

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

Edgar Soonpeel Chang¹

ABNR Counselors at Law

Graha CIMB Niaga, Jl. Jenderal Sudirman, Senayan,
Kec. Kby. Baru, Kota Jakarta Selatan, DKI Jakarta 12190
soonpeel.chang@gmail.com

ABSTRACT

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

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

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

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

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

Keywords: Business and Human rights, UNGP, workplace safety, women's protection.

A. Introduction

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

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

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

2 United Nations Development Programme, "6 Ways Companies Can Integrate Human Rights," <https://www.undp.org/blog/6-ways-companies-can-integrate-human-rights> (accessed July 7, 2024)

3 Article 1, 217 A (III), the *Universal Declaration of Human Rights*, 10 December 1948, United Nations.

4 See United Nations, *Charter of the United Nations*, 24 October 1945.

throughout their operations.⁵

Indonesia, with its dynamic economic growth and significant labor force, presents a compelling case for examining the intersection of corporate activities and human rights. As of 2024, Indonesia's population stands at approximately 277.53 million people, making it one of the most populous countries in the world.⁶ This large population is matched by robust economic performance. In the first quarter of 2024, Indonesia's economy, measured by Gross Domestic Product (GDP) at current prices, reached IDR 5,288.3 trillion, marking a 5.11% increase compared to the first quarter of 2023.⁷ This economic growth underscores Indonesia's expanding market and its increasing integration into the global economy.

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

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

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

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

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

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

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

9 Ibid.

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

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

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

B. Research Method

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

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

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

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

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

C. Discussions

1. Initial Discourse on Human Rights in Indonesia

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

Post-independence, Indonesia's approach to human rights has been characterized by an ongoing effort to balance individual rights with collective responsibilities. The foundation of its legal framework begins with Pancasila, Indonesia's philosophical cornerstone, particularly its Second Precept, which emphasizes "Fair and Civilized Humanity (*Manusia yang Adil dan Beradab*)."¹³ This principle symbolizes and supports the nation's dedication to ensuring that human rights are respected and upheld in all aspects of society.

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

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

12 Id.

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

2. Recent Discourse on Human Rights in Business

a. Global Developments in Human Rights in Business

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

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

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

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

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

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

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

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

In terms of Human Rights in Business, Late John G. Ruggie¹⁷ is presumably the most renowned scholar as he introduced the concepts of international regimes and brought human rights into the global legal discourse of business. As the UN Secretary-General’s Special Representative for Business and Human Rights, he developed a set of principles, the UNGP, and thus, it is often called the “Ruggie principles” or the “Ruggie framework.”¹⁸

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

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

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

16 Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

Furthermore, countries have begun to legislate human rights due diligence as a legal obligation. Starting with France in 2017, several European countries, including Germany, the Netherlands, and Norway, have enacted due diligence laws.²³ In 2022, an EU-wide regulation was also established. The Corporate Sustainability Due Diligence Directive, prepared by the European Commission, will come into effect in 2024, requiring companies operating in or trading with the EU to conduct human rights due diligence.²⁴ Japan has also initiated efforts towards formalization by drafting the "Guidelines for Respecting Human Rights in Responsible Supply Chains, etc." in 2022.²⁵

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

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

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

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

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

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

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

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

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

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

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

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

This alignment was not merely to follow developed countries but also to address unprecedented and urgent domestic demands. For instance, between 2019 and September 2021, the National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia* or “KOMNAS HAM”) received 1,366 complaints of corporate human rights violations, with 435 cases in 2019, 455 in 2020, and 428 in 2021.³⁰ Predominantly, these grievances concern agrarian disputes, labor rights abuses, and environmental degradation, directly infringing upon rights such as land ownership, welfare, and environmental quality. Ultimately, a report from KOMNAS HAM in 2023 consistently highlights that on an annual basis, corporations consistently rank second on the list of entities that complained to KOMNAS HAM, following the police.³¹ Based on these findings, some activists assert that as corporate influence in human rights issues grows, proactive engagement with these entities becomes essential,

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

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

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

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

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

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

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

3. Recent Legislative Advances and Their Implications in Indonesia

a. Adoption of UNGP

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

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

³² Ibid.

