

# THE COMPATIBILITY OF INDONESIA'S JOB CREATION LAW NUMBER 11 OF 2020 WITH UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

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## *Abstract*

*Achieving economic growth is a main driving force for the Indonesian government to enact unprecedented laws, Law Number 11 Of 2020 on Job Creation, which amend, deregulate, and harmonize 80 laws with more than 1.200 articles at one go. The law comes with human rights and environmental costs. The degradation of human rights protection as a consequence of the Job Creation Law does not correspond with the UNGPs on Business and Human Rights which aim to address human rights problems in business sectors. This work seeks to examine to what extent Job Creation Law is compatible with UNGPs by identifying the impact of Job Creation Law on human rights in the palm oil supply chain. The study finds that the simplification of environmental permit in Job Creation Law indeed increase the potential of adverse human right impacts in upstream palm oil company by lowering the right to information and participation. Although some countries have adopted UNGPs into their domestic law with different measures to make businesses accountable, downstream companies keep buying palm oil products from suppliers who violate human rights. Thus, the proposal of establishing a legal-binding instrument and holding companies liable has been raised to make HRDD effective.*

*Mencapai pertumbuhan ekonomi adalah kekuatan pendorong utama bagi pemerintah Indonesia untuk memberlakukan undang-undang yang belum pernah terjadi sebelumnya, yaitu Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja,*

*yang mengamandemen, meregulasi, dan mengharmonisasi 80 undang-undang dengan lebih dari 1.200 pasal sekaligus. Undang-undang tersebut juga membawa dampak terhadap hak asasi manusia dan lingkungan. Degradasi perlindungan hak asasi manusia sebagai konsekuensi dari UU Cipta Kerja tidak sesuai dengan UNGP tentang Bisnis dan Hak Asasi Manusia yang bertujuan untuk mengatasi masalah hak asasi manusia di sektor bisnis. Penelitian ini berusaha untuk memeriksa sejauh mana UU Cipta Kerja sesuai dengan UNGPs dengan mengidentifikasi dampak UU Cipta Kerja terhadap hak asasi manusia dalam rantai pasok kelapa sawit. Studi ini menemukan bahwa penyederhanaan izin lingkungan dalam UU Cipta Kerja memang meningkatkan potensi dampak buruk terhadap hak asasi manusia di perusahaan hulu kelapa sawit dengan menurunkan hak atas informasi dan partisipasi. Meskipun beberapa negara telah mengadopsi UNGP ke dalam hukum domestik mereka dengan berbagai langkah untuk membuat perusahaan bertanggung jawab, perusahaan hilir tetap saja membeli produk kelapa sawit dari pemasok yang melanggar hak asasi manusia. Oleh karena itu, usulan untuk membuat instrumen yang mengikat secara hukum dan meminta pertanggungjawaban perusahaan telah diajukan untuk membuat HRDD menjadi efektif.*

**Keywords:** *Business and Human Rights, Diligence, Job Creation Law, Human Right Due*

## Introduction

Indonesia aims to become the fifth-largest economy in the world by 2024.<sup>1</sup> This ambitious long-term goal is realized by Indonesia's economic transformation from a middle-income country to a high-income country.<sup>2</sup> To achieve this goal, the Indonesian government has set several indicators including an average economic growth of 5.7 percent and real Gross Domestic Product (GDP) growth per Capita of 5 percent by 2045.<sup>3</sup> However, this ambitious goal faces external and internal barriers. The external barrier arises from global uncertainty: Covid-19<sup>4</sup> and the Russia-Ukraine war<sup>5</sup> are considered major causes, slowing down global economic

1 Indonesian Government, 'Naskah Akademis Undang-Undang Cipta Kerja' [Academic Discussion Paper for the Law on Job Creation] :[https://ekon.go.id/source/info\\_sektoral/Naskah%20Akademis%20RUU%20tentang%20Cipta%20Kerja.pdf](https://ekon.go.id/source/info_sektoral/Naskah%20Akademis%20RUU%20tentang%20Cipta%20Kerja.pdf)

2 Indonesian Government, 'Naskah Akademis Undang-Undang Cipta Kerja' [Academic Discussion Paper for the Law on Job Creation]

3 Indonesian Government, 'Naskah Akademis Undang-Undang Cipta Kerja' [Academic Discussion Paper for the Law on Job Creation]

4 Vivek Mishra, 'Indonesia's GDP Growth Set to Slow in Q3 as COVID-19 Curbs Bite' (Reuters, November 3, 2021)<<https://www.reuters.com/business/cop/indonesias-gdp-growth-set-slow-q3-covid-19-curbs-bite-2021-11-03/>> accessed 11 June 2022.

5 Fardah Assegaf, 'Russia-Ukraine Conflict May Slow down Indonesia's Recovery: Expert' (Antara News, 1 March 2022) <<https://en.antaranews.com/news/217757/russia-ukraine->

growth, but the internal factor which is associated with the poor competitiveness index (compared to neighboring countries, such as Singapore, and Malaysia) plays a significant role in the weakening of national economic growth.<sup>6</sup>

The low competitiveness index in Indonesia is sourced from Indonesia's Ease of Doing Business (EoDB). According to global market ratings, such as Moody's and S&P, and Fitch Rating, some factors that undermine EoDB include a complex bureaucracy, lack of transparency, poor infrastructure, and high logistics cost.<sup>7</sup> Therefore, President Joko Widodo signed Law Number 11 of 2020 concerning Job Creation (hereinafter Job Creation Law) on 2 November 2022 to deregulate the complexity of bureaucracy which aims to encourage Foreign Direct Investment (FDI) and built a conducive economic ecosystem.<sup>8</sup> Thereafter, this legislation amended 80 existing national laws with more than 1.200 articles and introduced a new framework for business licensing covering a very wide sweep of issues encompassing; environmental permits, labor, spatial planning, special economic zones, small and medium enterprises, land rights, transport, energy, agriculture, fisheries, taxation, and many more.<sup>9</sup>

One of the issues that seek to be discussed in this dissertation is the environmental permit which is a prerequisite for obtaining a business license and, in turn, also has a significant impact on human rights. In this regard, Given the reduction in regulations and heavy bureaucracy on licensing which hinder investment growth, the Indonesian government ensures that minimizing the number of permits and centralizing the authority of business licenses to the central government, including environmental permits, will increase Indonesia's EoDB. This reform may offer an instant answer to the complexity of the permit system in Indonesia; Unfortunately, the policy would potentially exacerbate human rights violations. One of the fundamental changes in environmental permits, for example, is the shifting of environmental permits into environmental approvals which have an impact on reducing the stringency of environmental standards,

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conflict-may-slow-down-indonesias-recovery-expert> accessed 13 June 2022

6 Naskah Akademis Undang-Undang Cipta Kerja [Academic Discussion Paper for the Law on Job Creation] 15.

7 Fedina S. Sundaryani and Ina Parlina, 'Indonesia Lags Even Further in Competitiveness Index' (The Jakarta Post, 29 September 2016) <<https://www.thejakartapost.com/news/2016/09/29/indonesia-lags-even-further-in-competitiveness-index-.html>> accessed 25 July 2022.

8 Max Lane, 'Widodo's Employment Creation Law', 2020 What Its Journey Tells Us about Indonesian Politics' (2020) ISEAS-Yusof Ishak Institute, <[https://www.iseas.edu.sg/wp-content/uploads/2021/05/TRS13\\_21.pdf](https://www.iseas.edu.sg/wp-content/uploads/2021/05/TRS13_21.pdf)>.

9 Law Number 11 of 2020 Job Creation Law.

rendering human rights susceptible to abuse.<sup>10</sup>

Under this new law, environmental standards will be compromised, and affected parties will be at risk as it allows the authority to issue business concessions without deliberately assessing adverse human rights impact but is more inclined to the business interest.<sup>11</sup> Accordingly, there is a potential for increased human rights violations as a result of lax environmental assessments and neglect of local populations, threatening some basic rights of the International Convention on Economic, Social and Cultural Rights (ICESCR)<sup>12</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>13</sup>

The ease of environmental permits to facilitate business activities also underscores Indonesia's dependence on the natural resource sector, particularly the agricultural sector, as one of the main sources of national income.<sup>14</sup> As the world's leading producer and exporter of palm oil with a total of 46.2 million metric tons by 2021,<sup>15</sup> the palm oil industry contributed to 4.5 of GDP, boosting the national economy.<sup>16</sup> Palm oil is used for various products, such as, inter alia, cooking oil, margarine, soaps, detergents, toiletries, cosmetics, and candles.<sup>17</sup> Palm oil is also emerging as renewable alternative energy sourced from vegetable oils and biofuels.<sup>18</sup> Furthermore, Indonesia supplied palm oil products to the EU (European Union) amounting to nearly US 2.3 billion dollars in 2018, making it the second biggest importer of Indonesian palm oil after India.<sup>19</sup> However, behind the expansion of

10 Raynaldo Sembiring and Isna Fatimah, 'Indonesia's Omnibus Bill on Job Creation: a Setback for Environmental Law' (2020) 4(1) CJEL 97.

11 'Indonesia: New Law Hurts Workers, Indigenous Groups' (Human Rights Watch, 15 October 2020) <<https://www.hrw.org/news/2020/10/15/indonesia-new-law-hurts-workers-indigenous-groups>> accessed 25 July 2022.

12 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) UNTS 993 (ICESCR)

13 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

14 Resources, in particular palm oil, oil and gas, coal, remain vital to Indonesia's trade balance as they comprised of 68 percent of export, see Raoul Oberman and Others 'The Archipelago Economy: Unleashing Indonesia's Potential' (2012) McKinsey Global Institute 17.

15 Statista, 'Indonesia: Production Volume Palm Oil 2021' (8 March 2022) <<https://www.statista.com/statistics/706786/production-of-palm-oil-in-indonesia/>> accessed 25 July 2022.

16 'Indonesia: Sustainable Palm Oil | United Nations Development Programme' <<https://www.undp.org/greencommodities/indonesia-sustainable-palm-oil>> accessed 25 July 2022.

