by local governments in several regencies or cities for the implementation of CSR. An example is found in Jombang Regency, Central Java, where the local government has set up a coordination team consisting of different organs of the local government. The team is mandated to plan, coordinate, integrate, and synchronize CSR and environmental responsibility programs in that region.²²⁴ Another example is the city of Batam, where pursuant to the enactment of the 2011 Local Law no. 13 on Corporate Social Responsibility, a private-public forum on CSR consisting of representatives from different companies and local government was set up to design, plan, implement, and monitor CSR there.²²⁵

8.2 Is the State taking steps to maintain adequate domestic policy space to meet its human rights obligations when concluding economic agreements with other States or business enterprises?

It is not clear whether Indonesia has taken such steps; there is no official reference or statement on this issue. However, some practices indicate this occurring in the context of loans from financial institutions, particularly the Asian Development Bank (ADB). In various loan agreements, ADB requires private or state borrowers to conduct environmental impact assessments as a requirement for receiving the loan. Examples are loan proposals for the Tangguh Project, Regional Roads Development Project (RRDP), and Reconstruction of Cement Production Facility in Aceh Project. These are cases in which the borrowers must conduct initial environmental

224 "Decision of the Head of Local Development Planning; Jombang Recency No. 188/14/Skep/li/415.38/2011 on the Permanent Secretariat for Coordination Team on Corporate Social Responsibility Program and Partnership Program on Environmental Responsibility (Pkbl - Tjsl)," (2011).

225 "The 2011 East Belitung Law No. 13 on Corporate Social Responsibility," (East Belitung Regency, 2011), Articles 1 para. (11), 11.

examinations (IEE) based on the ADB's Safeguard Policy Statement (ADB SPS 2009), in addition to the environmental impact assessment (AMDAL) required by Indonesian law.²²⁶ This IEE covers the general environmental profile of the project, and includes an overview of the potential environmental impacts during various project phases.²²⁷ The assessment should also include the set of mitigation and management measures to be taken during project implementation to avoid, reduce, mitigate or compensate for adverse environmental impact.²²⁸

8.3 Is the State taking steps to ensure and promote business respect for human rights when acting as a member of a multilateral institution dealing with business-related issues?

Although Indonesia is a member of the International Financial Corporation, there is no official reference in which it is taking such steps specifically as such a member.

226 There are some differences between the environmental impact assessment (AMDAL) according to Indonesian law and the Initial Environmental Examination (IEE). IEE has higher standard than AMDAL involving public participation. Another difference lies on the purpose of doing different assessment. AMDAL is a requirement to get operating license from Indonesian government; IEE is the requirement to get a loan from ADB. See: "ADB Environmental Assessment Guidelines," Asian Development Bank, <http://www.adb.org/documents/adb-environmental-assessment-guidelines>.

227 "Summary Environmental Impact Assessment : Tangguh LNG Project in Indonesia," (2005); "Initial Environmental Examination for the Asian Development Bank : Ino: Regional Roads Development Project," ed. Ministry of Public Works Directorate General of Highways (DGH or Ditjen Bina Marga) (Jakarta: October 2011), 5.

228 "Indonesia: Reconstruction of Cement Production," (2006); "Initial Environmental Examination for the Asian Development Bank : Ino: Regional Roads Development Project": 1.

9. Is the State taking steps to ensure through judicial, administrative, legislative, or other appropriate means that when business-related human rights abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy?

9.1 What are the legal and non-legal State-based grievance mechanisms available to those seeking remedy for business-related human rights abuses?

The State-based mechanisms available to those seeking a remedy for business-related human rights abuses are primarily divided into two types: the judiciary and investigation and mediation by KOMNAS HAM. The former has been discussed in Question II.2.3, and the role of KONAS HAM will be further elaborated in Question 10.

9.2 What barriers to access to remedy through these State-based grievance mechanisms have been reported?

While the barriers to obtaining remedies through the mechanism of KOMNAS HAM will be discussed in Question II.2.10, this section will only elaborate the problems found in the context of remedy through the judicial system.

