

Press Release

The Urgency of Developing the National Action Plan on Business and Human Rights in Indonesia

Corporation and Human Rights Violations in Indonesia

Indonesia already has regulations and instrument that protects human rights. Indonesian Constitution 1945 and Law No. 39 Year 1999 guarantees that the Government of Indonesia is committed to fulfill, protect, and respect the human rights, which is based on the Universal Declaration of Human Rights and other international human rights instruments that was ratified by Indonesia, such as the Covenant for civil and political rights and the Covenant for economic, social, and cultural rights.

Other than the regulations and instruments on human rights, Indonesia also developed independent national institutions that have duties to ensure that the human rights are protected, such as the National Human Rights Commission, Ombudsman, Public Information Commission, National Women's Rights Commission, etc. However, there are still weaknesses and lack of practice, whether based on regulation or institutional, that results in the violation of human rights. These human rights violations are mainly done by the States and corporations. One of the reasons is because there is no standard and guideline that is binding that can be used by corporations, as guidelines to provide ways on how should corporations operate without violating the law, principles, and other human rights instruments.

Within the last three years, corporations ranked high as the perpetrators of human rights violations, and environmental degradation. Several human rights and environmental reports stated that corporations are the perpetrators that are mostly responsible for the human rights violations. The National Human Rights Commission noted that in 2012, corporations are the second party that are usually reported as violators of human rights. This was included in the annual complaint reports which included 1009 cases. WALHI (an environmental NGO) reported that in 2013, corporations ranked top as the main actors that destruct and pollute the environment, with a percentage of 82,5%. There are at least 52 corporations that are perpetrators of environmental conflicts, natural resources and agraria issues. In the plantation sector, ELSAM reported that in 2014 there were 57 conflicts and human rights violations that involves plantation corporations as perpetrators. Corporations from the extractive sector are the main actor of human rights violations and environmental pollution.

The numbers and total of human rights violations that are reported by the National Human Rights Commission and human rights and environmental institutions reflects that corporations are the non-state actor that have high potentials in violating the

human rights. If this is allowed, it is dangerous for the people, environment, and the State's economy as well as the sustainability of the business itself. Considering that corporations are the entities that have high capacity and influence towards the development process and respecting the human rights, especially in areas where they operate.

Therefore, in order to prevent and minimize the negative impacts of business operations towards the human rights and environment, as well as in the attempt to make corporation as one of the actors responsible for development process in Indonesia, the National Human Rights Commission recommends that there should be a National Action Plan that can provide ways for the Government to make corporations as important actors to be involved in the States' development through its business operations, including making human rights as an integral part of their business activities. This National action plan hopefully will provide ways regarding which regulations should be developed and which should be adapted through the corporates' responsibilities towards respecting, protecting, and giving access to remedy of the human rights.

The Urgence of the National Action Plan on Business and Human Rights

Business and human rights became an increasingly prominent feature on the international agenda in the 1990s. The liberalization of trade, domestic deregulation, and privatization throughout the world extended the scope and deepened the impact of markets.^[1] The increasing power of multinational corporations led to the increase of inequality as well as human rights violations. However, there is still resistance to the idea that economic and social rights may be invoked against corporate actors and that companies have duties towards these rights.^[2] In order to face the rising negative human rights impacts caused by corporations, the Human Rights Council endorsed the "*United Nations Guiding Principles on Business and Human Rights: Protect, Respect, Remedy*," also known as Ruggie's Principles, in June 2011.

The UN Guiding Principles consists of three pillars, known as "Protect, Respect, Remedy". First is the State's duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The third is the need for greater access by victims to effective remedy, both judicial and non-judicial.^[3]

The Human Rights Council established the Working Group of Business and Human Rights in 2011, with the main task to promote the Guiding Principles' implementation and dissemination.^[4] The Working Group launched the guidance document on National Action Plans (NAPs) to implement the Guiding Principles.^[5]

Indonesia, as home for various multinational corporations, is the largest economy in Southeast Asia. The 1945 Constitution of Indonesia and its amendments provide human rights protections, which are recognized as constitutional rights. The Law No. 39 of the Year 1999 concerning human rights establishes a series of human rights obligations applying to states and individuals. 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.^[6] Moreover, Indonesia has ratified eight international treaties, which are ICCPR, ICESCR, CERD, CEDAW, CAT, CRC, CIMW, and CRPD. Regarding to business and human rights, the government stated its concerns regarding this issue during the session with the Human Rights Council in 2011

However, up until now, the UNGPs are not reflected in the draft National Human Rights Action Plan for 2014 – 2019. Meanwhile, human rights violations continues to grow over the past years

No	Reported	2010	2011	2012	2013
1.	BUMN (State-owned Enterprise)	273	246	306	372
2.	Attorney	264	224	186	195
3.	Court Institution	544	520	542	484
4.	Central Government	251	261	483	488
5.	Local Government	779	830	569	542
6.	Private Companies	1.119	1.068	1.126	958
7.	POLRI (Police)	1.503	1.839	1.938	1.845
8.	TNI (Army)	223	240	204	270

Source: Annual Report 2010 – 2013, National Human Rights Commission

The main issues, stipulated by the National Human Rights Commission 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.[\[7\]](#)

Other than that, the existing regulations in Indonesia is not enough to control corporations to respect the human rights. Regulations that has been made are not coherent as well as overlapped, which results in law uncertainties, especially in cases related to corporations. The Government does not have clear expectations regarding the corporates' responsibilities towards the human rights.

Based on that issue, the National Human Rights Commission suggests that there should be an initial attempt to develop an inclusive regulations, one of them is by developing the National Action Plan on Business and Human Rights (NAP Business and Human Rights).

The purpose of the development of NAP Business and Human Rights is to establish ways on how to implement the UN Guiding Principles on Business and Human Rights in Indonesia. By developing the NAP, the government can create policies that are coherent through inclusive coordination between the related ministries. The NAP on Business and Human Rights can also be the central document for national regulations that enables the government to communicate with every stakeholders. This can also encourage further collaboration between every stakeholders. Similar to the one map policy, the NAP on Business and Human Rights could harmonize every regulations related to business and human rights.

For these reasons, in order to encourage the integration of the UN Guiding Principles on Business and Human Rights, the National Human Rights Commission recommends that the government of Indonesia to develop the National Action Plans on Business and Human Rights.

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NATIONAL HUMAN RIGHTS COMMISSION

Chief,

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- [1] Ruggie, John Gerard. Just Business: Multinational Corporations and Human Rights. (New York: W.W. Norton & Company, Inc.:2013), p. xxv
- [2] Riedel, Giacca, Golay. Economic, Social, and Cultural Rights in International Law: Contemporary issues and Challenges. (UK:Oxford University Press:2014), p. 194
- [3] Huijstee, Mariette Van; Ricco, Victor; Chaturvedi, Laura Ceresna. How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy: A guide for civil society organisations. (SOMO, CEDHA, Divided India: 2012), p. 11
- [4] Ruggie, John Gerard. Just Business: Multinational Corporations and Human Rights. (New York: W.W. Norton & Company, Inc.:2013), p. 173
- [5] Mo Ibrahim, Chair of the Forum, Summary of discussions of the Forum on Business and Human Rights, A/HRC/FBHR/2014/3, p. 9
- [6] Waagstein, Patricia Rinwigati. Business and Human Rights in ASEAN: A Baseline Study. (HRRCA: 2013), p. 103
- [7] Waagstein, Patricia Rinwigati. Business and Human Rights in ASEAN: A Baseline Study. (HRRCA: 2013), p. 96