17 Vivek Voora and others, 'Global Market Report: Palm Oil' (2019) Sustainable Commodities Marketplace Series, IISD <https://www.iisd.org/system/files/publications/ssi-global-market-report-palm-oil.pdf> accessed 20 June 2022

18 Ibid.

19 Hugh Speechly and Saskia Ozinga, 'Indonesian-EU palm oil trade and consumption: Improving coherence of EU actions to avoid deforestation and human rights abuses' (2019)

this commodity, it comes with environmental and social problems, such as, among others, marginalized indigenous peoples, displaced population, wholesale forest and habitat loss, poisoned rivers and concentration of land, and wealth and power in the corporation.<sup>20</sup>

The legal reform which tends to be pro-business interest and ignores the protection of human rights and environment acts not seem to be in line with the current global trend where environmental damage and human rights violations should be mitigated as optimally as possible. Moreover, in recent years, a growing number of palm oil-consuming countries have adopted or are in the process of formulating laws requiring businesses to conduct Human Right Due Diligence (HRDD) and improve corporate behavior, such as the UK Modern Slavery Act, Dutch of Child Labor Due Diligence Act, French Duty of Vigilance Law, the EU Non-Financial Reporting Directive, and so forth, which will be further compared to the HRDD imposition for clarification of the characteristics, the benefits, and drawbacks.

All these initiatives seek to strengthen the United Nations Guiding Principles on Business and Human Rights (hereinafter UNGPs) which aim to guide businesses to prevent, mitigate, and address adverse human rights impacts across their business activities and value chains through their relationship with third parties, such as business partners, subsidiaries, contractors, and many more, as stipulated in the pillar two of UNGPs.<sup>21</sup> Therefore, the UNGPs clarify that it is the state's duty to foster a corporate culture to respect human rights at home or abroad through appropriate policy, regulation, and adjudication.<sup>22</sup> In relation to Indonesian Job Creation Law, the degradation of human rights protection by states has eventually reviewed HRDD in UNGPs which attracted the international community to call upon a legal-binding instrument for states to regulate businesses in their domiciled areas as well as liability.

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Fern [https://www.fern.org/fileadmin/uploads/fern/Documents/2020/EUIndonesia\\_palm\\_oil\\_trade\\_and\\_consumption.pdf](https://www.fern.org/fileadmin/uploads/fern/Documents/2020/EUIndonesia_palm_oil_trade_and_consumption.pdf) accessed 22 July 2022

20 Tom Griffiths and Norman Jiwan, 'Demanding Accountability Strengthening Corporate Accountability and Supply Chain Due Diligence to Protect Human Rights and Safeguard The Environment' (2021) Forest Peoples Programme, TuK Indonesia, PUSAKA, WALHI Riau, WALHI Jambi, and WALHI Sulawesi Tengah < [https://www.forestpeoples.org/sites/default/files/documents/210615\\_Demanding%20Accountability%20v10.pdf](https://www.forestpeoples.org/sites/default/files/documents/210615_Demanding%20Accountability%20v10.pdf)> accessed 21 June 2022

21 John Gerard Ruggie, The UN Framework "Protect, Respect and Remedy" Framework for Business and Human Rights (2010).

22 John Gerard Ruggie, The UN Framework "Protect, Respect and Remedy" Framework for Business and Human Rights,.

Therefore, this dissertation seeks to critically examine the extent to which the business license simplification regime in job creation law is compatible with the UNGPs. The structure of this dissertation is as follows; Chapter B will briefly address the trajectory of UNGPs from the past context and then is followed by the introduction of HRDD as a heart of UNGPs, its challenges, as well as the increased adoptions of UNGPs. Thereafter, chapter C of this work will be an analysis of the state's duty to protect, which will start from a broader perspective and then move on to Indonesia's context in detail. The discussion is followed by a critical study of changes in the environmental permit in Job Creation Law, its implication on human rights, and then linked to human rights violations in the palm oil supply chains. Finally, chapter D will examine the effectiveness of HRDD in preventing human right violation in relation to two central stakeholders in UNGPs, namely businesses and states.

### Research Methods

This research employed a normative-juridical method with the compatibility of the Job Creation Law with the UNGPs by identifying the impact of the Job Creation Law on human rights in the palm oil supply chain, while the approaches involved statutory and conceptual, where the former was employed by further examining the meaning contained in the laws related to the Job Creation Law and the latter dealt with intellectual property rights in the business sector. Primary legal materials were obtained in the form of the Job Creation Law, UNDPs, other laws and regulations that regulate labor. Meanwhile, secondary legal materials consisted of scientific articles, research results, books, and similar papers that are in line with the research entitled *The Compatibility of Indonesia's Job Creation Law Number 11 Of 2020 With United Nations Guiding Principles on Business and Human Rights*. Primary legal materials and secondary legal materials were obtained through library research. A literature study is a method of collecting data by reviewing books, literature, notes, and various reports related to the problem to be solved. The data analysis used is a systematic interpretation of the Job Creation Law regulations, UNDPs, and related legislation to then carry out an extensive interpretation to determine the meaning of the compatibility of the Job Creation Law with the UNGPs and the impact of the Job Creation Law on human rights so that a solution to the problem faced is found to make conclusions and recommendations.

## Discussion

### The Architecture of United Nations Guiding Principles on Business and Human Rights

For more than a generation, the global governance system has been searching for an ideal formula to adjust to the growing influence of Transnational Corporations (TNCs). The first attempt recorded was the draft UN Code of Conduct on Transnational Corporations in the 1970s, but it did not feature human rights.<sup>23</sup> Afterward, soft law approaches attracted more acceptance by the Organization of Economic Cooperation and Development (OECD) to adopt a set of Guidelines for Multinational Enterprises.<sup>24</sup> A year later, International Labor Organization (ILO) adopted a Tripartite Declaration of Principles concerning Multinational Enterprise.<sup>25</sup> Both refer to the Universal Declaration of Human Rights (UDHR) and other international human rights standards. Furthermore, in 2000, United Nations Global Compact became operational with its voluntary initiative engaging companies, civil society, and labor, promoting UN principles in three areas: human rights, labor standards, and environmental protections.<sup>26</sup>

Report of corporate human rights abuse in the extractive sector and footwear and apparel industries led to the establishment of the working group on business and human rights in 1998, which then generated Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises relating to Human Rights.<sup>27</sup> However, while the International human rights Non-governmental Organizations (NGOs) endorsed the draft norms, the business community, represented by the International Chamber of Commerce (ICC) and the International Organization of Employers (IOE), was firmly opposed, and the last phase of Business and Human Rights ranged from 2005 to 2011, which mandated Professor Jhon Gerard Ruggie as the Special Representative of the Secretary-General (SRSG). Human Rights Council Unanimously endorsed the UNGPs based on the 'protect, respect and remedy'

23 UN Intergovernmental Working group on Code of Conduct, 'Draft UN Code of Conduct on Transnational Corporations' (12 June 1990) U.N. Doc. E/1990/94

24 OECD, The OECD Guideline for Multinational Enterprises: Text, Commentary and Clarifications, OECD Doc. DAF/FE/IME/WPG(2000)15/FINAL

25 International Labour Organisation (ILO), Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, Series A, No. 3 (2000)

26 For more information about UN Global Compact can be accessed at <http://unglobalcompact.org>

27 Draft Norms on the Responsibilities on Transnational Corporation and Other Business Enterprises with regard to Human Rights, (August, 26 2003) U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2

framework, which resulted in thirty-one principles divided into three pillars: the state duty to protect human rights,<sup>28</sup> the business responsibility to protect<sup>29</sup> human rights, and access to remedy.<sup>30</sup> The UNGPs apply to all states and all business enterprises, regardless of their size, sector, location, ownership, and structure.

### Human Right Due Diligence Concept

One fundamental concept in UNGPs is the inclusion of corporations' responsibility to respect human rights within their 'spheres of influence'. TNCs have greater power than some states to affect the realization of rights and some states may be unable or unwilling to protect human rights under domestic law.<sup>31</sup> These corporations therefore must bear responsibility under international law. Also, this responsibility was implicitly justified by the Universal Declaration of Human Rights (UHDR) in its preamble, which states that "every individual and every organ of society...shall strive by teaching and education to promote respect for these rights and freedom".<sup>32</sup> Moreover, in this globalization era, many companies must operate in multiple countries, which means adopting a network-based operating model involving multiple corporate entities (i.e. suppliers, subsidiaries, contractors, sub-contractors, etc.). As the number of participating units in the value chain increases, so does the potential vulnerability in any link and stage posed to the global company as a whole.<sup>33</sup>

In addition, as the foundational expectation of company involvement in human rights is a responsibility to respect, a company cannot compensate human rights by merely doing 'good deeds' but must also proactively implement 'doing no harm'. The company must thus prove its commitment by performing the Human Rights Due Diligence (HRDD) process, whereby they become aware of, identify, prevent, mitigate, and address their adverse human rights impacts (principles 15 b). To measure the implementation of due diligence, UNPGs are equipped with

28 Principle 1-10, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework A/HRC/17/31

29 Principles 11-24

30 Principles 25-31

31 Jhon Gerard Ruggie, 'Business and Human Rights: The Evolving International Agenda' (2007) Corporate Social Responsibility Initiative, Working Paper No. 38 Cambridge, MA: Jhon F. Kennedy School of Government, Harvard University.

<[https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper\\_38\\_ruggie.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper_38_ruggie.pdf)> accessed 20 June 2022

32 Universal Declaration of Human Rights 1948, (adopted 10 December 1948) U.N. Doc. A/810

33 Ruggie (n 31) 34.



essential components, including; policies, impact assessments, integration, and tracking performance (principle 17). In terms of causation, UNGPs provide a tripartite typology for business enterprises that may cause or contribute to or directly link to adverse impacts through their operations, products, or services by their business relationship (principles 13).

Regarding the scope of HRDD, it will clearly depend on several categories covered in the UNGPs, including size, risk of human rights impacts, and the nature and operating context.<sup>34</sup> Different states will set off different criteria which apply to different companies depending on their size, profits, jurisdictions, and number of employees.<sup>35</sup> The scope may change over time as the situation and circumstances of businesses operation evolve.