Although the State has taken various steps for ensuring a fair, simple, integrated and low-cost judicial system, some challenges remain. First, Indonesia is a huge country, and different regions reflect distinct conditions. In certain regions, particularly ones that are disadvantaged and physically remote, financial problems and geographical conditions have hindered victims' access to justice.²²⁹ Second, the problem of corruption in the judiciary has been one of the major barriers to providing justice for all. In addition to KPK, a special working group dealing

229 "Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragrah 5 of the Annex to Human Rights Council Resolution 16/21: Indonesia."

with the issue of the corruption in the judicial justice system was established by the President to coordinate all relevant institutions, for the purpose of eradicating corruption in the court system.²³⁰ As the working group is still at an early stage, it is difficult to assess its effectiveness.

9.3 Are there laws, regulations, policies and/or initiatives requiring or encouraging the establishment of non-State-based grievance mechanisms?

In Indonesia, *adat* or customary law is officially recognised as part of the legal system. In addition to providing norms which have to be obeyed in societies preserving and applying such law, it also offers a mechanism to settle disputes. This type of settlement is expected to reduce the workload of courts, and to ensure speedy and efficient access to justice for all members of society.

In general, *adat* law regulates all aspects of social life including marriage, death, birth, inheritance, and criminal acts. However, three limitations apply. First, in criminal cases, State law usually restricts the application of *adat* law to minor crimes. Here, the method for settlement is mediation led by tribal leaders. Second, if there is a conflict between *adat* law and State law, the latter applies. Third, if one of the parties to the conflict is not satisfied with the outcome of the mediation, he/she can continue to pursue justice through the formal judicial process.

Two examples are highlighted here. First, the sub-national law of Aceh no. 17 of 2000 provides that tribal leaders in Aceh are given priority to settle disputes in each village within one month. If that period of time has passed and the dispute has not been resolved, or one of the parties to the dispute is not satisfied with the outcome, he/she may file the case with a judicial institution. The earlier decision by *adat* leaders may be used as a consideration

230 Gunanto, "Satuan Tugas Pemberantasan Mafia Peradilan Diragukan," *Tempo Online*, November 27, 2009, <http://www.tempo.co/read/news/2009/11/27/063210778/Satuan-Tugas-Pemberantasan-Mafia-Peradilan-Diragukan>

by law enforcement officers in coming to a final decision.²³¹

A similar law has been adopted by the local government in Papua. The 2008 Law No 20 on the Establishment of *adat* trials in Papua mandated the people of Papua to establish an *adat* trial, which will deal with both private and criminal conduct. The *adat* law is only applicable to people originally from Papua,²³² or outsiders who accept the authority of the trial. As in Aceh, if the *adat* trial cannot settle the dispute or one of the parties is not satisfied with the decision, he/she can file the case with the District Court. In criminal cases, the exoneration of a defendant by the *adat* decision will require an approval from the District Court and Local Prosecution Office. If the Court rejects the decision, then the police and prosecutor will continue to process the defendant by applying State law.²³³ The decision from the *adat* trial may be taken into consideration by the District Court in deciding the case.²³⁴

While the *adat* law mechanism may provide an alternative means of settling disputes, and thereby reduce the workload of law enforcement officers while improving access to justice, it is not free from problems. First, while this mechanism has been utilised in areas of civil and criminal law, and for mediation between corporations and society in relation to *Hak Ulayat* (land ownership),²³⁵ the extent to which it can be utilised to deal with human rights violations - including labour rights - is not clear.

The second problem relates to its legitimacy and application, particularly with respect to land ownership. As mentioned earlier, under the Indonesian legal system, a land deed is used to certify such ownership. However, this system is not recognised in *adat* law, which relies on customary

231 "The 2000 Aceh Law no. 7 on the Application of Adat Law in Aceh," (2000).

232 "The 2008 Law No. 20 on the Adat Trial in Papua," (2008).

233 *Ibid.*, Article 8.

