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## Access to Judicial Remedies for Palm Oil Workers Under Poor Working Conditions in Indonesia

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### Abstract

Most palm oil workers in Indonesia are employed as temporary daily workers. Their situations are prone to human rights violations ranging from the right to fair working conditions to the freedom of association. Under international law, palm oil workers should have the right to remedies for these human rights violations. The third pillar of the United Nations Guiding Principles on Business and Human Rights (UNGPs) provides that remedies for victims of business-related human rights violations can be accessed through judicial or non-judicial means. Under Indonesian Law, palm oil workers working under poor conditions can access their remedy through judicial mechanisms, such as the Industrial Relations Court, Civil Court or Criminal Court. However, current Indonesian Law does not provide adequate access to remedies for palm oil workers in Indonesia because the law does not provide the obligation to provide remedies under the UNGPs. Therefore, these palm oil workers do not have adequate access to a judicial remedy. Palm oil workers in remote areas face legal, procedural, and practical barriers in obtaining remedies. This article aims to find the judicial avenues these workers could use to access remedies and overcome their challenges.

**Keywords:** Human Rights; Business; Industrial Relations Court; Civil Court; Criminal Court.

### Introduction

The palm oil plantation industry requires extensive labour<sup>1</sup> and has led to the exploitation of workers on many palm oil plantations.<sup>2</sup> Many workers on the

<sup>1</sup> Institute for ECOSOC Rights, 'Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan' (2015) 85 <[www.jus.uio.no/smr/english/about/id/docs/indonesia/report-palm-oil-industry-and-human-rights-2015.pdf](http://www.jus.uio.no/smr/english/about/id/docs/indonesia/report-palm-oil-industry-and-human-rights-2015.pdf)> accessed 8 March 2020.

<sup>2</sup> Tobias Schleicher and others, 'Production of Palm Oil in Indonesia Country-Focused Commodity Analysis in the Context of the Bio-Macht Project' (2019) <[www.oeko.de/fileadmin/oekodoc/BioMacht-palm-oil-report.pdf](http://www.oeko.de/fileadmin/oekodoc/BioMacht-palm-oil-report.pdf)> accessed 8 March 2020.

plantations are employed as precarious workers without any contractual relationship with the company.<sup>3</sup> Indonesia is the world's largest palm oil producer,<sup>4</sup> and 70% of palm oil workers have been employed as precarious casual workers for years.<sup>5</sup> This employment status usually amounts to poor working conditions, such as lack of protection from termination, overtime work, low wages, inadequate social and health protection, and denial of freedom of association.<sup>6</sup> Some workers are penalised if they fail to meet the targets, forcing them to work overtime to compensate for the missed targets or fear losing their jobs.<sup>7</sup> These practices can lead those workers to be at risk of forced labour.<sup>8</sup> In this way, palm oil plantations workers in Indonesia face poor working conditions.

In several companies in Sumatera and Kalimantan, some workers remain temporary workers for years without any employment agreement. In a company in Sumatera (Company A), casual workers did not get any permanent employment agreement after working for more than three months.<sup>9</sup> In another company in Sumatera (Company B), a subsidiary of a multinational company from Singapore, some plantation maintenance workers have been daily labourers for 20 years without

<sup>3</sup> Cambridge Dictionary, 'Precarious Employment: A Situation in which Someone Works in a Job that May Not Be Permanent Because It Is a Temporary Contract, Is in an Industry that Is Experiencing Financial Problems, Etc' (*Tilburg University*) <<https://dictionary-cambridge-org.tilburguniversity.idm.oclc.org/dictionary/english/precarius-employment>> accessed 8 April 2020.

<sup>4</sup> Green Commodities Programme, 'Country Factsheet Indonesia Palm Oil' (2014) <[www.undp.org/content/dam/gp-commodities/docs/Country\\_Factsheets/INDONESIA\\_PALM\\_OIL.pdf](http://www.undp.org/content/dam/gp-commodities/docs/Country_Factsheets/INDONESIA_PALM_OIL.pdf)> accessed 14 March 2020.

<sup>5</sup> Redaksi WE Online/Ant, '70 Perten Pekerja Di Perkebunan Sawit Buruh Harian Lepas Rabu, 23 November 2016, 00:01 WIB' (*Warta Ekonomi.co.id*, 2016) <[www.wartaekonomi.co.id/read121311/70-persen-pekerja-di-perkebunan-sawit-buruh-harian-lepas.html](http://www.wartaekonomi.co.id/read121311/70-persen-pekerja-di-perkebunan-sawit-buruh-harian-lepas.html)> accessed 30 June 2020.

<sup>6</sup> Jane Bates, 'The Human Cost of Conflict Palm Oil Revisited' (2017) 4 <[www.oeko.de/fileadmin/oekodoc/BioMacht-palm-oil-report.pdf](http://www.oeko.de/fileadmin/oekodoc/BioMacht-palm-oil-report.pdf)> accessed 8 March 2020.

<sup>7</sup> Schleicher and others (n 2) 4.

<sup>8</sup> Fair Labor Association for the Consumer Goods Forum, 'Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia' (2018) <[www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia\\_web.pdf](http://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf)> accessed 8 March 2020.

<sup>9</sup> RSPO, 'Complaints Panel's Decision' 1 <<https://ap8.salesforce.com/sfc/p/#90000000Yo-Ji/a/90000000PYaf/6mJ.T1HSMNHdkSdhiOT8z3ldAHk8eJ6fHGUElpz9jB0>> accessed 20 May 2020.

a contract.<sup>10</sup> Similarly, in a company in Kalimantan (Company C), the workers are daily workers without a contract.<sup>11</sup> The lack of a proper employment agreement leads to job insecurity.<sup>12</sup>

Workers reportedly work more than the standard working hours for this industry. Indonesian Law No 13/2003 regarding Labour Law (Labour Law) stipulates the maximum working hours are 40 hours per week.<sup>13</sup> Moreover, the Labour Law regulates that the normal working hours are 7 hours per day for 6 working days or 8 hours per day for 5 working days in a week.<sup>14</sup> Workers who work more than 40 hours are entitled to overtime.<sup>15</sup> However, in practice, the working hours in Indonesia's palm oil plantations exceed the weekly maximum. In Company A, the additional working time reaches 3 hours a day or 14 hours per week during the peak crop season.<sup>16</sup> Those workers did not receive any overtime; instead, they had to work overtime to compensate for their missed targets, a practice that can lead to forced labour.<sup>17</sup>