HRDD applies not only to specific or even corporate groups but also throughout global networks to fill the global gap. As enumerated in principle 13, it expects every business to consider human rights violations including third parties with whom it is directly connected in its business relationship (i.e., suppliers, distributors, consumers, and other entities in this value chain).<sup>36</sup> The overreached network corporations for third parties reflect that companies must be prudent in considering the scope of their HRDD. Also, companies must be aware of specific human rights issues, high-risk areas, or contexts within their operations or value chain.

Another critical feature that distinguishes HRDD from its predecessors, Corporate Social Responsibility (CSR), for example, is the requirement that it must be conducted continuingly, recognizing that human rights risks can change over time. In addition, the HRDD procedure in UNGPs arises due to the ineffectiveness of the CSR scheme. This voluntary initiative for corporate self-regulation was deemed unable to fill the accountability gap as it does not provide transparent, legally-binding obligations nor does it provide access to remedies for victims of corporate harassment. Favotto and Kollman demonstrate that CSR makes companies highly selective in respecting human rights, and there is rare evidence to show a change in behavioral companies.<sup>37</sup> In this regard, UNGPs seek to fill

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<sup>34</sup> Principle 17(b)

<sup>35</sup> Norwegian Acts Transparency Act, for instance, apply to Norwegian's companies and foreign companies that offer service and goods in Norway with sales revenue NOK70 million and 50 full-time employees. On the other hand, German Supply Chain Due Diligence Act covered to only national companies with at least 3,000 employees. See Markus Krajewski and others, 'Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?' (2021) 6(3) BHRJ 550-558.

<sup>36</sup> See commentary on principle 13 UNGPs

<sup>37</sup> Alvise Favotto and Kelly Kollman, 'When rights enter the CSR field: British frms' engagement

not only global development gaps but also complement the weakness of the current transparency issue on CSR schemes with some traceability measures.

Nevertheless, some scholars warn of the failure of HRDD, given that HRDD is not established under a legally binding instrument, leading business groups to often view it as a 'tick-box' exercise designed for public purposes rather than a serious integral part of corporate decision-making.<sup>38</sup> The lack of liability and enforcement thereby become particular issues in UNGPs, making self-regulation in business and human rights filed rarely change business conduct in human rights issues. The following discussion will portray some issues regarding its implementation and effectiveness in tackling human rights violations after a decade of its declaration.

### Emerging Challenges of UNGPs

As UNGPs managed to compromise various interests between business groups, civil societies, and states, some compliment that UNGPs are the global authoritative standard, providing a blueprint for the steps all states and businesses should take to uphold human rights as commented by UN High Commissioner for Human Rights, Zeid Ra'ad Al-Hussein.<sup>39</sup> Nevertheless, some persistent scholars criticize its form and substance. Ruggie's proposal to use a soft-law approach in implementing the UNGPs is believed to be the cause of the weak regulation of Business and Human Rights.<sup>40</sup>

The lack of a legally binding instrument to hold TNCs accountable perpetuates human rights violations by businesses and prevents victims from accessing remedies. Some corporations clearly cause gross human rights violations.<sup>41</sup> For example, the environmental damage caused by mining operations impacts people's health and access to adequate food.<sup>42</sup> In this regard, there is no clarity in international law that corporations are directly responsible for their impact on human rights.

with human rights and the UN Guiding Principles' (2022) 23(1) HRR 21-40.

38 Peter Muchlinski, 'Human Rights Framework: Implications for Corporate Law, Governance, and Regulation' (2012) 22(1) BEQ 145-177.

39 Zeid Ra'ad Al-Hussein, 'Ethical Pursuit of Prosperity' (Law Gazette 23 March 2015) <<https://www.lawgazette.co.uk/commentary-and-opinion/ethical-pursuit-of-prosperity/5047796.article>> accessed 26 July 2022.

40 Surya Deva, 'Treating human rights lightly: a critique of the consensus rhetoric and the language employed by the Guiding Principles' in Surya Deva and David Bilchitz (eds), *Human Rights Obligation of Business Beyond the Corporate Responsibility to Respect?* (CUP 2013) 78.

41 Surya Deva, 'Treating human rights lightly: a critique of the consensus rhetoric and the language employed by the Guiding Principles' in Surya Deva and David Bilchitz (eds), *Human Rights Obligation of Business Beyond the Corporate Responsibility to Respect?* (CUP 2013) 78.

42 Tim Wegenast and Jule Beck, 'Mining, Rural Livelihoods and Food Security: A Disaggregated Analysis of Sub-Saharan Africa' (2019) 130 World Development 80.

In addition, the UNGP soft-law approach cumulatively causes difficulties for victims of human rights violations by companies in accessing remedies. Unrecognized legal obligations on corporations mean that legal remedy is unavailable unless provided within specific jurisdiction but some different mechanisms have been introduced in UNGPs (e.g., judicial grievance and non-judicial grievance).<sup>43</sup> Jurisdictional doctrines often make access to remedies more difficult and complex even in initiating legal proceedings in cross-border cases where, in some cases, the court burdens the plaintiff to prove his claim instead of burdening the proof with the corporation.<sup>44</sup> For example, while the French Precautions Act pioneered the adoption of the UNGPs into national legislation, it is the plaintiffs who must prove that they have the right under the Precautions Act to satisfy the courts.<sup>45</sup>

On the other hand, the market uptake of UNGPs is relatively low. Evidence presented by the Corporate Human Rights Benchmark Report for 2020, which surveyed the human rights disclosures of 299 global companies, concludes that only a small proportion of companies demonstrate a willingness and commitment to take human rights seriously and that there is a disconnect between commitment and process on the one hand and actual performance and result on the other.<sup>46</sup> The absence of international legal personality for corporate actors prevents them from having direct international obligations.

The two circumstances above gave rise to the idea of treaty-based business and human rights regulations, mandating an Open-Ended Working Group by Resolution of the Human Rights Council to form Open-Ended Working Group on the elaboration of a legally binding instrument on Transnational Corporations and other business enterprises with respect to human rights.<sup>47</sup> Yet, the pragmatic means that UNGPs used by applying soft-law strategy was designed to achieve general political consensus because, in essence, applying legally binding instruments to business groups will result in unavoidable resistance. Furthermore, while UNGPs emphasized the voluntary self-reporting system, there is a growing number of

43 David Bilchitz, 'Introduction: Putting Flesh on the Bone What Should a Business and Human Rights Treaty Look Like?' in Surya Deva and David Bilchitz (eds), *Building a Treaty on Business and Human Rights: Context and Contours* (CUP 2017) 1.

44 Surya Deva, 'Treating human rights lightly: a critique of the consensus rhetoric and the language employed by the Guiding Principles' in Surya Deva and David Bilchitz (eds), *Human Rights Obligation of Business Beyond the Corporate Responsibility to Respect?* (CUP 2013).

45 Almut Schilling-Vacaflor, 'Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?' (2021) 1(22) HRR 109.

46 World Benchmarking Alliance (WBA), Corporate Human Rights Benchmark Report 2020 <https://www.worldbenchmarkingalliance.org/publication/chrb/> accessed 21 June 2022.

47 UN HRC, 'Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights' UN Document A/HRC/RES/26/9

national and international efforts to make UNGPs to be more forceful. The following sub-chapter will extensively describe this mandatory HRDD trend with its characteristics.

### The Growing Adoption of UNGPs

The UNGPs do not envisage a particular approach to applying its principles, but rather a dynamic mix to guide business on a global scale. The strategies may include mandatory and voluntary measures, ranging from authoritative guidance for business, and positive incentives, to sanctions and appropriate forms of liability. The scale also varies, ranging from national, regional, to international levels. There are three different categories of domestic legislation that attempt to implement UNGPs.<sup>48</sup>

The first type is the laws that require companies to disclose information regarding their human rights and environmental impacts on certain specific human rights issues. This category includes the California Transparency in Supply Chain Act (CTSCA),<sup>49</sup> UK Modern Slavery Act (UMSA), and the EU Non-Financial Reporting Directive (ENFRD).<sup>50</sup> CTSCA requires every business entity in California with worldwide gross receipts of more than US 100 million dollars to disclose their efforts to eradicate slavery and human trafficking from their supply chains. However, UMSA only requires commercial organizations to prepare slavery and human trafficking statements. The ENFRD also fall within the category of mandatory disclosure in which the company shall provide the information regarding a non-financial statement containing information about the development, performance, position, and impact of their activity relating to environmental, social, and employee-related matters; respect for human rights; anti-corruption; and bribery-related matters.<sup>51</sup>

Furthermore, whereas the laws mentioned above require companies to report the risk of human rights impact through their supply and contracting chains, an HRDD standard and liability conditions for the parent or leading companies are not introduced. Indeed, these mandatory disclosure requirements make it more difficult for companies to argue that they did not know or could have known about the adverse impacts.<sup>52</sup> However, since they do not clarify any

48 Nicolas Bueno, 'The Swiss Popular Initiative on Responsible Business: From Responsibility to Liability' in Enneking et al. (eds), *Business Operations and the Law: Providing Justice for Corporate Human Rights Violations in Global Value Chains* (Routledge 2019) 2.-24.

49 California Transparency in Supply Chains Act 2010.

50 EU Directive 2014/95 of 22 October 2014.

51 EU Directive 2014/95 of 22 October 2014.

52 Nicolas Bueno, 'Corporate Liability for Violations of the Human Right to Just Conditions of Work

HRDD standards and conditions of liability, they may not significantly reduce the uncertainty regarding the outcomes of transnational litigation for corporate abuses, leading to the ‘tick-box’ effect for their disclosure requirements.