234 *Ibid.*

235 See the discussion on the Hak Ulayat before.

law. When there is a transfer of ownership – usually from forest owned by *adat* society to a business – conflict is unavoidable. In this case, the *adat* law and its dispute mechanism may not be able to resolve the conflict because its position is superseded by national law.

10. Is the State giving the country's National Human Rights Institution sufficient powers to enable it to contribute in the area of business and human rights?

The Human Rights Law provides a statutory basis for the National Human Rights Commission (KOMNAS HAM) to monitor human rights implementation in Indonesia. Article 89 of the law imposes certain mandates on KOMNAS HAM, namely: research and development, observation, investigation, and mediation.²³⁶ Based on these mandates, KOMNAS HAM is obliged to receive complaints from victims of human rights violations, investigate them, and provide recommendations to related authorities.²³⁷ In certain situations, it can also conduct mediation among the parties to the conflict. Here, it may either act as a mediator or merely facilitate the mediation (observation).

In 2008, with the passage of Law No. 40 on the Elimination of Racial and Ethnic Discrimination, the mandate of KOMNAS HAM was expanded to include monitoring the implementation of this law. Like the Human Rights Law, Law No. 40 grants KOMNAS HAM authority to receive complaints or reports from victims of racial or ethnic discrimination by any parties, including business entities, to investigate them, and to provide further recommendations to any relevant bodies.²³⁸ The question, then, is whether KOMNAS also deals with corporations and human rights. Indeed, the answer is yes – this issue is not novel for the organization. Currently, it addresses the issue in two ways.

²³⁶ “The 1999 Law No. 39 on Human Rights,” (2009).

²³⁷ *Ibid.*, Articles 89-90.

²³⁸ “The 2008 Law No. 40 on the Elimination of Racial and Ethnic Discrimination,” (2008) Articles 8, 20.

First, KOMNAS HAM has been actively disseminating and developing the concept and content of business and human rights through a series of discussions. As mentioned in Question 1, it held a workshop on this topic with the title, ‘Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform,’ in which the Bali Declaration on Human Rights and Agribusiness was adopted.²³⁹ Internally, discussions have been conducted on the relationship between land, violence, and business actors.²⁴⁰

The second role of KOMNAS HAM relates to its mandate to observe and investigate human rights violations. As mentioned earlier, every year its Complaint and Investigation Department has to deal with more than 1000 complaints involving business-related human rights abuses. That figure consists of around 800 new complaints, and 200 ongoing cases.²⁴¹ The statistic also highlights several issues:

- a. The number of cases involving business-related human rights abuses is quite high – about 15 % of the total cases dealt with every year. This makes corporations (both private and state-owned) second only to the police as perpetrators of human rights violations.
- b. The yearly statistical report of KOMNAS HAM specifies issues commonly reported by victims of human rights violations, namely: land and labour issues, racial and ethnic discrimination, environmental hazards, right to health, migrant workers, forced evictions, right to education, children’s rights, and women’s rights.²⁴²

²³⁹ “Bali Declaration on Human Rights and Agribusiness in Southeast Asia.”

²⁴⁰ The result of discussion with the Head of Compliance and Investigation Unit.

²⁴¹ It bears noticing that in the Indonesian language, there is only a single translation for the terms “violation” and “abuses”; namely, ‘pelanggaran.’ See the statistic earlier. For further information see: “Laporan Tahunan 2008,” Komisi Nasional Hak Asasi Manusia (KOMNAS HAM) (2008) and “Laporan Tahunan 2010,” Komisi Nasional Hak Asasi Manusia (KOMNAS HAM) (2010).

²⁴² “Klasifikasi Kasus Pelanggaran HAM Oleh Korporasi Tahun 2010 Dan 2011.”