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

2023.³⁴³⁵ This regulation serves as a framework for ministries, institutions, and regional governments to plan, implement, and monitor practices that uphold human rights within the business sector. It also provides guidelines for businesses and other stakeholders to ensure human rights are respected. Indonesia's ratification of this regulation makes Indonesia the third country in ASEAN after Thailand and Vietnam and the eighth country in Asia after Thailand, Korea, Japan, Taiwan, Pakistan, Mongolia, and Vietnam to have National Action Plans on Business and Human Rights.³⁶ The initiative aligns Indonesia with the UNGP, thus reflecting a commitment to integrating human rights into corporate governance.

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

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

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

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

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

36 Ibid.

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

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

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

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

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

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

b. Human Rights Due Diligence

1) Framework

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

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

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

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

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

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

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

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

2) Implication

Indonesia can indeed incorporate human rights principles in business, just as it has with CSR. Yet, the inherent conflicts between human rights and business objectives,⁴⁷ coupled with the vague nature of the concept, may cause the legislative implementation of human rights in Indonesian business to remain merely cosmetic. In connection with the aforementioned result of PRISMA, interpreting the numbers requires careful consideration. While the intent behind such measures is commendable, it imposes a substantial burden on businesses. For instance, to qualify for registration, companies must answer 12 main indicator questions and 140 detailed sub-indicator questions, providing documented proof of established measures to uphold human rights. Furthermore, these questions cover a wide range of topics, including company policies on safeguarding employee rights, provisions for labor unions, workplace environment protection, complaint mechanisms, and corporate social responsibility. Preparing responses to the extensive questions and providing all the necessary documentation and follow-up clarifications demands considerable effort and resources. In order to externally submit this type of intensive document about its status, a company should typically verify whether there are no legal or contractual issues by disclosing detailed information and consider whether certain disclosures could impact pending lawsuits and disputes or lead to other managerial failures. Such an extensive set of redundant burdens from the authorities significantly burdens the company's operations. Therefore, it is uncommon for developed countries to impose such onerous jobs on their private companies unless there is a serious allegation against them.

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

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

45 Ibid.

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

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

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

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

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

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

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

c. Protection for Women in Job Place

1) Legal Frame

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

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

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

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

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

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

2) Cases

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

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

Case No. 1		
1	Case No.	Decision No. 848/Pid.Sus/2023/PN Jkt. Pst ⁵⁰
	Parties	Defendant: Andaria Sarah Dewia Prosecutor: General Prosecutor
	Merits of the case	<p>PT Capella Swastika Karya held the license for the Miss Universe Indonesia 2023 event and appointed the Defendant, the Chief Operating Officer of Miss Universe, to manage the event's activities. The Defendant was responsible for ensuring finalist participation, coordinating with liaison officers, reprimanding undisciplined finalists, and executing superior orders.</p> <p>The Defendant was found guilty of electronic-based sexual violence by illegally and without consent taking images of the finalists: (i) Ni Kadek Natasha Lilian (1st Victim); (ii) Lola Nadya Larasati (2nd Victim); (iii) Euginia Livina Irwan (3rd Victim); and (iv) Dinda Alifah Ayudita (4th Victim). The actions included:</p> <ol style="list-style-type: none"> 1. On 1 August 2023, the Defendant conducted an unauthorized body check on the 4 Victims, taking images of their body parts without consent. 2. The Defendant specifically targeted body parts covered in tattoos. 3. A total of 17 images of the 4 Victims were stored on the Defendant's smartphone. 4. The 4 Victims demanded restitution from the Institution for the Protection of Witnesses and Victims.
	Legal Consideration and Decision	<p>The Central Jakarta District Court found that the Defendant's actions fulfilled Article 14 (1) of Law 12/2022, which includes:</p> <ol style="list-style-type: none"> 1. Illegally recording or taking images with sexual content; and 2. Recording without the individuals' consent. <p>The Court sentenced the Defendant to one year of imprisonment, a fine of IDR 100,000,000, and restitution of IDR 738,877,500 for the victims.</p> <p>This high-profile case significantly damaged the company's reputation, leading the Miss Universe Organization to revoke its license to organize future Miss Universe events in Indonesia.</p>
	Explanation	<p>This high-profile case in Indonesia gained significant attention due to the Miss Universe event's publicity. The Court ruled that workplace electronic-based sexual violence occurred within the company. The litigation significantly damaged the company's reputation, and online sources reported that the Miss Universe Organization revoked its license to organize future events.</p>
Case No. 2		

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

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

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

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

is recognized for sexual harassment or assault committed.^{52 53}

3) Implication

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

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

d. Protection for Workers' Health and Safety

1) Legal Frame

Acknowledging the advancements in legal frameworks regarding human rights

52 Korea: On February 6, 2018, Seoul Central District Court (**2016Gadan5234961**) recognized the employer's vicarious liability for a sexual violence incident between employees within the company, holding both the perpetrator and the employer (company) jointly responsible for damages. This ruling is significant as it highlights that merely conducting sexual harassment prevention training is insufficient for an employer to be considered as having fulfilled its duty of care to prevent sexual crimes among its employees.