The second category requires a more comprehensive exercise of substantive due diligence in specific sectors of human rights issues without providing liability conditions once harm occurs. This category includes the EU Timber Regulation (EU-TR), the EU Conflict Minerals in Supply Chain Regulation (EU-CMSCR), and the Dutch of Child Labour Due Diligence Act.<sup>53</sup> EU-CMSCR, for instance, requires some companies to submit a report on the measures taken to exercise due diligence supply chain of minerals. The rule of implementation specifies the due diligence standard, which should follow the OECD’s Due Diligence Guidance for a Responsible Supply Chain of Minerals from Conflict-Affected and High-Risk Areas.<sup>54</sup> In the same vein, Dutch of Child Labour Due Diligence Act companies must exercise due diligence in the child labor issue by which ILO-IOE Child Labour Guidance Toll for Business becomes the standard of the rule.

The inclusion of a standard of conduct that companies must adopt would make companies liable once harm occurs. Moreover, those laws impose administrative and criminal sanctions in case of failure to comply with the obligations as the enforcement mechanism’s purpose is to sanction non-compliance companies in conducting due diligence. Nevertheless, like mandatory disclosure, mandatory due diligence does not provide an effective remedy for affected communities, leaving access to remedy unresolved.<sup>55</sup>

The third category is the law and proposal that not only gives an obligation to exercise due diligence but also provides civil liability regime in case of harm.<sup>56</sup> The laws under this category include the French Duty of Vigilance Law<sup>57</sup> and the Swiss Responsibility Business Initiatives.<sup>58</sup> This category specifies the legal consequences of failing to carry it out, which can take the form of criminal liability

in Extraterritorial Operations’ (2017) 21 IJHR 565.

53 Wet Zorgplicht Kinderarbeid (unofficial translation Dutch Child Labour Due Diligence Act 2015)

54 OECD, ‘OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas’ Third Edition (OP 2016).

55 [Nicolas Bueno](#) and [Claire Bright](#), ‘Implementing Human Rights Due Diligence Through Corporate Civil Liability’ (2020) 69(4) International and Comparative Law Quarterly <<https://ssrn.com/abstract=3689241>> accessed 4 August 2022

56 [Nicolas Bueno](#) and [Claire Bright](#), ‘Implementing Human Rights Due Diligence Through Corporate Civil Liability’, 801.

57 Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre.

58 Chancellerie fédérale, Initiative populaire fédérale ‘Entreprises responsables – pour protéger l’être humain et l’environnement.

or civil liability depending on who must enforce HRDD.<sup>59</sup> Both the laws present a certain degree of similarities which introduce HRDD and environmental due diligence obligations. Nevertheless, the French Duty of Vigilance Law applies a more limited category in determining companies' involvement. It applies cover to the operations of the companies it controls and those of the subcontractors or suppliers with whom the company maintains an established commercial relationship. Meanwhile, the HRDD of the Swiss initiative applies to controlled companies and all business relationships.

The burden of proof is another key feature that distinguishes the French Duty of Diligence and the Swiss Responsibility Business Initiatives. The former burdens the plaintiff to prove that a French company failed to comply with its HRDD regarding its operation with foreign companies, while the latter is up to the controlling company to prove that it conducted HRDD related to its controlled companies.<sup>60</sup> This category has the added advantage of enforcing corporate responsibility that will have a greater potential to drive meaningful changes in corporate behavior.

### **State Duty to Protect from Non-State Actors: Indonesian Context**

According to UNGPs pillar 1, states must protect against rights abuse within their and/or jurisdiction by third parties, including business enterprises. This obligation requires states to manifest it through proactive steps to prevent, investigate, punish, and redress such abuses through effective policy, legislation, regulations, and adjudications.<sup>61</sup> Furthermore, although States are not responsible for human rights abuse by private actors in this case businesses, they may hold accountable under international law, where they fail to take appropriate steps, to prevent, investigate, punish, and redress private's abuse.<sup>62</sup>

The state's duty to protect human rights against non-state actors within their jurisdiction is also grounded in international law (International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Economic, Social, and Cultural Rights, (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR)) and elaborated more by treaty body.<sup>63</sup> Despite the fact that all those listed treaties do not specifically express state duty in regard to business, they impose a generalized

59 Bueno and Bright (n 15) 34.

60 Bueno (n 48) 21.

61 See UNGPs principle 1

62 See Commentary UNGPs principle 1 a. foundational principles.

63 Ruggie (n 31) 27.

obligation to ensure the enjoyment of rights and prevent non-state abuse. For instance, ICERD requires each state's parties to prohibit racial discrimination by "any persons, group or organizations".<sup>64</sup> Another convention that expresses the state obligation to proactively engage with human rights against private entities is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which requires states to take all appropriate measures to eliminate discrimination against women by any "enterprises."<sup>65</sup>

Human Rights Committee (HRC) also elaborates on states' duty to protect. In its general comment, States are not only obliged to protect Covenant rights against their agents but also against acts committed by private entities.<sup>66</sup> Further, the Committee also expresses those states may breach Covenant obligation if they permit or fail to take appropriate measures to prevent, punish, investigate, or redress the harm caused by 'private person' or 'entities'.<sup>67</sup>

In the context of Indonesia, State obligations on human rights are grounded in Indonesia's constitution (The 1945 Constitution of Republic Indonesia). Chapter XI concerning Human Rights mandates the state to protect, fulfill, and promote human rights covering civil, political, economic, social, and cultural rights.<sup>68</sup> Indonesia exclusively guarantees human rights in its constitution as a commitment to the idea that the state is based on the rule of law. Whereas the Indonesian constitution does not explicitly mention corporations responsible for human rights, Justice Saldi Isra, Justice of the Constitutional Court of the Republic of Indonesia, wrote that corporations are also responsible for human rights in addition to states and individuals. The inclusion of corporations to respect human rights, in this case, is driven by the fact that, in regard to economic policy, the state is not a single player who makes decisions in this field, instead involving the interest of business words.<sup>69</sup>

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64 International Convention on the Elimination of All Form of Racial Discrimination (March 1966) Treaty Series 660 Art 2.1(d) "Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization".

65 Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entry into force 3 September 1981) Treaty Series 1249 Article 2 (e). "To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise".

66 HRC, General Comment 31, Nature of General Legal Obligation of States to the Covenant, UN Doc. HRI/GEN/1/Rev/ 8 at 233 para 8.

67 1945 constitution of Republic Indonesia, Chapter XI Article 28I (4).

68 1945 constitution of Republic Indonesia, Chapter XI Article 28I (4).

69 Saldi Isra, 'Peran Mahkamah Konstitusi dalam Penguatan Hak Asasi Manusia Di Indonesia, Jurnal Konstitusi' (2014) 11(3) JMK 11.

Furthermore, in term of its implementation, Indonesia's government bear a constitutional obligation to protect, fulfill, and promote human rights. Several times, the Constitutional Court of the Republic of Indonesia through judicial review has nullified national legislation involving corporations as potential entities that infringe human rights in several areas.<sup>70</sup> Decision Number 55/PUU-VIII/2010 that nullified Law Number 18 of 2004 concerning Plantations ruled that rights to work and to earn livelihood were breached by Plantation companies through the criminalization of disruption of plantation activities. Another decision is 27/PUU-IX/2011, which ruled that Article 65(7) and Article 66(2) Law Number 13 of 2003 concerning employment are unconstitutional because they breached the right to work and earn a decent livelihood stated in Indonesia's constitution. This law introduces a fixed work agreement in the outsourced scheme, which creates work uncertainty for the employee who works in a particular area; thereby, the Constitution Court of the Republic of Indonesia makes it unconstitutional. The two decisions have shown that states, under Indonesia's constitution, are obliged to protect human rights against third parties.

The National Action Plan (NAP) on business and human rights is another indication to measure the state's duty to protect. HRC strongly encourages each country member to have its NAP on Business and Human Rights as a policy document in which a government articulates priorities and actions that it will adopt to support the implementation of international, regional, and national obligations and commitments with regard to a given area or topic.<sup>71</sup> Unfortunately, until this dissertation has been written, Indonesia's NAP is underway.

### **The Changes of Environmental Permit on Job Creation Law**

One of the core issues in Job Creation Law is the significant change in Indonesia's permit regime. The current 'environmental permit' regime would be altered into 'environmental approval', which would be a pre-requirement to secure a business permit.<sup>72</sup> This new permit scheme seeks to convert a range of permit types, including environmental permits, into a single, business permit scheme. Furthermore, this legislation also introduces a risk-based approach to identifying what types of permits businesses need to secure. Four aspects will determine the levels of assessment, encompassing health, safety, the environment, and natural resource utilization. Yet, this law seeks to classify three levels of risk.

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<sup>70</sup> Constitution Court of Republic Indonesia, Decision Number 55/PUU-VIII/2010

<sup>71</sup> UN Working Group on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights (November 2016).

<sup>72</sup> See Law Number 11 of 2020 on Job Creation Art. 21.



a) low risks activities: only Business Identification Number (BIN) is required to secure a business permit at a business with low-risk activities; b) Medium-risk activities: activities that are classified as medium risk will require to have BIN and the Standard Certificate. The definition of a Standard Certificate states that a business person already satisfies the standards before commencing their business; c) High-risk activities: businesses that include this area will be required to secure BIN and the permit.<sup>73</sup>

At first glance, this new approach offers a solution to the complexity of the permit system in Indonesia. Sembiring and Fatimah, however, point out some weaknesses that arise under this mechanism. As the specific criteria of level of risk remain unclear in which will be implemented by Government Regulation (GR), it is possible that activities with significant impact are not considered high-risk activities if the possibility of damage occurs infrequently.<sup>74</sup> It is possible that businesses with high-risk levels will not undergo Environmental Impact Assessment (EIA) procedure, instead only gaining Standard Certificate. Thus, with the lack of adequate standards and unclear categorization of high-risk and significant impacts, the claim that this legislation will boost economic growth without neglecting environmental protection remains doubtful.