The Labour Law forbids employers from paying workers less than minimum wage.<sup>18</sup> Furthermore, the law requires that piece-rate workers be paid at least minimum wage if they fulfil the ordinary working hours, even if their actual daily wage is below minimum wage.<sup>19</sup> If workers did not meet the company's targets, they were still entitled to minimum wage. Nevertheless, Indonesia's palm oil workers are mostly paid below the standardised minimum wages if they fail to meet the targets despite working ordinary working hours. Casual workers in Company A

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<sup>10</sup> Vincent Kiezebrink, 'Palming Off Responsibility, Labor Rights Violations in the Indonesian Palm Oil Sector' 19 <[www.cnvinternationaal.nl/\\_Resources/Persistent/494a6d41ea-4525468b46072a02e31f21e85a59c6/CNVI-0118%20Palmolie%20Indonesie-rapport-Low%20Res.pdf](http://www.cnvinternationaal.nl/_Resources/Persistent/494a6d41ea-4525468b46072a02e31f21e85a59c6/CNVI-0118%20Palmolie%20Indonesie-rapport-Low%20Res.pdf)> accessed 23 June 2020.

<sup>11</sup> Institute for ECOSOC Rights (n 1).

<sup>12</sup> Kiezebrink (n 10).

<sup>13</sup> Indonesian Law No 13/2003 regarding Labour Law art 77 (Labour Law).

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*[78].

<sup>16</sup> RSPO (n 9).

<sup>17</sup> Fair Labor Association for the Consumer Goods Forum (n 8).

<sup>18</sup> Labour Law (n 13) art 90.

<sup>19</sup> *ibid.*[157].

earn a maximum daily wage of IDR 78,600 (USD 5.57),<sup>20</sup> less than the standard IDR 80,480 (USD 5.71)<sup>21</sup> daily district-wide minimum wage.<sup>22</sup> Palm oil workers in Company B only receive a salary of IDR 2.32 million (USD 163.8), while the regency minimum wage is IDR 2.69 million (USD 189.9).<sup>23</sup> Similarly, workers in Company C only obtain IDR 68,000 (USD 4.8)<sup>24</sup> per day or IDR 1.76 million (USD 124) per month, which is also below minimum wage.<sup>25</sup>

Palm oil workers in Indonesia also lack sufficient health protection. Article 35 of the Labour Law stipulates that the employer should provide health and safety protections to the workers.<sup>26</sup> Nevertheless, in Company A, almost all casual daily workers did not receive health insurance from the company.<sup>27</sup> In Company B, the chemical substance in the plantation affected the workers' health.<sup>28</sup> Similarly, Company C does not provide any healthcare facilities for the workers.<sup>29</sup> These companies have violated their obligation to provide health and safety protections to their workers.

In many cases in Indonesia, palm workers' freedom of association is also denied. Article 104 of the Labour Law provides that every worker has the right to form or be a member of a labour union. In Company A, incidents of intimidation of union representatives weakened the trade unions.<sup>30</sup> The palm workers in Company B were afraid to join the labour union because it might cause them to be laid off. The workers in Company C do not have a labour union.<sup>31</sup> The workers in all three companies lack the freedom of association.

The abovementioned issues form the basis for several labour rights violations,

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<sup>20</sup> Based on the 24 June 2020 currency exchange rate of USD 1 = IDR 14,175.

<sup>21</sup> *ibid.*

<sup>22</sup> RSPO (n 9).

<sup>23</sup> Kiezebrink (n 10).

<sup>24</sup> Institute for ECOSOC Rights (n 1).

<sup>25</sup> *ibid.*[133].

<sup>26</sup> Labour Law (n 13) art 35.

<sup>27</sup> RSPO (n 9).

<sup>28</sup> Kiezebrink (n 10).

<sup>29</sup> Institute for ECOSOC Rights (n 1).

<sup>30</sup> RSPO (n 9).

<sup>31</sup> Institute for ECOSOC Rights (n 1).

such as the right to fair working conditions and wages,<sup>32</sup> the right to social security<sup>33</sup> and the right to healthy and comfortable working conditions.<sup>34</sup> There are also violations of the human rights provided in the International Covenant on Civil and Political Rights (ICCPR)<sup>35</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>36</sup> such as the right to favourable and just conditions of work,<sup>37</sup> the right to freedom of association,<sup>38</sup> the right to health and safety<sup>39</sup> and the right to be free from forced labour.<sup>40</sup>

Workers at palm oil plantations have difficulty finding adequate access to remedies under Indonesian law. The Indonesian government does not make proper reparations for the victims of human rights violations perpetrated by palm oil companies. Indonesia's government does not play a significant role in resolving this issue,<sup>41</sup> and the lack of government supervision amplifies this situation.<sup>42</sup> The plantation fields are located far from the central government, which causes geographical limitations.<sup>43</sup> The weak Indonesian legal system and the unavailability of specific laws to resolve human rights violations worsen the situation. As a result, workers at palm oil plantations have difficulty finding adequate access to remedies under Indonesian law.<sup>44</sup>

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<sup>32</sup> ILO, 'ILO Constitution' (*NORMLEX Information System on International Labour Standards*) <[www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:-NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:-NO)> accessed 14 July 2020.

<sup>33</sup> *ibid.*

<sup>34</sup> ILO, 'Promotional Framework for Occupational Safety and Health Convention (No 187)' (2006).

<sup>35</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 <[www.refworld.org/docid/3ae6b3aa0.html](http://www.refworld.org/docid/3ae6b3aa0.html)> (ICCPR).

<sup>36</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 <[www.refworld.org/docid/3ae6b36c0.html](http://www.refworld.org/docid/3ae6b36c0.html)> (ICESCR) accessed 14 July 2020.

<sup>37</sup> *ibid.*[7].

<sup>38</sup> ICCPR art 22; ICESCR, art 8; ILO Convention No 87, 'Freedom of Association and Protection of the Right to Organize Convention' (1948).

<sup>39</sup> *ibid* art 7 [b].

<sup>40</sup> *ibid* art 8 [a].

<sup>41</sup> Institute for ECOSOC Rights (n 1).

<sup>42</sup> Sumondang, 'Online Social Dialogue, Palm Oil Workers Coalition in Sumatera Region, COVID-19 Impact to Palm Oil Workers, OPPUK, SERBUNDO, Koalisi Buruh Sawit' (*Disnaker Sumatera Utara (Regional Labor Office)*).