United States: **Faragher v. City of Boca Raton**, the U.S. Supreme Court held that an employer can be held vicariously liable for the acts of a supervisor whose actions create a hostile work environment, especially if the harassment results in a tangible employment action, such as firing or demotion. This case established important guidelines for employer liability in sexual harassment cases. *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

United Kingdom: The Supreme Court case **Catholic Child Welfare Society v Various Claimants** (The Christian Brothers case) expanded the scope of vicarious liability beyond traditional employment relationships. Here, a religious institute was held liable for the sexual abuse committed by teachers, even though the institute did not formally employ the teachers but were in a relationship "akin to employment" Lewis Silkin, 'Employer not liable for sexual assaults committed by an independent contractor,' 6 April 2020.

Canada: In **Bazley v. Curry**, the Supreme Court of Canada held a non-profit organization liable for the sexual abuse committed by one of its employees. The court emphasized that vicarious liability applies when the employee's wrongful acts are sufficiently connected to the conduct authorized by the employer. *Bazley v Curry*, [1999] 2 SCR 534.

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

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

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

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

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

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

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

Table 3 Key Indonesian laws and regulations regarding OHS

No.	Stipulation	Application	Sanctions
1	Law No. 1 of 1970 on Occupational Safety (Law No. 1/1970)	<p>The Law No. 1/1970 applies to workplaces where:</p> <ul style="list-style-type: none"> a. machines, devices, tools, appliances, equipment, or installations that are dangerous or may cause accidents, fires, or explosions are manufactured, tested, used, or utilized; b. materials or goods that are explosive, flammable, biting, toxic, causing infection, or high temperature are manufactured, processed, used, utilized, traded, transported, or stored; c. construction, repair, maintenance, cleaning, or dismantling of houses, buildings, or other structures are carried out, including irrigation, underground ducts or tunnels, and so forth, or where preparatory works are carried out; d. the following activities are carried out: agriculture, plantation, forest clearing, forest working, processing of timber or other forest products, farming, fisheries, or health sector; e. mining and processing of gold, silver, other metals or metal ores, rocks, gases, oils or other minerals, either on the ground or underground, as well as underwater are conducted; transportation of goods, animals or humans, whether on land, through tunnels, on the water surface, underwater or in the air is conducted; f. loading and unloading of cargo is carried out in ships, boats, piers, docks, stations, or warehouses; g. diving, retrieval of objects, and other works in the water are conducted; h. work is carried out at a height above the ground or water level; i. work is carried under high or low air pressure or temperature; j. work is carried out which involves the danger of being buried by the ground, falling, hit by objects, collapsing or stumbling, drifting or bouncing; k. work is carried out in tanks, wells, or pits; l. temperature, humidity, dust, dirt, fire, smoke, steam, gas, wind, weather, light or radiation, sound or vibration are present or spread; m. trash or waste is disposed of or destroyed; n. transmitting, broadcasting, or receiving radio, radar, television, or telephone are conducted; 	<p>Violations of Law No. 1/1970 may result in criminal penalties, with a maximum imprisonment of 3 (three) months or a maximum fine of Rp100,000.00 (one hundred thousand rupiah).</p> <p>Note that the fine amount is quite small as this is an old regulation, and the Indonesian Government has not yet amended this law.</p> <p>There is no further stipulation on whether this sanction is imposed on the director or other executives of the company concerned.</p>

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

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

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

Table 4 Additional OHS regulations applicable in heavy industry

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

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

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

2) Cases

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

Table 5 Recent cases of punishing Executives for workplace safety accidents

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

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

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

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

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

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

i. ITSS Case⁵⁹

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

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

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

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

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

ii. PT GNI Case⁶⁰

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

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

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

3) Implication

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

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

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

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

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

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

D. Closing

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

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

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

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

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

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

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

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

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

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