Another issue is the alteration of the 'strict liability' concept when environmental damage has occurred. In the context of forestry law, for instance, Job Creation Law changes this provision from 'being responsible' to 'shall prevent and control' forest fires.<sup>75</sup> This alteration eliminates strict liability as the 'responsible' terminology has been changed into 'shall prevent and control'.<sup>76</sup> The Ministry of Environment argues that strict liability can be used to sue corporations causing forest fires by using criminal law or administrative sanctions.<sup>77</sup> This statement asserts that strict liability has been eliminated as the strict liability concept is only known in the field of Civil Liability in Indonesia, not Criminal Liability. Strict liability is pivotal in holding corporations liable since this provision is frequently used for forest fire cases in peatland areas, for instance, when the Bumi Mekar Hijau, Ltd (2015-2016) was found guilty by the High Court of a forest fire.<sup>78</sup>

73 Law Number 11 of 2020 on Job Creation Art. 8-11.

74 Sembiring and Fatimah (n 10) 109.

75 Law No 41 1999 on Forestry Art. 49 "The permit holder shall be responsible for the occurrence of forest fires in its working area". Compared to Job Creation Law Article 37 section 16 "The permit holder shall prevent and control forest fires in its working area" .

76 Sembiring and Fatimah (n 77).

77 Ministry of Environment and Forestry, Frequently Asked Questions on Omnibus Bill on Job Creation, for environment and forestry section, 29th February 2020.

78 Ministry of Environment and Forestry v. Bumi Mekar Hijau, Ltd. Decision No 51/ PDT/2016/PT/

Furthermore, although strict liability provision is retained in Environment Law in Job Creation Law, the phrase “without the need to prove fault” has been removed, leading to less effective strict liability. Under a strict liability regime, three components need to be proved: (i) the activities pose a serious threat to the environment or abnormally dangerous activities, (ii) loss, and (iii) causation.<sup>79</sup> Removing the ‘without fault’ in strict liability provision will raise the difficulty to prove in court. In the recent judgments on forest fires case, judges consider that if judges agree to use strict liability, then generally, they no longer consider ‘the fault’ as explicitly stated in the provision.

### **The Implication of Job Creation Law on Human Rights**

In 2019, in his inauguration speech, Joko Widodo, a newly elected president, pledged five priority development agenda goals; human resource development, infrastructure development, deregulation, bureaucratic reform, and economic reform. All those priorities are designed to attract FDI, which then he announced introducing the ‘omnibus method’ as legal means to deregulate disharmonious regulations. The omnibus method is used to enact law number 11 of 2020 on job creation (hereinafter Job Creation Law).<sup>80</sup> As introduced in this dissertation’s background, this law amended 80 acts ranging from taxation to the education system.

While it is obvious that this law contains 11 cluster issues,<sup>81</sup> this dissertation will focus on simplifying business permits, which affect provisions of environmental regulations. Environmental regulation changes in Job creation would significantly impact human rights, considering that Indonesia relies more on natural resources as national income compared to other sectors.

### **Impact on The Right of Access to Information**

The right of access to information is another affected right upon enactment of the Job Creation Law. The right is an essential foundation for realizing a

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PLG 90–91.

79 Supreme Court Decision of Republic Indonesia No 36/KMA/SK/II/2013 on Environmental Case Handling Guidelines, 2.

80 Karina M. Tehusijarana, “The Main Thing Is Not the Process, but the Result’: Jokowi’s Full Inauguration Speech’ (The Jakarta Post, 20 October 2019) <<https://www.thejakartapost.com/news/2019/10/20/the-main-thing-is-not-the-process-but-the-result-jokowis-full-inauguration-speech.html>> accessed 10 July 2022.

81 Simplification of business Licensing, Investment Requirements, Employment, Research and Innovation, Ease of Doing Business, Land Acquisition, Economic Zones, Protection of MSEs and Cooperatives, Government Investments and Projects, Government Administration, Imposition of Sanctions), see Academic Script for Act Number 11 of 2020 on Job Creation.

democratic society and is seen as a prerequisite for basic human rights fulfillment. Without adequate, clear, and transparent information, the public would hardly be able to participate, and hence it is not easy to seek justice.<sup>82</sup> This right is also mentioned in the General Comment of UN HCR and guaranteed under Indonesia's constitution under Article 28H (1).<sup>83</sup> However, Job Creation Law has reduced its fulfillment of the right of access to information by allowing the public announcement process for environmental decrees to be commenced only when such decrees have been handed down. Thus, the process remains unknown from the beginning of the application process.

Looking more closely, implementing regulation of the Job Creation Law, GR Number 22 of 2021 has given detailed manner through the transmission of announcements on business activity or plan, which does not limit transmission of information only to electronic media, but it shall be delivered in the way that is clear and easily understood. Nevertheless, it does not seem to answer the core issue of accessing information since, under this law, environmental licensing and related documents remain classified as exempted information.

### **Impact on the Right to Participate in the Making of Environmental Decrees**

Job Creation Law also downgrades the right to participate in environmental decision-making. It should be noted that the right of access to participation plays an essential role in ensuring the quality and implementation of oversight in every decision. These rights also enable participants, particularly affected communities, to raise their concerns, be heard, and hold authorities accountable.<sup>84</sup>

In comparison, protection to this right is previously protected in Law Number 32 of 2009 on Environmental Protection. In this Law, parties who are impacted, such as the affected community, environmentalists (including Non-Government Organizations), and other members who are potentially affected were involved in the decision-making process. In this case, public and environmental organizations were involved to be part of the Environmental Impact Assessment (EIA) Appraisal Commission which can be used to say 'no' to an activity or business proposal. Unfortunately, Job Creation Law has reduced this right by narrowing the scope of community members who may be involved. Moreover, GR Number

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82 Jane Holder and Maria Lee, *Environmental Protection, Law, and Policy* (2nd edn, CUP 2007), 86.

83 International Covenant on Civil and Political Rights, Human Rights Committee, General Comment No 34, (CCPR/C/GC/34) 12 September 2011, Art. 19, 'Freedom of opinion and expression', para 19; Constitution of the Republic of Indonesia 1945, Art. 28F

84 Grita Anindarini Widyarningsih and Raynaldo Sembiring, 'Environmental Protection in Indonesia after the Job Creation Law' (2020) 5(2) CJEL 97.

22 Of 3032 makes the definition clear for those located within the boundaries of the EIA study and directly impacted.<sup>85</sup>

All impacted rights described above are prerequisites to ensure the substantive rights (i.e., right to live, right to the highest attainable standard of health, right to adequate housing, right to clean water and fresh air, etc.).<sup>86</sup> This has been emphasized in ICCPR Article 19 and UDHR Article 19, which require the state to provide public access to any government information of public interest. Similarly, governments must assess and disclose foreseeable environmental risks as part of their positive duties to protect, respect, and fulfill various human rights, including any environmental risk caused by government or third-party activity. The change of environmental provisions in Job Creation Law to support business activities has rendered human right violation by corporations likely to occur, which UNGPs seek to prevent and mitigate at the very beginning of the process across business value chains. However, pro-business interest in Job Creation Law seems to oppose that spirit and hurdle human rights fulfillment. The following discussion will thus closely describe the human rights violations by the Indonesian palm oil industry, which is a vital supplier to major global companies.

### Human Rights violation Across Palm Oli Supply Chain

Palm oil is one of the vital commodities for Indonesia, which contributed US\$16.53 billion in 2018; 9.2% of its total exports and 1.6% of GDP, making it the second largest earner after coal.<sup>87</sup> Palm oil also is an essential ingredient to many different end-use products. Nonetheless, it comes with human rights expenses that often must be paid by affected communities and indigenous people. Research conducted by Development Solutions for European Commission listed that there are twenty rights posed by palm oil activities in Indonesia, ranging from ICESCR and ICCPR to ILO.<sup>88</sup> For instance, the direct impact of palm oil's presence and

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85 Government Regulation of Indonesia No. 22 of 2021 on Regulation on Organization of Environmental Protection and Management Art. 29.

86 UN HRC, 'Report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights' (Feb. 18, 2008) UN Doc. A/HRC/7/21 "noting that the rights to information and participation are "both rights in themselves and essential tools for the exercise of other rights, such as the right to life, the right to the highest attainable standard of health, the right to adequate housing and others"; National Human Rights Commission of the Republic of Indonesia, 'Omnibus Law on Job Creation Bill in Human Rights Perspective' (Jakarta 2021).

87 Speechly and Ozinga (n 19).

88 Development Solution, 'Sustainability Impact Assessment (SIA) in support of Free Trade Agreement (FTA) negotiations between the European Union and Republic of Indonesia Draft Interim Report'

expansion in Central Kalimantan Province is the loss of forest, customary land, and people's farmland, which are turned into monoculture palm oil plantations. Many people lost their lands and places for their religious rituals, as happened to the Hindu Kaharingan religion, thus, preventing them from enjoying the right to culture.<sup>89</sup>

Similarly, the intense and expansive palm oil industry has caused environmental damage, such as, among others, deforestation, biodiversity loss, climate change, hindering access to a safe, clean, healthy, and sustainable environment.<sup>90</sup> These environmental conditions are integral to the full enjoyment of broad human rights, including the rights to life, health, food, water, and sanitation. Thus, it can be said that essential human rights will not be fulfilled without an appropriate environment.

Broadly speaking, upstream palm oil companies are directly responsible for human right violation. However, downstream companies also perpetuate human rights abuse by buying palm oil products whose upstream companies violate human rights.<sup>91</sup> At this point, it is equally important to map palm oil value chain networks, so it can be identified who is involved and should be held accountable for human rights violations. Furthermore, this dissertation refers to a report conducted by a coalition of NGOs that investigated ten cases of human rights violations in Indonesia. In terms of downstream companies, there are several large TNCs, most of which are domiciled in the EU, UK, and US, that have bought palm oil from Indonesian companies, and this act reportedly violates human rights. The relationship between upstream producers and suppliers and downstream companies is illustrated as follows:

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(2018), 99.

89 Norwegian Centre for Human Rights (NCHR), 'Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan' (2015) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2596422](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2596422) 81 accessed 22 July 2022.

90 'Report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights' para 27.