<sup>43</sup> *ibid.*

<sup>44</sup> RAN, 'The Human Cost of Conflict Palm Oil Revisited' (2017).

Several international guidelines and laws refer to access to remedies, including the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA);<sup>45</sup> the ICCPR;<sup>46</sup> the United Nations Human Rights Basic Principles and Guidelines on the Right to a Remedy and Reparation or Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Guidelines);<sup>47</sup> Ruggie's 'Protect, Respect and Remedy' Framework;<sup>48</sup> and the United Nations Guiding Principles on Business and Human Rights (UNGPs).<sup>49</sup> Under the ICCPR, States have the responsibility to provide remedies to individuals or people who suffer harm due to human rights violations.<sup>50</sup> Indonesia is a party to the ICCPR, so it must implement access to remedies in national legislation and law.<sup>51</sup> Recently, the obligation to provide remedies has shifted to non-State actors such as corporations, as provided under the UNGPs.<sup>52</sup> Thus, when a business entity violates its workers' rights, the Indonesian government should bear the burden of redress by providing sufficient access to remedy.

Remedies can take the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>53</sup> Furthermore, under the UNGPs, remedies could be accessed through judicial, administrative, legislative or other

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<sup>45</sup> ILC, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) UN Doc A/56/10 <[https://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)> accessed 13 May 2020.

<sup>46</sup> ICCPR (n 35).

<sup>47</sup> UNHR, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (2005) <[www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx](http://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx)> accessed 13 April 2020 (UN Guidelines).

<sup>48</sup> John Ruggie, 'Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development Protect, Respect and Remedy: A Framework for Business and Human Rights' (2008) <[www.business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf](http://www.business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf)> accessed 13 April 2020.

<sup>49</sup> UNHR, 'Guiding Principles on Business and Human Rights' (2011) <[www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr\\_eN.pdf](http://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf)> accessed 20 May 2020.

<sup>50</sup> ICCPR (n 35).

<sup>51</sup> *ibid.*

<sup>52</sup> UNHR, 'Guiding Principles on Business and Human Rights' (n 49).

<sup>53</sup> United Nations (n 45).

appropriate means.<sup>54</sup> Judicial mechanisms can be accessed through courts, while non-judicial mechanisms can be implemented through the National Human Rights Institution (NHRI), arbitration or mediation.

Despite being the largest exporter of palm oil in the world, Indonesia has problems related to the human rights violations of palm oil workers who work under poor working conditions.<sup>55</sup> This research aims to map and evaluate the current access to remedies for palm oil workers in Indonesia using international and domestic laws. It asks the following question: to what extent do the palm oil workers on palm oil plantations in Indonesia have access to remedies for poor working conditions under international and Indonesian law?

Literary research was conducted to evaluate the current access to remedies within the Indonesian legal framework. Indonesian law and relevant international conventions ratified by Indonesia were used as the primary resources. Qualitative data were used by using secondary legal materials such as books, academic journals and other relevant documents to support the arguments. Several reports were also used to illustrate several labour rights violations of palm oil workers in Indonesia.<sup>56</sup>

There is limited official data on the poor working conditions in the palm oil industry.<sup>57</sup> Therefore, reports by academics, non-governmental organisations (NGOs) and trade unions have been used in this study. The author interviewed Sawit Watch and Trade Union Research Centre (TURC) to obtain facts about the obstacles that palm oil workers face in accessing remedies.<sup>58</sup> Those NGOs published their studies on palm oil workers. Interviews with the Indonesian Plantation Trade Union (SERBUNDO) were conducted to confirm the current findings directly from the workers' perspective. Interviews with the Indonesian NHRI or *Komisi Nasional*

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<sup>54</sup> UNHR, 'Guiding Principles on Business and Human Rights' (n 49).

<sup>55</sup> Daniel Workman, 'Palm Oil Exports by Country' (*World's Top Exports*, 2020) <[www.worldstopexports.com/palm-oil-exports-by-country/](http://www.worldstopexports.com/palm-oil-exports-by-country/)> accessed 9 July 2020.

<sup>56</sup> Institute for ECOSOC Rights (n 1).

<sup>57</sup> UNICEF, 'Palm Oil and Children in Indonesia Exploring the Sector's Impact on Children's Rights' (2016) <[www.unicef.org/indonesia/media/1876/file/Palm%20oil%20and%20children%20in%20Indonesia.pdf](http://www.unicef.org/indonesia/media/1876/file/Palm%20oil%20and%20children%20in%20Indonesia.pdf)> accessed 8 March 2020.

<sup>58</sup> Alih Aji Nugroho, 'Ironi Di Balik Kemewahan Industri Perkebunan Kelapa Sawit' (2018) 8 *Jurnal Pembangunan Dan Kebijakan Publik*. [24].



*Hak Asasi Manusia* (Komnas HAM) were conducted to obtain the government's and human rights institutions' perspectives.

### Access to Remedies for Palm Oil Workers in Indonesia

This chapter elaborates on access to remedies under international law and business and human rights law. Then, this chapter discusses the existing state-based mechanism in Indonesia. Access to remedies for Indonesian palm oil workers as provided by Indonesian law is presented. Indonesian law provides two remedy mechanisms for workers: (1) a state-judicial mechanism through the Industrial Relations Court, Civil Court and Criminal Court, and (2) a non-judicial mechanism through the bipartite and tripartite mechanism and the NHRI.

#### A. Access to Remedies Under International Law

Access to remedies is a fundamental right for the adequate protection of all other human rights.<sup>59</sup> However, there is no precise definition of what constitutes access to remedies. *Black's Law Dictionary* defines 'remedy ... [as] the means by which the violation of a right is prevented, redressed, or compensated.'<sup>60</sup> The Human Rights Committee (HRC) highlights that the right to obtain remedy is the first step when obtaining reparation of injuries.<sup>61</sup> Therefore, access to remedies is a path to redressing an injury<sup>62</sup> when a human right is violated.

Under international law, the obligation to provide an effective remedy can be found in several ARSIWA that stipulate States have an obligation to make a full reparation as a result of an internationally wrongful act conducted by the State.<sup>63</sup> As discussed in the first chapter, the types of reparation and remedy include

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<sup>59</sup> International Commission of Jurists, *Universal Right to A Remedy Guidelines, A Practitioner Guide, Revised Edition* (2018).