- c. The complaints come not only from different regions in Indonesia, but from other countries such as Papua, Saudi Arabia, Bahrain, Kuwait, Malaysia, Kenya, RRC, Singapore, United Arab Emirates, and the USA.²⁴³ Complaints from overseas usually concern Indonesian migrant workers who are living abroad.
- d. Most cases are complex in the sense that one violation of rights will lead to another violation. Moreover, most cases involve multiple actors, which in certain situations may create ambiguity as to who should be responsible for what. An example of this can be found with the land dispute in Bengkulu (Taba Tebat and Pering Baru villages) involving the state-owned tea company (PTPN VII), the people of Taba Tebat Sibun and Pering Baru, local police, and local government. The petitioners, residents of Taba Tebat Sibun and Pering Baru, claimed that their rights - particularly the right to life and right to fair treatment - had been violated due to intimidation by local government and police during the resettlement process. They also accused the corporation of providing incorrect information about the land acquisition and resettlement. In its investigation, KOMNAS HAM found that PTPN VII and the local government provided false information to the villagers to make them give up their land.²⁴⁴ Moreover, violence and intimidation by police were documented.²⁴⁵

Another case refers to the conflict between a security guard for PT Satya Agung (a corporation), who was also a member of the Indonesian police, and the people in Simpang Keuramat. This conflict resulted in the killing of [how many?] two members of the village. During its investigation, KOMNAS HAM questioned PT Satya Agung about its employment of the Indonesian police to safeguard corporate assets, given that the corporation is not considered a national vital

object.²⁴⁶ KOMNAS HAM pointed out that the employment of police officers for business security would place them in a compromised position: protect the business's assets, or protect the village people.

This extended discussion of KOMNAS HAM leads us to several conclusions. First, human rights violations or abuses can be committed by private actors alone, or in complicity with states and other institutions. The two cases above (PTPN VII and PT Satya Agung) confirm this. The first case referred to a violation indirectly committed by a corporation, in which it together with the local government disseminated false information to the people. The second case reflected the direct involvement of a corporation, by employing a police officer as private security personnel who killed the other persons.

Second, it is true that KOMNAS HAM has been active in disseminating and developing the concept of human rights and business; however, the emphasis has primarily been on NGOs and special activities. The organization could also promote this issue among business communities and assist them in integrating human rights into day-to-day corporate policy but has not done so. To this end, cooperation with other institutions such as universities, State-owned corporations, the Indonesian Chamber of Commerce, and the larger business community could enhance its present activities.

Third, as mentioned, KOMNAS HAM has been active in responding to violations of human rights by corporations; however, its involvement comes mainly after the incident has occurred. Additional emphasis could be placed on prevention related activities.

There may be a possibility for expanding the role of KOMNAS HAM so that it will be more engaged during the earlier process of investment. Here, human rights impact assessment is a useful starting point. While such assessments can be carried out by private auditing companies or other relevant

243 *Ibid.*

244 "Laporan Tahunan 2010," 75-76.

245 *Ibid.*

246 *Ibid.*, 78-79.

institutions, KOMNAS HAM could require this for all investments, in addition to the environmental impact assessment made prior to business activities.

11. What efforts are being made by non-State actors to foster State engagement with the Framework and Guiding Principles?

In addition to KOMNAS HAM, some non-state actors - namely, NGO's and business communities - have also been engaged with the Framework and Guiding Principles. Sawit Watch and Forest People Program, two NGOs focusing on the monitoring of palm oil plantations in Indonesia and abroad, have sent a letter to the UN High Commissioner for Human Rights in response to the Ruggie Report. In their letter, they called for the UN Secretary-General on Business and Human Rights to include a discussion of human rights conditions at palm oil plantations in the report.²⁴⁷ Another Indonesian NGO, the Indonesian Centre for Ethics (ICE), has used the Framework as a basis for its program to develop voluntary principles on security and human rights; particularly for extractive business. Finally, ELSAM, a human rights NGO, has translated the Framework into the Indonesian language to make it accessible to local readers.

Within the business sector, Asian Pulp and Paper (APP) has taken an extra step to adopt this Framework in assessing and addressing human rights policies throughout its operations.²⁴⁸ To realise its commitment, APP has appointed Mazars Indonesia, an auditing company, to independently assess its stated policies, principles and performance across its corporate operations, including eight Indonesian pulp and paper mills and their supply chain.²⁴⁹ Hopefully, APP's move will be followed by

247 "Letter to Office of the United Nations High Commissioner for Human Rights on the Inputs to the United Nations Secretary-General's Report on Business and Human Rights and the UN System," (Forest Peoples Programme & Sawit Watch, 7th March 2012).