91 Griffiths and Jiwon (n 20).

Table 1: Palm Oil Supply Chain Connection



Sources: Forest Peoples Programme

Given the word restrictions, this dissertation will only summarize two business and human rights cases, namely cases two and three. Case number two is linked to PT. Sari Aditya Loka 1 (PT. SAL) in the case of land grabbing that involved violence, intimidation, poisoning, and brutal forced eviction of Indigenous people called Orang Rimba.<sup>92</sup> Deforestation and eviction by monoculture industries have undermined the Orang Rimba’s hunting-based way of life. Affected communities have lost traditional sources of food and income. In terms of the relationship between upstream and downstream companies, PT. SAL 1 continues to supply several TNCs namely Wilmar, PepsiCo, Nestle, Cargill, and AAK despite human rights violations in the Orang Rimba community. In the case of Unilever, PT. SAL 1 was listed in the 2019 supplier list.<sup>93</sup>

The next illustrative case is number three, which involves Golden Agri-Resources (GAR)/ Sinar Mas as the parent company of PT. Kresna Duta Agrindo (PT KDA). PT. KDA is accused of causing extensive damage to community forests and wildlife habitats because their clearing method endangers the Sumatran elephants. In addition, in 2021 mobile armed police shot a local farmer, injuring

92 Steven Sager, ‘The Sky is our Roof, the Earth our Floor: Orang Rimba Customs and Religion in the Bukit Duabelas region of Jambi, Sumatra’ (PhD Thesis, Australian National University 2008) <> accessed 20 July 2022

93 Griffith and Jiwan (n 20) 21.

six people while they were gathering fruits.<sup>94</sup> In fact, in 2020, PT KDA kept supplying Pepsi Co, Cargill, Nestle, and AAK via GAR. Meanwhile, Unilever suspended purchases from GAR in 2015.<sup>95</sup> Even though downstream companies have disclosed these risks in their self-reports system, they still enter business contracts with companies that violate human rights.

In the above cases, the problem persists despite environmental laws and other business permits which, before being amended by the Job Creation Law, provided more protection for the environment and human rights. Thereby, under Job Creation Law regimes, it is predicted that business actors' encroachment on human rights would be more omnipresent and systemic. Moreover, the Job Creation Law has had significant changes in the forestry sector. The law removes the minimum requirement for the provincial government to maintain a forest area of at least 30% previously mandated by Article 18 of the Environmental Law. This change implies the potential for massive land conversion for economic purposes, including palm oil plantations.<sup>96 97</sup>

In addition, the Job Creation Law's key concessions to the palm oil industry effectively legalize the crime of business operations within designated forest areas. Articles 110A and 110B allow plantation operators a grace period of three years to obtain the proper permits by degazetting the forest designation and paying the requisites fines though they had previously committed illegal operations, such as clearing methods that caused wildfire. The alteration from the criminal to the administrative regime in this legislation consequently allows illegal companies to resume their business operation without having to face criminal penalties as long as they pay the fines. Indeed, this provision contradicts the objective of HRDD, which is specifically intended to prevent, mitigate, and address, the risk of human rights adverse impact even before starting the operation because, from the outset, the business practice has been carried out before obtaining a business license which

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94 [Yitno Suprpto and Suryadi](https://www.mongabay.co.id/2020/04/04/nasib-gajah-di-sorolangun-dan-balai-raja-kala-habitat-terus-tergerus/), 'Nasib Gajah Di Sorolangun Dan Balai Raja, Kala Habitat Terus Tergerus' (Mongabay Environmental News 4 April 2020) <<https://www.mongabay.co.id/2020/04/04/nasib-gajah-di-sorolangun-dan-balai-raja-kala-habitat-terus-tergerus/>> accessed 23 July 2022.

95 Griffith and Jiwan (n 20) 24.

96 Maskun and others, 'Environmental Standard of Indonesian Palm Oil Post Omnibus Law Ratification' (International Conference on Climate, 2021).

97 [Hans Nicholas Jong](https://news.mongabay.com/2021/05/indonesian-omnibus-laws-whitewash-of-illegal-palm-oil-shocks-its-architects/), 'Indonesian Omnibus Law's "Whitewash" of Illegal Palm Oil Shocks Its Architects' (Mongabay Environmental News, 10 May 2021) <<https://news.mongabay.com/2021/05/indonesian-omnibus-laws-whitewash-of-illegal-palm-oil-shocks-its-architects/>> accessed 2 August 2022. See also Law Number 11 of 2020 on Job Creation article 110A and 110B.

in the process involves due diligence.

In addition, the relaxation of business permits and degradation of human rights protection in Indonesia as a host country, in turn, undermines the country's efforts to prevent human right violation for companies not only in their own operations but also their subsidiaries, and partners. The explanation above demonstrates that although companies with a base in the EU, UK, and US, in this case, Unilever and Cargill are required by Law (UMSA and CTSCA) to carry out HRDD in different measures and have human rights policy in their business operations, the implementation of HRDD seems to fail to address human rights problem in the palm oil sector. Not to mention, these companies still maintain their business relationships with suppliers who commit human rights abuse, rendering HRDD less effective.

Thus, the effectiveness of HRDD depends not only on home countries in adopting UNGPs to national law but also on the same measures initiated by corporations. In this case, introducing HRDD in business contracts can be another innovation to force business partners to respect human rights.<sup>98</sup> Other than that, the imposition of liability on the companies that does not comply with the law as introduced in French Duty of Due Diligence and Swiss Responsibility Business Initiatives will make HRDD more forceful given that most current HRDD initiatives do not entail legal consequences.<sup>99</sup>

### Evaluating the Effectiveness of Human Rights Due Diligence

Since the adoption of UNGPs, the effectiveness of HRDD in preventing human rights abuse by businesses across their value chains has been in question, especially business commitment and state leadership.<sup>100</sup> Further detail, most companies do not demonstrate practices that meet the requirements set by UNGPs. At the same time, states expected to orchestrate the implementation of HRDD to private actors, either voluntary or mandatory, failed to do their duty to protect human rights.<sup>101</sup> Therefore, this chapter seeks to evaluate to what extent businesses effectively adopted HRDD, which leads to the notion to hold them liable if they

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98 John Gerard Ruggie and John F. Sherman, 'Adding Human Rights Punch to the New Lex Mercatoria: The Impact of the UN Guiding Principles on Business and Human Rights on Commercial Legal Practice' (2015) 6(3) JIDS 455.

99 Robert McCorquodale and Justine Nolan, 'The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses' (2021) 68 (3) NILR, 455.

100 Robert McCorquodale and Justine Nolan, 'The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses' (2021), 459.

101 UN GA 'Working Group on the issue of human rights and transnational corporations and other business enterprises' (16 July 2018) UN Doc A/73/163



fail to do so,<sup>102</sup> and also evaluate states' action in ensuring businesses undertake HRDD amidst rising views to strengthening UNGPs through 'hard law'.<sup>103</sup>

### HRDD effectiveness and business

The starting point here is that the idea of introducing HRDD in UNGPs is to draw a compromise between strong regulation of business on the one hand and deregulation on the other by adopting a self-regulatory arrangement.<sup>104</sup> Yet such a mechanism does not seem to meet the expectation that the company will comply with and implement the HRDD according to UNGPs. This undesirable outcome has been justified by a recent study of Corporate Human Rights Benchmark (CHRB) showing that "only minority of companies demonstrate the willingness and commitment to take human rights seriously [...] the disconnect between commitment and processes on the one hand actual performance and results on the other hand". Even more outstanding are the outcomes of HRDD, where a significant number (over 66% in some sectors) of businesses scored 0% in having and operating the HRDD process, and the lowest areas of improvement related to the HRDD process.<sup>105</sup>

One of the indicators is the lack of focus on human rights risk in most current reporting, which is the best result of inadequate communication or, at worst, a reflection of insufficient understanding and management of risk to human rights.<sup>106</sup> Furthermore, too many human rights impact assessments are done as an exercise to tick the box without meaningful engagement with stakeholders, including engagement with vulnerable or at-risk groups and critical voices such as human right defender, workers, consumers, and more. Not to mention, most businesses are mainly reactive instead of proactively identifying potential human

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102 United Nations Office of the High Commissioner of Human Right, 'UN Human Rights "Issues Paper" on legislative proposals for mandatory human rights due diligence by companies' (June 2020) <<https://www.business-humanrights.org/en/latest-news/un-human-rights-issues-paper-on-legislative-proposals-for-mandatory-human-rights-due-diligence-by-companies/>>

103 United Nations Office of the High Commissioner of Human Right, 'UN Human Rights "Issues Paper" on legislative proposals for mandatory human rights due diligence by companies' (June 2020).

104 McCorquodale and Nolan (n 101), 459.

105 Corporate Human Rights Benchmark (CHRB) and World Benchmarking Alliance (WBA), 'COVID-19 and Human Rights: Assessing the Private Sector's Response to the Pandemic Across Five Sectors' (2021) <<https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/>> accessed 1 August 2022.

106 For more detailed points on the evaluation current UNGPs refer to Working Group on the issue of human rights and transnational corporations and other business enterprises' para, 25-30.

rights impacts before they arise. In the context of supply chain management, it is difficult for a company to undertake HRDD beyond tier-one companies.<sup>107</sup> Only a few companies require their suppliers in the tiers below to fulfill responsibility to respect human rights.

These indicators have led to the conclusion that, due to limited reference to the interplay between legal liability and the degree of companies' involvement, UNGPs leave an issue that some scholars call the 'accountability gap' in business and human rights.<sup>108</sup> This inadequate measure is considered to make the implementation of HRDD less effective. Thus, on 26 June 2014, HRC established the Open-ended Intergovernmental Working Group (OEIWG) with a mandate to 'elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.'<sup>109</sup> In its second revised draft, Article 8(7) stipulates those states should provide for the liability of a natural or legal person for its failure to prevent another person with whom it has a business relationship from causing or contributing to human rights abuses to third parties.<sup>110</sup> The formulation of 'failure to prevent' does not allow a company to argue that it had formally complied with its due diligence obligation by simply conducting a tick-box exercise.