<sup>60</sup> The Law Dictionary, 'Remedy' <<https://thelawdictionary.org/>> accessed 13 April 2020.

<sup>61</sup> International Commission of Jurists (n 60).

<sup>62</sup> International Commission of Jurists, 'The Right to a Remedy and Reparation for Gross Human Rights Violations, Revised Edition' (2018) 52 <[www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf](http://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf)> accessed 13 April 2020.

<sup>63</sup> ILC (n 45).



restitution, compensation, satisfaction, rehabilitation and a guarantee of non-repetition.<sup>64</sup> Restitution shall be given to restore the victims' right to the original situation before the violation.<sup>65</sup> Compensation entails providing remedies to repair damages that usually can be measured economically.<sup>66</sup> Satisfaction covers a broad range of remedies that cannot be fulfilled under restitution and compensation.<sup>67</sup> Rehabilitation can be provided to victims in the form of medical or psychological, legal and social services.<sup>68</sup> Last, the guarantee of non-repetition is provided to ensure that human rights abuses do not occur anymore.<sup>69</sup>

Access to remedies can also be found in several human rights instruments.<sup>70</sup> Primarily, the right to an effective remedy is stipulated in the Universal Declaration of Human Rights.<sup>71</sup> Under the ICCPR, when human rights violations occur within the jurisdiction of a State, that State should ensure that the victims whose rights are violated shall have an effective remedy by accessing judicial, administrative, legislative or other competent authorities available in that State.<sup>72</sup> Moreover, the State has to ensure the authorities are enforcing the remedies.<sup>73</sup> The HRC further explains that administrative means are essential to investigate allegations of violations 'promptly, thoroughly and effectively through independent and impartial bodies.'<sup>74</sup> Subsequently, the perpetrator must be brought to justice.<sup>75</sup> Failing to

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<sup>64</sup> UN Guidelines (n 47).

<sup>65</sup> *ibid.* Principle 9 [19].

<sup>66</sup> *ibid.* Principle 9 [20].

<sup>67</sup> *ibid.* Principle 9 [21].

<sup>68</sup> *ibid.* Principle 9 [22].

<sup>69</sup> International Commission of Jurists (n 60).

<sup>70</sup> ICCPR art 2(3); International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 art 6; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 39; Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 art 14(1); UN Guidelines (n 47)

<sup>71</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) art 8.

<sup>72</sup> *ibid.*

<sup>73</sup> *ibid.*

<sup>74</sup> UNHRC, 'General Comment 31 in 'The nature of the general legal obligation imposed on States Parties to the Covenant' (2004) CCPR/C/21/Rev 1/Add 13 <[www.refworld.org/docid/478b26ae2.html](http://www.refworld.org/docid/478b26ae2.html)> accessed 10 July 2020.

<sup>75</sup> *ibid.*

conduct investigations and bring the perpetrator to justice will be deemed a breach of the covenant.<sup>76</sup>

Although the obligation to provide remedies cannot be found explicitly in the ICESCR, General Comment 9 explains that appropriate remedies shall be given to the aggrieved parties using legal, administrative or other appropriate means.<sup>77</sup> Although judicial remedies are essential, the right to an effective remedy does not always require a judicial remedy.<sup>78</sup> Administrative remedies can be adequate to provide effective remedies, as long as they are accessible, affordable, timely and effective.<sup>79</sup> The obligation to provide an effective legislative and administrative procedure that requires ‘adequate, effective, prompt access to justice’ in the domestic laws can also be found under the UN Guidelines.<sup>80</sup> Hence, under international human rights law, States shall provide effective remedies through judicial, administrative, legislative authorities or any other means.

## B. Access to Remedies Under Business and Human Rights

In its development, non-State actors play an essential role in international law. Since the collapse of the Rana Plaza building, which cost the lives of over 100 people working in garment companies, it remains to be seen that non-State actors can also cause harm to individuals.<sup>81</sup> Consequently, non-State actors also have an obligation to make reparations and damages as a result of an internationally wrongful act. However, the average score of remedies and grievance mechanisms in hundreds of large companies in the world is only 15%.<sup>82</sup> Thus, most victims of

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<sup>76</sup> *ibid.*

<sup>77</sup> CESCR, General Comment 9 ‘The Domestic Application of the Covenant’ (1998) UN Doc E/C 12/1998/24 <[www.refworld.org/docid/47a7079d6.html](http://www.refworld.org/docid/47a7079d6.html)> accessed 10 July 2020.

<sup>78</sup> *ibid.*

<sup>79</sup> *ibid.*

<sup>80</sup> UN Guidelines (n 47).

<sup>81</sup> Abdurrahman Erol, ‘Doing Business Right’ (*Asser Institute*, 2018) <[www.asser.nl/Doing-BusinessRight/Blog/?tag=/Rana-Plaza](http://www.asser.nl/Doing-BusinessRight/Blog/?tag=/Rana-Plaza)> accessed 5 April 2020.

<sup>82</sup> Corporate Human Rights Benchmark, ‘Corporate Human Rights Benchmark Methodology for the Agricultural Products, Apparel and Extractives Industries’ (2020) <[www.corporatebenchmark.org/sites/default/files/documents/CHRB%202018%20Methodology%20Web%20Version.pdf](http://www.corporatebenchmark.org/sites/default/files/documents/CHRB%202018%20Methodology%20Web%20Version.pdf)> accessed 25 May 2020.

corporate human rights abuses lack access to an effective remedy, although human rights for workers are crucial.<sup>83</sup> The UN Guidelines emphasises that ‘In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.’<sup>84</sup> It remains to be seen when an entity or corporation is found liable for human rights violations; it should provide reparation to the victims of human rights violations.

