

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

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ABSTRACT

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

Keywords: Business, Investment, Human Rights.

A. Introduction

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

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

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

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

Amnesty International has exposed numerous cases where corporations exploit weak regulations with devastating effects on people and communities.⁷ These include incidents such as oil spills that infect the cleanliness of water supplies, land contamination from mining waste, and polluted air thanks to industrial facilities.⁸ The ramifications of pollution resulting from corporate activities can significantly affect indigenous peoples, as their way of life and identity are frequently intertwined with their land.⁹ Communities impacted by this pollution are often deprived of information regarding the consequences of company operations, leading to their exclusion from decision-making processes that profoundly impact their lives.¹⁰ Furthermore, they are sometimes subjected to forced evictions¹¹, exacerbating their vulnerability.

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

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

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

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

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

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

8 Ibid.

9 Ibid.

10 Ibid.

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

12 Amnesty International, "Corporate Accountability,"...

corporations perceive that they can exploit poverty with impunity.¹³ Not to mention other important issues within corporations such as gender justice,¹⁴ racial discrimination,¹⁵ equal rights for diffable¹⁶, and other critical issues as well. These situations undoubtedly infringe upon human rights and have severe repercussions on the livelihoods of thousands of individuals.

George G. Brenkert believes that this condition is hindered by the general reluctance of most businesses to address human rights concerns and the numerous challenges businesses face in assuming human rights responsibilities.¹⁷ That said, the conflict between prioritizing human rights or investment is evident on a global scale, including in Indonesia. Following the enactment of Law No. 11 of 2020 on Job Creation¹⁸ (Law on Job Creation), doubts have emerged regarding the government's genuine concern for human rights issues. It appears that the government prioritizes commercial benefits, a perception fueled by its tendency to prioritize economic interests over addressing human rights, environmental issues, and other development objectives.¹⁹

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

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

13 Ibid.

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

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

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

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

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

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

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

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

22 Ibid.

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

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

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

B. Research Method

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

23 Ibid.

24 Ibid.

25 Ibid.

26 Press Release, "Menko Airlangga: Strategi Nasional Bisnis dan HAM Menjadi Alat Efektif dalam Mendukung Iklim Bisnis dan Investasi yang Mengedepankan HAM di Indonesia," The Coordinating Ministry of Economic Affairs, <https://ekon.go.id/publikasi/detail/5467/menko-airlangga-strategi-nasional-bisnis-dan-ham-menjadi-alat-efektif-dalam-mendukung-iklim-bisnis-dan-investasi-yang-mengedepankan-ham-di-indonesia> (accessed 8 March 2024).

27 Ibid.

28 RMBOL Bisnis, "Stranas BHAM Belum Sentuh Pekerja Industri Kelautan dan Perikanan," *Republika* <https://rmbol.id/bisnis/read/2023/10/11/592692/stranas-bham-belum-sentuh-pekerja-industri-kelautan-dan-perikanan> (accessed 9 March 2024).

29 Sri Mamudji *et al.*, *Metode Penelitian dan Penulisan Hukum*, (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005), Page 6.

30 *Ibid*, Page 4.

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

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

C. Discussion

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

1. Investment and Human Rights on Ethical Perspective

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

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

31 John Dewey and James Hayden Tufts, *Ethics*. (New York: H. Holt and Company, 1906).

32 James Griffin, *On human rights*. (New York, Oxford University Press, 2009).

33 See his work as translated in Terence Irwin, *Nicomachean ethics*. (Cambridge: Hackett Publishing, 2019).

34 Enrico Berti, "The Contemporary Relevance of Aristotle's Thought." *Iris: European Journal of Philosophy & Public Debate* 3, no. 6 (2011): 12.

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

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

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

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

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

37 Ibid.

38 Ibid.

39 Ibid.

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

41 Ibid.

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

43 Ibid.

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

45 Ibid.

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

2. United Nations Guiding Principles on Business and Human Rights

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

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

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

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

46 United Nations Working Group on Business and Human Rights, "The UN Guiding Principles on Business and Human Rights: An Introduction," United Nations, https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf (accessed 12 March 2024).