248 "Asia Pulp & Paper Follows UN Lead, Commits to First-Ever Human Rights Audit," ed. Mazars and Asia Pulp & Paper (2012).

249 *Ibid.*

other corporations. Mazars Indonesia has adopted the Framework as a basis for its human rights auditing process. Its assistance to APP in incorporating the Framework into the latter's corporate strategies provides a model for how Indonesian companies can use the Framework in developing the human rights dimensions of company policies.

IV. Conclusion

This study is built by a premise that there is a need to provide a robust comparative analysis of the duty of the State to protect against human rights abuses by business enterprises. It is not expecting to identify exhausted set of rules which can be applicable to all corporations nor a set of compilation which can cover the whole aspects of corporation and human rights. It is only a small contribution to detect and map best practices by analysing human rights policies in relation to corporate responsibility to protect. The expectation is that this study can provide the basis for the development of future empirical research on business and human rights in ASEAN region. It is just the start of the beginning.

In the context of Indonesia, it can be concluded that the issue of human rights and business is not novel as it has been incorporated directly or indirectly in various laws, regulations, and private initiatives. However, the last ten years, Indonesian governments as well as business society particularly in Indonesia have begun to pay attention seriously to the issue and various steps have been taken to integrate human rights into business activities. Indeed, more efforts are needed to disseminate the issue among decisions makers, business society, and civil society.

Based on this study, there are some gaps which need to be addressed further in the future. First concerns the implementation of regulatory framework. While the current research has shortlisted various regulations as well as initiatives adopted by Indonesia and society, their efficacy and implementations in the practice is beyond the scope of this study, therefore, it is deserved a special analytical

and empirical research. Having a regulation on business and human rights is important but how such regulations ensure corporate compliance and postulate efficacy cannot be neglected.

Second, in relation to issues, this study has identified several high profile issues on business and human rights in Indonesia such environment, security, corruptions by business actors, land rights, etc which need to be further addressed and discussed in separated research in order to get in-depth understanding on each of them. Hence, it is suggested to have a series of thematic issue studies involving different stakeholders such society, business, and government.

Third, a specific study on grievance mechanism for business and human rights also needs to further be developed. This issue is very important to implement the obligation to provide remedy as stipulated in the Ruggie's Framework.

Finally, it is very obvious that the issue of business and human rights is broad involving various branches of laws. Moreover, it relates many company activities and touches every human rights aspect of individual. Hence, more in-depth studies on specific aspects of human rights and business are indeed very welcomed.

ABBREVIATION

ADB		Asian Development Bank
AMDAL	Analisis Dampak Lingkungan	Environmental Impact Assessment
APP		Asia Pulp and Paper
BAPEPAM-LK	Badan Pengawas Pasar Modal dan Lembaga Keuangan	
BP Migas	Badan Pelaksana Kegiatan Usaha Hukum Minyak dan Gas Bumi	The Upstream Activity of Oil and Gas Agency
BUMN	Badan Usaha Milik Negara	State-owned Enterprise
CSR	Pertanggungjawaban Social Perusahaan	Corporate Social Responsibility
CV	Commanditaire Vennotschaap	Limited Partnership
IEE		Initial Environmental Examination
KOMNAS HAM	Komisi Nasional Hak Asasi Manusia	National Commission on Human Rights
KPK	Komisi Pemberantasan Korupsi	Corruption Eradication Commission
MAHKEJAPOL	Mahkamah Agung, Departemen Kehakiman, Kejaksaan Agung, Polisi	Consultative forum of law-enforcing offices
PERUM	Perusahaan Umum	Public State-Owned Enterprises
SPAK	Program Prakarsa Anti Korupsi	Prakarsa Anti Corruption Programme
TNI	Tentara Nasional Indonesia	Indonesian Military
UN	Persatuan Bangsa Bangsa	United Nations