The obligation to provide access to remedies is recognised in the third pillar of the UNGPs as the implementation of Ruggie’s ‘Protect, Respect and Remedy’ Framework,<sup>85</sup> specifically Principles 25–31. In addition to the ICCPR, remedies in the UNGPs include apologies, punitive sanctions and injunctions.<sup>86</sup> Access to remedies is also provided in the Maastricht Principles.<sup>87</sup>

Under UNGPs Principle 25, there are two remedy or grievance mechanisms: state-based and non-State-based.<sup>88</sup> State-based judicial mechanisms include the courts (criminal and civil) and labour tribunals.<sup>89</sup> In practice, state judicial mechanisms often undergo a long process with multiple challenges that are further elaborated in the next chapter.<sup>90</sup> The victims often have limited capacity to file lawsuits or pursue other avenues.<sup>91</sup> UNGPs Principle 27 stipulates that States should provide non-judicial grievance mechanisms (NJGMs) to enable ‘comprehensive access to remedy’.<sup>92</sup>

NJGM, therefore, is an alternative solution for victims seeking redress. Although the outcome is not binding like judicial decisions, the outcome of NJGM

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<sup>83</sup> Gwynne Skinner, ‘Beyond Kiobel: Providing Access to Judicial Remedies for Violations of International Human Rights Norms by Transnational Business in a New (Post-Kiobel) World’ (2014) 46 *Columbia Human Rights Law Review* 30 <<https://ssrn.com/abstract=2544131>> accessed 13 April 2020.

<sup>84</sup> UN Guidelines (n 47).

<sup>85</sup> Ruggie (n 48).

<sup>86</sup> UNHR, ‘Guiding Principles on Business and Human Rights’ (n 49).

<sup>87</sup> ETOs, ‘Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights’ (2013) <[www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx\\_drblob\\_pi1%5BdownloadUid%5D=23](http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23)> accessed 10 May 2020.

<sup>88</sup> UNHR, ‘Guiding Principles on Business and Human Rights’ (n 49).

<sup>89</sup> *ibid.*

<sup>90</sup> *ibid.*

<sup>91</sup> *ibid.*

<sup>92</sup> *ibid.*

has proven to be effective and socially binding.<sup>93</sup> Examples of NJGM include mediation, NHRI, National Contact Points for the Organisation for Economic Co-operation and Development (OECD), ombudsman offices, and government complaint offices.<sup>94</sup> Nonetheless, the OECD mechanism does not apply in the cases of Companies A, B and C because there is no causation link to OECD countries. The only NJGM that applies to palm oil workers in Indonesia is the NHRI and mediation under Indonesian Law No 2/2004 regarding Industrial Relations Resolution Law (Industrial Relations Law).<sup>95</sup> Meanwhile, examples of non-State-based grievance mechanisms are those administered by a business enterprise alone or by a multi-stakeholder group, as further elaborated in Chapter Four. The effectiveness criteria of NJGM are provided in UNGPs article 31, which are legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning.<sup>96</sup>

Remedies for victims of corporate abuses can be accessed through civil law and criminal law. Under civil law, the remedy of human rights violations by business entities can be accessed through tort law. In common law systems, the law of civil remedies intends to claim liability from an act caused by negligence or intentional act, which cause harm or injury to other parties.<sup>97</sup> Most countries recognise it as ‘fault liability’ (liability for fault).<sup>98</sup> There is also ‘strict liability’, meaning liability that arises from an act causing injuries without negligence or intent to harm.<sup>99</sup> For human rights violations conducted by corporations, ‘fault liability’ is more suitable for accessing remedies because of the liability caused by negligence or an intentional act. Hence, accessing remedies through civil courts can be a feasible option for the victims of human rights violations.

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<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.* Principle [28].

<sup>95</sup> Indonesian Law No 2/2004 regarding Industrial Relations Resolution Law (Industrial Relations Law).

<sup>96</sup> *ibid.* Principle [30].

<sup>97</sup> Rudi M Rizki, *Tanggung Jawab Korporasi Transnasional Dalam Pelanggaran Berat HAM* (Fikahati Aneska 2012).

<sup>98</sup> *ibid.* 17.

<sup>99</sup> *ibid.*

The discussions concerning violations by corporations are mainly about transnational corporations, where the business involves two States (the home State of the parent company and the host State of the subsidiary company).<sup>100</sup> Usually, the host State's judicial system is not effective, the government's enforcement is weak and there is widespread corruption.<sup>101</sup> Given the situation, accessing the remedy in the home State can occur in several countries such as the United States, the Netherlands and Canada. In the United States, the victims of human rights violations abroad can file a civil claim in the United States under the Alien Tort Statute.<sup>102</sup> A similar case can also be found in Dutch tort litigation in *Shell v Nigeria*. There, the court established civil jurisdiction over the Shell parent company and its Nigerian subsidiary and held the subsidiary liable for duty of care violations committed in Nigeria.<sup>103</sup>

Remedies for the victims of corporate abuses can also be accessed through criminal law.<sup>104</sup> In *Shell v Nigeria*, Dutch criminal law recognised the exercise of criminal jurisdiction over corporate entities.<sup>105</sup> This case was brought to Dutch criminal courts, where two Dutch businessmen were convicted for facilitating the crime.<sup>106</sup> From that case, it can be inferred that the Dutch criminal court can also hold corporations accountable under Dutch law.<sup>107</sup> Thus, criminal and civil court mechanisms can be used to access remedies in several jurisdictions.

Nonetheless, the civil and criminal court mechanisms in foreign jurisdictions have never been used for palm oil workers in Indonesia. Although these mechanisms exist, it is not feasible for palm oil workers because of the barriers discussed in the

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<sup>100</sup> *ibid.*

<sup>101</sup> Justine Nolan and Dorothee Baumann-Pauly, *Business and Human Rights: From Principles to Practice* (Routledge 2016).

<sup>102</sup> Nicola Jägers, *Lecture 5 Human Rights and Business, Access to Remedy See Also: Alien Tort Claims Act 1789 and Sosa v Alvarez-Machain. The US Supreme Court Bestowed the District Court to Jurisdiction to Deal with Violations of ATS Regardless* (Tilburg University 2020).

<sup>103</sup> *ibid.*

<sup>104</sup> Cedric Ryngaert, 'Accountability for Corporate Human Rights Abuses: Lessons from the Possible Exercise of Dutch National Criminal Jurisdiction over Multinational Corporations' (2018) 29 *Criminal Law Forum* 1 <<https://doi.org/10.1007/s10609-017-9330-y>>.

<sup>105</sup> *ibid.*

<sup>106</sup> *ibid.*

<sup>107</sup> *ibid.*

next chapter.<sup>108</sup>

The third pillar of the UNGPs makes it clear that States have access to an effective remedy through judicial, administrative, legislative or other means. Consequently, Indonesia has an obligation to enact judicial, administrative and domestic legislation that provides effective access to remedies for the victims of human rights abuses. The next subsection presents a legal mapping on access to remedies, both judicial and non-judicial, for victims of human rights violations perpetrated by corporations under Indonesian law in accordance with the UNGPs.