47 Ibid.

48 Ibid.

49 Ibid.

50 Ibid.

51 United Nations Development Program, "United Nations Guiding Principles on Business and Human Rights," United Nations, <https://www.undp.org/sites/g/files/zskgke326/files/migration/in/UNGP-Brochure.pdf> (accessed 12 March 2024).

52 United Nations Office of The High Commissioner of Human Rights, "Guiding Principles on Business and Human Rights," United Nations, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed 12 March 2024).

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

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

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

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

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

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

53 Ibid.

54 Ibid.

55 Ibid.

56 Ibid.

57 Ibid.

58 Ibid.

59 Ibid.

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

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

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

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

Furthermore, in efforts to mainstream business and human rights at the national level, the Indonesian Government established the National Task Force on Business and Human Rights in 2021.⁶⁷ This aligns with the vision and mission of the President of the Republic

60 George G. Brenkert, "Business Ethics and Human Rights..."

61 Ibid.

62 Friedrich Naumann Foundation Indonesia, "Harmonizing Prosperity and Humanity: A Blueprint for Advancing Business and Human Rights in Indonesia," Friedrich Naumann Foundation, <https://www.freiheit.org/indonesia/harmonizing-prosperity-and-humanity-blueprint-advancing-business-and-human-rights> (accessed 12 March 2024).

63 Republika, "Strategi Nasional Bisnis dan HAM Pemerintah Indonesia Dinilai Alami Kemajuan," Republika, <https://news.republika.co.id/berita/s0z0sy456/strategi-nasional-bisnis-dan-ham-pemerintah-indonesia-dinilai-alami-kemajuan> (accessed 12 March 2024).

64 Setara Institute, "Pemajuan Bisnis dan HAM di Indonesia," Setara Institute, <https://setara-institute.org/pemajuan-bisnis-dan-ham-di-indonesia/> (accessed 12 March 2024).