Moreover, there is an increasing number of cases law recognizing that liability applies to the parent company upon what their subsidiaries did in violating human rights. Most cases, in particular English and Dutch case laws, acknowledge that parent companies, in certain circumstances, owe a duty of care to those affected by subsidiary activities. The illustration can be found in the case of *Chandler v Cape Plc.* (2012), *Lungowe v Vedanta Resources plc.* (2019), *Eric Barizaa Dooh of Goi and others v. Royal Dutch Shell Plc and Others.* (2015), etc.<sup>111</sup>

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<sup>107</sup> the evaluation current UNGPs refer to Working Group on the issue of human rights and transnational corporations and other business enterprises' para.

<sup>108</sup> UNGPs commentary to Principle 17.

<sup>109</sup> HRC 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights' (14 July 2014) UN Doc A/HRC/RES/26/9.

<sup>110</sup> Open-Ended Intergovernmental Working Group (OEIWG), Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises: Second Revised Draft (6 August 2020) <[https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG\\_Chair\\_Rapporteur\\_second\\_revised\\_draft\\_LBI\\_on\\_TNCs\\_and\\_OBEs\\_with\\_respect\\_to\\_Human\\_Rights.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair_Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf)> accessed 2 August 2022

<sup>111</sup> *Eric Barizaa Dooh of Goi v. Royal Dutch Shell Plc*, Court of Appeal of The Hague (18 December 2015).

### HRDD Effectiveness and States

OEIWG highlight the ineffectivity of HRDD in preventing human rights abuse associated with the states' role in fulfilling their obligation in addressing HRDD implementation. The fundamental issue is that states are not fulfilling their duty to protect human rights such as failing to pass legislation that meets international human rights and labor standards, passing legislation that is inconsistent with human rights protection, and failing to enforce legislation that would protect workers and affected communities. Although some home countries have introduced HRDD or disclosed legislation, such initiatives remain patchy.<sup>112</sup> The enactment of national legislation in some developed countries requiring disclosure of modern slavery and risks to human rights is not supported by the harmonization and coordination between governments, limiting such efforts only in developed countries. In addition, the adoption of NAP for implementing UNGPs has been too slow and usually failed to provide 'concrete action'.<sup>113</sup>

Indonesia's effort in implementing business and human rights policy is only found in ministerial level regulation and recommendations by National Human Rights Commission which are far from adequate to have effective HRDD as outlined in UNGPs. The former was initiated by the Minister of Affairs and Fisheries, which issued a certification system of Human Rights in the fishery industry<sup>114</sup> while the latter proposed a draft of a national guide for preventing, mitigating, and addressing human rights violations by corporations.<sup>115</sup> However, despite having started to regulate human rights issues in the business sector, these initiatives are sporadic and are not established under strong legal standing, such as a national act. Moreover, it is worth mentioning that, politically, the Indonesian government does not prioritize business and human rights in its NAP, years 2021 – 2025, covering only five targeted groups: women, children, disabled, and indigenous people.<sup>116</sup>

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<sup>112</sup> Working Group on the issue of human rights and transnational corporations and other business enterprises, para 32.

<sup>113</sup> To date, only 30 countries which has published NAP since the approval of UNGPs; for further information of NAP See <https://globalnaps.org/>.

<sup>114</sup> Regulation of the Minister of Marine and Fishery of Indonesia No. 35/PERMEN-KP/2015 Concerning Human Rights System and Certification in Fishery Business.

<sup>115</sup> The National Commission on Human rights of Indonesia and Elsam, 'National Action Plan on Business and Human Rights' (May 2017).

<sup>116</sup> Presidential Decree of Indonesia No. 53 of 2021 on National Action Plan of Human Rights, year of 2021-2025.

The slow uptake of business and human rights policy into national policy is arguably rooted in the form of current UNGPs that stand under moral normativity.<sup>117</sup> To accelerate states' business and human rights uptake, there is a need for BHR to be regulated under a treaty that renders states to have a legal obligation to adopt legislations or measures that require corporations to undertake HRDD and hold them accountable for failure to comply as well as allowing victims to access remedy. In this way, the treaty would at least partly compensate for the inability or unwillingness of some states to hold corporations accountable for human rights violations in their national legal systems.<sup>118</sup>

The clearer and stronger obligation upon states is reflected in the Second Revised Draft that mandates State Parties to require business activities to undertake HRDD to identify, assess, prevent, and monitor any actual or potential human rights violations or abuses that may arise 'from their business activities, or their business relationships.'<sup>119</sup> This formulation contains a firm obligation for states to fulfill their duty to protect human rights by businesses. Article 6 (1) stipulates that "state Parties shall regulate effectively the activities of all business enterprises domiciled within their territory or jurisdiction, a transnational character".<sup>120</sup> Furthermore, it asserts that states shall take "all necessary legal and policy measures" to ensure that such business enterprises respect all internationally recognized human rights and prevent and mitigate human rights abuses in their operations.<sup>121</sup> In this sense, states are legally required to take effective actions to tackle human right violation by businesses, including not issuing regulations that weaken the effort of human rights protection.

## Conclusion

Based on the foregoing analysis, the underlying purpose of Job Creation Law, which aims to attract FDI in Indonesia by simplifying, deregulating, and harmonizing 80 national laws through the omnibus method, significantly impacts

117 David Bilchitz, 'A chasm between 'is' and 'ought'? A critique of the normative foundations of the SRSG's Framework and the Guiding Principles' in Surya Deva and David Bilchitz (eds), *Human Rights Obligation of Business Beyond the Corporate Responsibility to Respect?* (CUP 2013), 107.

118 Chiara Macchi, 'A Treaty on Business and Human Rights: Problems and Prospects' in [Nicolás Carrillo-Santarelli](#) and [Jernej Letnar Cernic](#) (eds), *The Future of Business and Human Rights: Theoretical and Practical Considerations for a UN Treaty* (CUP 2018), 66.

119 N Bernaz, Clearer, 'Stronger, Better?' – Unpacking the 2019 Draft Business and Human Rights Treaty' (19 July 2019) <<http://rightsasusual.com/?p=1339>> accessed 3 August 2022

120 Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises: Second Revised Draft Art 6(1)

121 *ibid.*

human rights protection, especially from business actors. Primarily, the changes in environmental permits and removal of strict liability in the environmental cluster would likely increase the risk of human rights violations by business actors. The rights of access to information and participation in making environmental decrees which are essential to achieve substantial rights are potentially degraded.

This shift has negatively affected human rights protection in extractive industries, especially in palm oil sectors, where Indonesia is the biggest global supplier. The elimination of a minimum of 30% of the forestry area and the legalization of illegal business activities within the forestry area in the Job Creation Law would persist in human rights violations by businesses in the upstream level of the palm oil supply chain. This would result in the effort of countries' palm oil consumers to make companies accountable by exercising HRDD far from desirable outcomes, thus persisting human rights violations.

Thereby, it raises questions as to whether the current HRDD regulation in UNGPS is enough to prevent human rights violations. The recent benchmark rulings, national legislations, and international efforts have strengthened the need for clearer and stronger HRDD, which led to establishing treaty instruments of Business and Human Rights, and the parent company's liability. Thus, the concept of treaty regimes will ensure that states have a legal obligation to protect human rights while the liability concept will enforce businesses to respect human rights across the global supply chain.

## References

<https://globalnaps.org/> .

Assegaf F, 'Russia-Ukraine Conflict May Slow down Indonesia's Recovery: Expert' (Antara News, 1 March 2022) <https://en.antaranews.com/news/217757/russia-ukraine-conflict-may-slow-down-indonesias-recovery-expert> accessed 13 June 2022.

Bernaz N, Clearer, 'Stronger, Better? – Unpacking the 2019 Draft Business and Human Rights Treaty' (19 July 2019) <http://rightsasusual.com/?p=1339> accessed 3 August 2022.

Bilchitz D, 'Introduction: Putting Flesh on the Bone What Should a Business and Human Rights Treaty Look Like?' in Surya Deva and David Bilchitz (eds), *Building a Treaty on Business and Human Rights: Context and Contours* (CUP 2017) 1.

- Bilchitz D, 'A chasm between 'is' and 'ought'? A critique of the normative foundations of the SRSG's Framework and the Guiding Principles' in Surya Deva and David Bilchitz (eds), *Human Rights Obligation of Business Beyond the Corporate Responsibility to Respect?* (CUP 2013) 107.
- Bueno N, 'The Swiss Popular Initiative on Responsible Business: From Responsibility to Liability' in Enneking et al. (eds), *Business Operations and the Law: Providing Justice for Corporate Human Rights Violations in Global Value Chains* (Routledge 2019) 2-24.
- Bueno N, 'Corporate Liability for Violations of the Human Right to Just Conditions of Work in Extraterritorial Operations' (2017) 21 IJHR 565.
- Bueno N and Bright C, 'Implementing Human Rights Due Diligence Through Corporate Civil Liability' (2020) 69(4) International and Comparative Law Quarterly <<https://ssrn.com/abstract=3689241>> accessed 4 August 2022.
- California Transparency in Supply Chains Act 2010.
- Chancellerie fédérale, Initiative populaire fédérale 'Entreprises responsables – pour protéger l'être humain et l'environnement.
- Chandler v Cape Plc.* [2012] EWCA Civ 525.
- Constitution Court of Republic Indonesia, Decision Number 55/PUU-VIII/2010.
- Constitution of Republic Indonesia 1945.
- Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entry into force 3 September 1981) Treaty Series 1249.
- Corporate Human Rights Benchmark (CHRB) and World Benchmarking Alliance (WBA), 'COVID-19 and Human Rights: Assessing the Private Sector's Response to the Pandemic Across Five Sectors' (2021) <<https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/>> accessed 1 August 2022.
- Deva S, 'Treating human rights lightly: a critique of the consensus rhetoric and the language employed by the Guiding Principles' in Surya Deva and David Bilchitz (eds), *Human Rights Obligation of Business Beyond the Corporate Responsibility to Respect?* (CUP 2013) 78.

Draft Norms on the Responsibilities on Transnational Corporation and Other Business Enterprises with regard to Human Rights, (August, 26 2003) U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2.

*Eric Barizaa Doob of Goi v. Royal Dutch Shell Plc*, Court of Appeal of The Hague (18 December 2015).