### C. Access to Remedy Under Indonesian Law

Indonesian Law No 39/1999 regarding Human Rights (Human Rights Act),<sup>109</sup> Indonesian Law No 26/2000 regarding Human Rights Court (Human Rights Court Law),<sup>110</sup> Indonesian Civil Code (*KUHPerdata*), the Labour Law<sup>111</sup> and Industrial Relations Law comprise the Indonesian legal framework related to access to remedies.<sup>112</sup> Indonesian law only provides the obligation to provide restitution, compensation, satisfaction and the guarantee of non-repetition explicitly in public laws. Access to remedies as provided by international law can only be found under the Human Rights Court Law, Indonesian Law No 21/2007 regarding Trafficking Law, and the Witness and Victims Protection Law.<sup>113</sup>

#### State-Judicial Mechanism

##### a. Industrial Relations Court Mechanism

The basic principles of employment law are stipulated under the Labour Law. Given the nature of Labour Law, which lies between private and public

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<sup>108</sup> 'Freeport-McMoRan Lawsuits (Re West Papua)' (Business & Human Rights Resource Centre, 1996). <[www.business-humanrights.org/en/freeport-mcmoran-lawsuits-re-west-papua-0](http://www.business-humanrights.org/en/freeport-mcmoran-lawsuits-re-west-papua-0)> accessed 15 July 2020

<sup>109</sup> Indonesian Law No 39/1999 regarding Human Rights.

<sup>110</sup> Indonesian Law No 26/2009 of Human Rights Court (Human Rights Court Law) art 7.

<sup>111</sup> Labour Law (n 13).

<sup>112</sup> *ibid.*

<sup>113</sup> Indonesian Law No 21/2007 regarding Trafficking Law art 48.

law, there is no specific article regulating the obligations to provide remedies as usually provided under Indonesian public laws.<sup>114</sup> Under the Labour Law, no specific article regulates access to remedies as mandated by the UNGPs.

Workers and employers have used the industrial relations mechanism to obtain remedies regarding labour rights violations.<sup>115</sup> The obligation to provide access to remedies can be found under the Labour Law. Workers can access their remedy through the Industrial Relations Court, which deals with industrial relations disputes.<sup>116</sup>

The Industrial Relations Court uses the same procedural law as the Indonesian Civil Law, and the procedural law can be found under the Industrial Relations Law with several exceptions.<sup>117</sup> Although it uses the same procedural law as the Indonesian Civil Law, the Industrial Relations Court does not have the authority to hear tort cases, as discussed in the next subsection.<sup>118</sup> If the parties are not satisfied with the court's decision, they may appeal to the Supreme Court.<sup>119</sup>

Indonesian palm oil workers usually access their remedy through the Industrial Relations Court because it has several advantages. There is no case fee for cases worth less than IDR 150,000,000 (USD 10,553).<sup>120</sup> The judges consist of one experienced career judge and two ad hoc judges nominated by trade unions and employers' organisations.<sup>121</sup> By permitting trade unions and employers' organisations to elect one judge each, this law accommodates workers and employers through an ad hoc judge system that represents both

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<sup>114</sup> S Tjandra, 'Labour Law and Development in Indonesia' (Leiden University 2016). <<https://openaccess.leidenuniv.nl/handle/1887/37576>> accessed 8 March 2020.

<sup>115</sup> Patricia Rinwigati Waagstein, 'Business and Human Rights in Indonesia: From Principles to Practice, Human Rights Resource Centre' (2015).

<sup>116</sup> Industrial Relations Law (n 95) art 55 stipulates that the law is a Special Court in the first level of under the jurisdiction of General Court.

<sup>117</sup> *ibid* art 57.

<sup>118</sup> Juanda Pangaribuan, *Seluk Beluk Hukum Acara Pengadilan Hubungan Industrial* (Misi Jakarta 2017).

<sup>119</sup> *ibid*.

<sup>120</sup> *ibid*.

<sup>121</sup> Tjandra (n 114).



interests.<sup>122</sup> The trade unions and employers' organisations also have the right to represent their members as attorneys during the litigation.<sup>123</sup> Last, the law gives 50 working days to resolve a case to avoid undue delays.<sup>124</sup>

#### b. Civil Court Mechanism

Remedies under Indonesian law can also be accessed using civil litigation, specifically tort law. The procedure for civil litigation is provided under *KUHPerdata*, *Herzien Inlandsch Reglement* and *Rechtsreglement Buitengewesten*. In Indonesia, tort law is defined in article 1365 of *KUHPerdata* as 'every unlawful act that causes damage to another person obliges the wrongdoer to compensate such damage.' J Satrio explains the elements that constitute a tort under the provision<sup>125</sup>: (a) there is an act, (b) the act is against the law, (c) the person has an element of fault and (4) the act causes damages.

Previously, an act has been considered against the law if it was not in accordance with the written rule. Since 1919, after *Lindenbaum v Cohen*, the definition of element (b) was expanded by *Hoge Raad* (Supreme Court) of the Netherlands to mean every act that: (a) violates other people's rights; (b) is contrary to the perpetrators' legal obligations; (c) is contrary to morality; or (d) is contrary to the duty of care to pay attention to the interests of others in society.<sup>126</sup> The *Hoge Raad* ruled that 'action against the law' can be fulfilled if one of those elements is met.<sup>127</sup>

Rudi M Rizki further explains that civil liability can be used to claim the damages arising from the violations against the right to life, freedom, physical and mental integrity, and other people's possession.<sup>128</sup> Accordingly, civil liability can be used to claim remedies arising from human rights

<sup>122</sup> *ibid.*

<sup>123</sup> *ibid.* See also Industrial Relations Law (n 95) art 25 para (1) (b).

<sup>124</sup> *ibid.*

<sup>125</sup> J Satrio, *Hukum Perikatan, Perikatan Yang Lahir Dari Undang-Undang* (Bandung ed, 1st edn, Citra Aditya Bakti 2001).

<sup>126</sup> *Lindenbaum tegen Cohen, Dutch Supreme Court. See Also: Chidir Ali, Yurisprudensi Tentang Perbuatan Melanggar Hukum (Onrechtmatiggedaad)* (Binacipta, 1978) (1999).

<sup>127</sup> *ibid.*[171].