65 Ibid.

66 Attachment of Presidential Regulation No. 60 of 2023 on Business and Human Rights National Strategy.

67 Ibid.

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

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

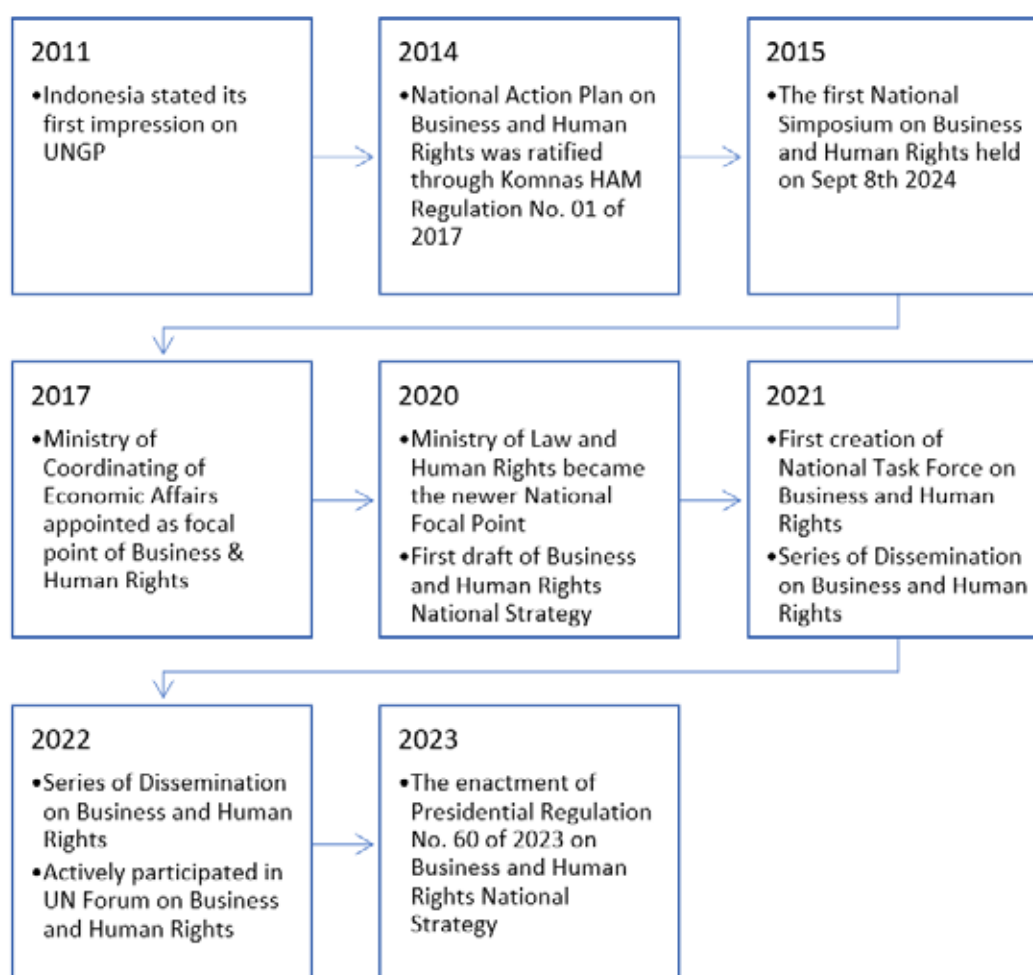


Figure 1 Indonesia's Chronological Milestone to Business and Human Rights Regulation

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

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

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

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

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

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

69 Press Release, "Menko Airlangga: Strategi Nasional..."

70 Hukum Online, "Pemerintah Resmi Luncurkan Perpres Stranas Bisnis dan HAM," Hukum Online, <https://www.hukumonline.com/berita/a/pemerintah-resmi-luncurkan-perpres-stranas-bisnis-dan-ham-lt6548cbe81e290/?page=3> (accessed 12 March 2024).

71 Attachment of Presidential Regulation No. 60 of 2023 on Business and Human Rights National Strategy.

72 Ibid.

73 Ibid.

74 Ibid.

75 Insight, "Indonesia's National Strategy on Business and Human Rights and expectations in relation to human rights due diligence," Herber Smith Freehills, <https://www.herbertsmithfreehills.com/insights/2024-03/>

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

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

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

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

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

76 Ibid.

77 Ibid.

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

79 Insight, “Indonesia’s National Strategy...

80 Ibid.

81 Ibid.

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

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

84 Ibid.

4. Business Ready Initiative

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

Business Ready represents an enhancement and replacement of the World Bank Group's previous Doing Business initiative, which is called Ease of Doing Business (EoDB). EoDB has been one of the most prioritized programs since President Joko Widodo was appointed as President in his first term in 2014.⁸⁷ Unfortunately, EoDB was later suspended in 2021 due to irregularities and integrity issues.⁸⁸ The Government of Indonesia, however, believes that EoDB indicators are still effective tools to measure Indonesian business competitiveness.⁸⁹ As it's still mandated as a priority issue in the National Medium-Term Development Plan (RPJMN) 2020-2024.⁹⁰

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

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

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

86 Ibid.

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

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

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

90 Ibid.

91 Press Release, "World Bank Group Launches..."

92 Ibid.

93 Ibid.

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



Figure 2 B-Ready Indicators

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

5. The Intersection

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

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

94 Ibid.

95 Ibid.

96 Ibid.

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

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

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

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

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

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

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

98 Ibid.

99 Ibid.

100 Ibid.

101 Ibid.

102 Ibid.

103 Ibid.

104 Ibid.

105 George G. Brenkert, "Business Ethics and Human Rights..."

106 Ibid.

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

D. Closing

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

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