EU Directive 2014/95 of 22 October 2014.

Favotto A and Kollman K, 'When rights enter the CSR field: British firms' engagement with human rights and the UN Guiding Principles' (2022) 23(1) HRR 21-40.

Gerard Ruggie J, The UN Framework "Protect, Respect and Remedy" Framework for Business and Human Rights (2010).

Gerard Ruggie J, 'Business and Human Rights: The Evolving International Agenda' (2007) Corporate Social Responsibility Initiative, Working Paper No. 38 Cambridge, MA: Jhon F. Kennedy School of Government, Harvard University. <[https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/csi/files/workingpaper\\_38\\_ruggie.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/csi/files/workingpaper_38_ruggie.pdf)> accessed 20 June 2022.

Gerard Ruggie J and F. Sherman J, Adding Human Rights Punch to the New Lex Mercatoria: The Impact of the UN Guiding Principles on Business and Human Rights on Commercial Legal Practice' (2015) 6(3) JIDS 455.

Government Regulation of Indonesia No. 22 of 2021 on Regulation on Organization of Environmental Protection and Management.

Griffiths T and Jiwan N, 'Demanding Accountability Strengthening Corporate Accountability and Supply Chain Due Diligence to Protect Human Rights and Safeguard The Environment' (2021) Forest Peoples Programme, TuK Indonesia, PUSAKA, WALHI Riau, WALHI Jambi, and WALHI Sulawesi Tengah [https://www.forestpeoples.org/sites/default/files/documents/210615\\_Demanding%20Accountability%20v10.pdf](https://www.forestpeoples.org/sites/default/files/documents/210615_Demanding%20Accountability%20v10.pdf) accessed 21 June 2022.

Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework A/HRC/17/31.

Holder J and Lee M, *Environmental Protection, Law, and Policy* (2nd edn, CUP 2007) 86.

HRC, General Comment 31, Nature of General Legal Obligation of States to the Covenant, UN Doc. HRI/GEN/1/Rev/ 8 at 233 para 8.

HRC 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights' (14 July 2014) UN Doc A/HRC/RES/26/9.

Indonesian Government, 'Naskah Akademis Undang-Undang Cipta Kerja' [Academic Script for the Law on Job Creation].

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) UNTS 993 (ICESCR).

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

International Convention on the Elimination of All Form of Racial Discrimination (March 1966) Treaty Series 660.

International Labour Organisation (ILO), Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, Series A, No. 3 (2000).

Isra S, 'Peran Mahkamah Konstitusi dalam Penguatan Hak Asasi Manusia Di Indonesia, Jurnal Konstitusi' (2014) 11(3) JMK 11.

Krajewski M and others, 'Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?' (2021) 6(3) BHRJ 550-558.

Lane M, 'Widodo's Employment Creation Law', 2020 What Its Journey Tells Us about Indonesian Politics' (2020) ISEAS-Yusof Ishak Institute, <[https://www.iseas.edu.sg/wp-content/uploads/2021/05/TRS13\\_21.pdf](https://www.iseas.edu.sg/wp-content/uploads/2021/05/TRS13_21.pdf)>.

Law Number 11 of 2020 Job Creation Law.

Law No 41 1999 on Forestry.

Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre.

*Lungowe v Vedanta Resources Plc.* [2019] UKSC 20.

M. Tehusjarana K, "The Main Thing Is Not the Process, but the Result': Jokowi's Full Inauguration Speech' (The Jakarta Post, 20 October 2019) <https://www.>



thejakartapost.com/news/2019/10/20/the-main-thing-is-not-the-process-but-the-result-jokowis-full-inauguration-speech.html accessed 10 July 2022.

Macchi C, 'A Treaty on Business and Human Rights: Problems and Prospects' in Nicolás Carrillo-Santarelli and Jernej Letnar Cernic (eds), *The Future of Business and Human Rights Theoretical and Practical Considerations for a UN Treat* (CUP 2018) 66.

Maskun and others, 'Environmental Standard of Indonesian Palm Oil Post Omnibus Law Ratification' (International Conference on Climate, 2021).

Massicotte L, 'Omnibus Bills in Theory and Practice' (2013) 45(1) CPR 13.

McCorquodale R and Nolan J, 'The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses' (2021) 68 (3) NILR 455.

Muchlinski P, 'Human Rights Framework: Implications for Corporate Law, Governance, and Regulation' (2012) 22(1) BEQ 145-177.

Ministry of Environment and Forestry v. Bumi Mekar Hijau, Ltd. Decision No 51/PDT/2016/PT/PLG 90–91.

Mishra V, 'Indonesia's GDP Growth Set to Slow in Q3 as COVID-19 Curbs Bite' (Reuters, November 3, 2021) <https://www.reuters.com/business/cop/indonesias-gdp-growth-set-slow-q3-covid-19-curbs-bite-2021-11-03/> accessed 11 June 2022

Muchlinski P, 'Human Rights Framework: Implications for Corporate Law, Governance, and Regulation' (2012) 22(1) BEQ 145-177.

National Human Rights Commission of the Republic of Indonesia, 'Omnibus Law on Job Creation Bill in Human Rights Perspective' (Jakarta 2021).

Norwegian Centre for Human Rights (NCHR), 'Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan' (2015) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2596422](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2596422) 81 accessed 22 July 2022.

Oberman R and others 'The Archipelago Economy: Unleashing Indonesia's Potential' (2012) McKinsey Global Institute 17.

OECD, *The OECD Guideline for Multinational Enterprises: Text, Commentary and Clarifications*, OECD Doc. DAFFE/IME/WPG(2000)15/FINAL.

- OECD, 'OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas' Third Edition (OP 2016).
- Presidential Decree of Indonesia No. 53 of 2021 on National Action Plan of Human Rights, year of 2021-2025.
- Ra'ad Al Hussein Z, 'Ethical Pursuit of Prosperity' (Law Gazette 23 March 2015) <https://www.lawgazette.co.uk/commentary-and-opinion/ethical-pursuit-of-prosperity/5047796>.article accessed 26 July 2022.
- Regulation of the Minister of Marine and Fishery of Indonesia No. 35/PERMEN-KP/2015 Concerning Human Rights System and Certification in Fishery Business.
- S. Sundaryani F and Parlina I, 'Indonesia Lags Even Further in Competitiveness Index' (The Jakarta Post, 29 September 2016) <https://www.thejakartapost.com/news/2016/09/29/indonesia-lags-even-further-in-competitiveness-index-.html> accessed 25 July 2022.
- Sager S, 'The Sky is our Roof, the Earth our Floor: Orang Rimba Customs and Religion in the Bukit Duabelas region of Jambi, Sumatra' (PhD Thesis, Australian National Universit 2008) accessed 20 July 2022.
- Schilling-Vacaflor A, 'Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?' (2021) 1(22) HRR 109.
- Sembiring R and Fatimah I, 'Indonesia's Omnibus Bill on Job Creation: a Setback for Environmental Law' (2020) 4(1) CJEL 97.
- Solution Development, 'Sustainability Impact Assessment (SIA) in support of Free Trade Agreement (FTA) negotiations between the European Union and Republic of Indonesia Draft Interim Report' (2018) 99.
- Speechly H and Ozinga S, 'Indonesian–EU palm oil trade and consumption: Improving coherence of EU actions to avoid deforestation and human rights abuses' (2019) Fern [https://www.fern.org/fileadmin/uploads/fern/Documents/2020/EUIndonesia\\_palm\\_oil\\_trade\\_and\\_consumption.pdf](https://www.fern.org/fileadmin/uploads/fern/Documents/2020/EUIndonesia_palm_oil_trade_and_consumption.pdf) accessed 22 July 2022.

Statista, 'Indonesia: Production Volume Palm Oil 2021' (8 March 2022) <https://www.statista.com/statistics/706786/production-of-palm-oil-in-indonesia/> accessed 25 July 2022.

Suprpto Y and Suryadi, 'Nasib Gajah Di Sorolangun Dan Balai Raja, Kala Habitat Terus Tergerus' (Mongabay 4 April 2020) <https://www.mongabay.co.id/2020/04/04/nasib-gajah-di-sorolangun-dan-balai-raja-kala-habitat-terus-tergerus/> accessed 23 July 2022.

Supreme Court Decision of Republic Indonesia Number 36/KMA/SK/II/2013.

The National Commission on Human rights of Indonesia and Elsam, 'National Action Plan on Business and Human Rights' (May 2017).

UK Modern Slavery Act of 2015.

UN GA, 'Report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights' (Feb. 18, 2008) UN Doc. A/HRC/7/21.

UN GA 'Working Group on the issue of human rights and transnational corporations and other business enterprises' (16 July 2018) UN Doc A/73/163.

UN HRC, 'Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights' UN Document A/HRC/RES/26/9.

UN Intergovernmental Workinggroup on Code of Conduct, 'Draft UN Code of Conduct on Transnational Corporations' (12 June 1990) U.N. Doc. E/1990/94.

UN OHCHR, 'UN Human Rights "Issues Paper" on legislative proposals for mandatory human rights due diligence by companies' (June 2020) <<https://www.business-humanrights.org/en/latest-news/un-human-rights-issues-paper-on-legislative-proposals-for-mandatory-human-rights-due-diligence-by-companies/>>.

UN Working Group on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights (November 2016).

Universal Declaration of Human Rights 1948, (adopted 10 December 1948) U.N. Doc. A/810.

Voora V and others, 'Global Market Report: Palm Oil' (2019) Sustainable Commodities Marketplace Series, IISD <https://www.iisd.org/system/files/publications/ssi-global-market-report-palm-oil.pdf> accessed 20 June 2022.

Wet zorgplicht kinderarbeid.

Wegenast T and Beck J, 'Mining, Rural Livelihoods and Food Security: A Disaggregated Analysis of Sub-Saharan Africa' (2019) 130 *World Development* 80.

World Benchmarking Alliance (WBA), Corporate Human Rights Benchmark Report 2020 <https://www.worldbenchmarkingalliance.org/publication/chrb/> accessed 21 June 2022.

<https://globalnaps.org/> .