<sup>128</sup> Rizki (n 96).

violations in Indonesia.<sup>129</sup> Moreover, article 1366 regulates that ‘individuals shall be responsible not only for the damage which they had caused, but also for damages which were caused by their negligence or carelessness.’ Further, article 1367 provides that this civil liability is not limited by the act that was conducted but by the liability that arises from the people under their supervision (vicarious liability). Hence, corporations can be liable for human rights violations conducted by the employer.

There are two kinds of damages that plaintiffs should obtain if they want to claim that another person is acting against the law.<sup>130</sup> First, material loss is the actual loss suffered by the plaintiff.<sup>131</sup> This damage entails the obligation for the wrongdoers to pay compensation as a result of those damages. Second, immaterial loss is defined as the loss of profits or benefits that the plaintiff might receive.<sup>132</sup> This kind of damage cannot be valued in the form of money.<sup>133</sup> In practice, the fulfilment of immaterial loss will be handed to the judge based on *ex aquo et bono*, which makes determining the amount of immaterial loss difficult because it depends on the subjectivity of the judge.<sup>134</sup>

From the abovementioned explanation, victims of human rights abuses in Indonesia can access their remedy through civil litigation by claiming material and immaterial losses under the tort law or ‘act against the law’ as provided in article 1365 of *KUHPerdata*. Additionally, the victims should fulfil one of the elements of ‘act against the law’ as mentioned. However, palm oil workers tend to access their remedy through the industrial relations mechanism. In civil courts, palm oil cases are mostly about the environment or land disputes.<sup>135</sup>

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<sup>129</sup> *ibid.*

<sup>130</sup> Bimo Prasetyo and Rizky Dwinanto, ‘Di Mana Pengaturan Kerugian Konsekuensial Dalam Hukum Indonesia?’ (*Hukum Online.com*, 2011).

<sup>131</sup> *ibid.*

<sup>132</sup> *ibid.*

<sup>133</sup> Wirjono Prodjodikoro, *Perbuatan Melanggar Hukum* (CET TX 1996).

<sup>134</sup> ‘Penentuan Ganti Rugi Immateriil; Hakim Harus Bijak’ (*Institute for Criminal Justice Reform*, 2012) <<https://icjr.or.id/penentuan-ganti-rugi-immateriil-hakim-harus-bijak/>> accessed 3 June 2020.

<sup>135</sup> *ibid.*

c. Criminal Court Mechanism

The Labour Law regulates criminal sanctions for certain violations,<sup>136</sup> including violations of child labour, pension security rights, foreign worker permits, freedom of religion, maternity leaves, underpaid wages and right to strike.<sup>137</sup> Severance payment, protection for workers such as the right to welfare, safety and health, payment of sick workers and disabled workers are also regulated.<sup>138</sup> Additionally, protection, overtime payment, rest and holidays, appointment letter if there is no contract, company regulations, notification of lockout and more are provided in the law.<sup>139</sup> For palm oil workers, if they work overtime and do not receive any overtime pay or if they do not receive adequate protection for safety and health, they can bring the case to the criminal court using criminal law procedure.<sup>140</sup>

Several disputes contain elements of criminal violations, especially those committed by employers, such as trade union-busting and embezzling wages. Industrial relations dispute mechanisms are the primary means for workers or trade unions. Therefore, in practice, workers first bring disputes regarding criminal violations to the Industrial Relations Court. Subsequently, they report the criminal violation to the police. According to the Labour Law, the sanctions imposed on the employer in the form of a jail sentence, lockup, and/or a fine do not release the employer's obligation to give the workers compensation.<sup>141</sup> Hence, criminal sanctions imposed on the employer do not eliminate its obligation to provide compensation to workers.

d. Human Rights Court

The Human Rights Act provides two procedures to access remedies through NHRI and the Human Rights Court. However, the Human Rights Court

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<sup>136</sup> Labour Law (n 13) arts 183–189.

<sup>137</sup> *ibid.*

<sup>138</sup> *ibid.*

<sup>139</sup> *ibid.*

<sup>140</sup> Indonesian Law No 8/1981 regarding Criminal Procedure Law.

<sup>141</sup> Labour Law (n 13) art 189.

is a court under the general court's sphere, dealing only with gross violations of human rights cases (eg genocide and crimes against humanity).<sup>142</sup> This court has never dealt with any human rights violation committed by a corporation or corporate personnel because its jurisdiction focuses on individuals and State actors rather than non-State actors.<sup>143</sup> Human rights violations committed against workers cannot be brought before the Human Rights Court because the violation of workers' rights is not included in the scope of gross violations of human rights.<sup>144</sup> Therefore, palm oil workers do not fall under the scope of Human Rights Court Law.

### **Non-Judicial Mechanism**

#### **a. Mediation under Industrial Relations Law**

There are two mechanisms to access remedies under Industrial Relations Law: non-judicial mechanism, which can be accessed through bipartite and tripartite negotiation, and judicial mechanism, which can be pursued through the Industrial Relations Court. Under Industrial Relations Law, if there is an industrial relations dispute, first, it must be resolved through bipartite negotiation between the worker and employer. If within 30 working days the dispute cannot be resolved through bipartite negotiation, one of the parties should register their dispute with the Regional Labour Office.<sup>145</sup> After receiving the written complaint, the Labour Office will refer the dispute to mediation conducted by the government institution.<sup>146</sup> This mediation is a form of tripartite mechanism.

There are several types of disputes under the Industrial Relations Law, and different types of disputes are settled differently.<sup>147</sup> Disputes over interest and disputes among the trade unions can be settled through mediation, conciliation

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<sup>142</sup> Human Rights (n 108) art 104.

<sup>143</sup> Patricia Waagstein, 'Business and Human Rights in ASEAN: A Baseline Study' (2013).

<sup>144</sup> Human Rights Court Law (n 109) art 7.

<sup>145</sup> Industrial Relations Law (n 95) arts 3–4.

<sup>146</sup> *ibid.*

<sup>147</sup> *ibid.*

and arbitration.<sup>148</sup> Disputes concerning the termination of employment can be settled through mediation or conciliation.<sup>149</sup> Disputes over rights are settled through mediation.<sup>150</sup>

Disputes regarding the violations of the rights of palm oil workers under poor working conditions should be settled through mediation.<sup>151</sup> Should the parties not accept the mediator's recommendation, one of the parties can file a claim with the Industrial Relations Court.<sup>152</sup> Bipartite and tripartite mechanisms are the most accessible means for the victims because if both parties are cooperative and conduct the mechanism with transparency, they will get a win–win solution without proceeding into the complex judicial process in Indonesia.<sup>153</sup>

#### b. NHRI

Remedies for palm oil workers can be obtained through the NHRI. In Indonesia, the NHRI is Komnas HAM, an independent commission that monitors human rights in Indonesia.<sup>154</sup> It has several functions, ranging from research and development, observation and investigation to mediation.<sup>155</sup> The Human Rights Act obliges the NHRI to receive complaints, conduct investigations and provide recommendations. Komnas HAM handles cases of human rights abuses committed by individuals and corporations.<sup>156</sup> Every year, it handles more than 1,000 cases of business-related human rights abuses.<sup>157</sup> In 2019, there were only six kinds of palm oil workers cases, including unilateral termination of employment, underpaid wages, union-busting and lack of health protection tools.<sup>158</sup>

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<sup>148</sup> *ibid.*

<sup>149</sup> *ibid.*

<sup>150</sup> *ibid.*

<sup>151</sup> *ibid.*

<sup>152</sup> Waagstein (n 115).

<sup>153</sup> Interview with Marzuki Darusman, Chair and Co-Founder of Foundation International Human Right Reporting Standard (FIHRRST) (Jakarta, 15 July 2020).

<sup>154</sup> Human Rights (n 108) art 89.

<sup>155</sup> *ibid.*

<sup>156</sup> Waagstein (n 143).

<sup>157</sup> *ibid.*

<sup>158</sup> Komnas Ham, 'This Data of Palm Oil Workers Cases Was Obtained Formally from Human Rights Development Bureau; See the table in the Appendix'.

Mediation is conducted to make peace between parties, and it solves cases through consultation, negotiation, mediation, conciliation and expert evaluation.<sup>159</sup> Recently, Komnas HAM established a pre-mediation mechanism that focuses on exploring the intention of the parties to accommodate them better.<sup>160</sup>

To file a complaint through Komnas HAM, a complainant can submit an oral or written complaint as a person or collectively. As the output, Komnas HAM can refer the parties to court and make recommendations to the government or legislative bodies to follow up on the case.<sup>161</sup> Third parties such as trade unions, organisations or NGOs can file complaints with Komnas HAM as long as they are not anonymous.<sup>162</sup> If the complaint is made by a third party, the complaint shall be made with the consent of the victim unless Komnas HAM decides otherwise.<sup>163</sup>

## Conclusion

Under international law, access to remedies means restitution, compensation, satisfaction and a guarantee of non-repetition regulated under ARSIWA, the ICCPR and the UN Guidelines. Access to remedies can also be found in the UNGPs in a judicial way or a non-judicial way through State-based and non-State-based grievance mechanisms. State-based mechanisms entail judicial and non-judicial procedures. The judicial procedure can be obtained through administrative, civil and criminal courts. The non-judicial procedure can be approached through mediation, conciliation and arbitration.

Under Indonesian law, palm oil workers' cases can be brought judicially through the Industrial Relations Court, Civil Court and Criminal Court and non-judicially through the NHRI and mediation. However, Indonesian law does not give adequate provisions on access to remedies because it only provides explicit provisions for access to remedies under public laws. Under civil law, remedies can

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<sup>159</sup> Human Rights (n 108) art 89 (4).

<sup>160</sup> *ibid.* art 79.

<sup>161</sup> *ibid.* art 89.

<sup>162</sup> *ibid.* art 90.

<sup>163</sup> *ibid.*

be given in material and immaterial damages forms using tort law. Under Labour Law, remedies can be pursued through the Industrial Relations Court. In criminal cases, sanctions do not eliminate the obligation to provide compensation for the workers. In practice, palm oil workers tend to bring their cases through the Industrial Relations Court when their rights are violated. The Human Rights Court can only be accessed for gross violations of human rights. Therefore, palm oil workers' cases cannot be resolved using the Human Rights Court.

Before going to the Industrial Relations Court, a dispute over workers' rights shall be brought non-judicially through the bipartite mechanism. If the bipartite mechanism fails, they can conduct a tripartite mechanism in the form of mediation. Indonesian palm oil workers in several companies face poor working conditions. They have worked for years without an employment agreement with the company. They are also paid below the minimum wage and must work overtime to achieve the high targets set by the companies, which could risk their experiencing forced labour. They do not receive sufficient health protection, and the companies do not provide health security. Moreover, their freedom of association is denied. These working conditions make them prone to labour and human rights violations.

Under international law, in particular the ICCPR, ARSIWA and the UN Guidelines, States have an obligation to provide access to remedies for anyone whose human rights are violated. The obligation for States to provide access to remedies has shifted to business entities, as stipulated in the third pillar of the UNGPs. Under those laws, the obligation to provide remedies includes restitution, compensation, rehabilitation, satisfaction and the guarantee of non-repetition. This suggests that Indonesia is obligated to provide palm oil workers working under poor conditions access to remedies.

The UNGPs demonstrate that remedies can be obtained through judicial or non-judicial means. Under Indonesian law, palm oil workers can obtain their judicial remedy through Industrial Relations Court, Civil Court or Criminal Court. They can obtain their non-judicial remedy through Komnas HAM and bipartite and tripartite (mediation) mechanisms under the Industrial Relations Law. Nonetheless,



in practice, the most common path for palm oil workers in Indonesia to access their remedy is through the Industrial Relations Court, after exhausting the bipartite and tripartite mechanisms.

NJGMs such as bipartite mechanism and mediation are the most accessible means for the palm oil workers. The Indonesian government needs to improve the implementation of the UNGPs because the current laws do not provide adequate access to remedies for palm oil workers. Indonesia should publish the National Action Plan on Business and Human Rights. There is a need to revise the current Human Rights Act, Human Rights Court Law, Labour Law and Industrial Relations Law. Moreover, Indonesia should ratify the Plantation Convention and develop a specific regulation for palm oil workers.

Moreover, the Indonesian government should reform the available mechanisms under Indonesian law to achieve independent and impartial access to remedies. For instance, the Indonesian government should give more power to the NHRI to provide victims of human rights abuses access to remedies. The government should also provide more inspection and community outreach to the workers in remote areas. Moreover, the government should raise the business players' awareness regarding business and human rights by conducting training and advocacies among the palm-oil business stakeholders. Furthermore, human rights due diligence for corporations should be obligatory.

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