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## Civil Society's Contributions and Challenges in the Development of Business and Human Rights Policy in Indonesia

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### Abstract

Civil society greatly contributes to encouraging the adoption of the United Nations Guiding Principles on Business and Human Rights (UNGPs) into practice and legislation in Indonesia. This contribution can be seen from the various policies and actions taken by the Indonesian government in referring to the UNGPs when forming policies related to human rights or the operation of companies in Indonesia. This research aims to serve as a database and as consideration for civil society in Indonesia to advocate for business and human rights issues, especially the issues related to actions taken by civil society to influence Indonesian governmental policies and the challenges faced by civil society. As such, civil society will be able to measure the urgency of intervention in policymaking related to business and human rights. This research was conducted using qualitative and comparative approaches. The qualitative approach was carried out through studies of literature, both primary and secondary. The comparative approach aimed to analyse and compare two or more objects based on a theoretical framework. The comparison results can be in the form of similarities or differences in the aspects studied. This research process pays attention to certain sensitive contexts that require a context-sensitive approach.

**Keywords:** UNGPs; Business; Human Rights; Guiding Principle; Civil Society.

### Introduction

Indonesia is one of the countries that fully supports the adoption of the United Nations Guiding Principles on Business and Human Rights (UNGPs) endorsed by the UN Human Rights Council on 16 June 2011.<sup>1</sup> The Indonesian government has taken various steps and made policies to support the implementation of UNGPs in

<sup>1</sup> INKRISPENA ELSAM, INFID, Konsil LSM, Sawit Watch, 'Satu Dekade Implementasi UNGPs Di Indonesia: Catatan Dan Rekomendasi Masyarakat Sipil' (2021) <<https://elsam.or.id/satu-dekade-implementasi-ungps-di-indonesia-catatan-dan-rekomendasi-masyarakat-sipil/>>.

its state order.<sup>2</sup> Its actions have one important purpose: to encourage the integration of UNGPs into business operations in Indonesia. This purpose makes business entities an important group in promoting and respecting human rights in Indonesia.

One step taken by the Indonesian government was to develop the values and principles of UNGPs in business policies and operations in Indonesia. The government gave a mandate to the Ministry of Foreign Affairs to increase stakeholder understanding of business and human rights issues through the preparation of the National Guidelines to Business and Human Rights. This mandate is provided in Presidential Regulation No 75/2015 on the National Action Plan for Human Rights (*Rencana Aksi Nasional Hak Asasi Manusia, RANHAM*) 2015–2019, which has been amended by Presidential Regulation No 33/2018.

The mandate given to the Ministry of Foreign Affairs was to compile the National Guidelines for Business and Human Rights and strengthen the authority of the Directorate General of Human Rights from the Ministry of Law and Human Rights to carry out various concrete steps to encourage business activities in accordance with human rights values by involving various stakeholders, civil society organisations, academicians, the private sectors and business actors, and other stakeholders.<sup>3</sup> In addition to the steps taken by the Ministry of Law and Human Rights, the Indonesian government established a Business and Human Rights Focal Point in 2017 under the Coordinating Ministry for Economic Affairs.<sup>4</sup> However, since 2020, the role of the National Focal Point has been transferred to the Ministry of Law and Human Rights under the coordination of the Directorate General of Human Rights. This action was taken to strengthen Indonesia's commitment to fulfilling and respecting human rights.

The steps and progress made by the Indonesian government in developing policies on business and human rights can be seen in the Focal Point report submitted

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<sup>2</sup> Hajerati, 'Webinar Bisnis Dan HAM' (2021) Lembaga Studi dan Advokasi Masyarakat (ELSAM).

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*

by Prabianto Mukti Wibowo, Coordinating Ministry for Economy Affairs, at the UN Forum on Business and Human Rights, Geneva, Switzerland, on 26 November 2018. Wibowo observed that ‘We have increased our collective efforts to increase awareness and capacity of business and human rights among stakeholders through the development of training guidelines, sensitivity training, and multi-stakeholder dialogue organized by the government, civil society organizations, the Indonesia Global Compact Network, the private sectors and academicians’.

The Indonesian government’s great effort in adopting the UNGPs has given added value to Indonesia in implementing international frameworks and instruments into national law. These efforts cannot be separated from the important role of Indonesian civil society in convincing the government to take a large role in responding to developments and progress at the global level on business and human rights issues. The progress at the global level can be used to encourage the adoption of UNGPs into practice and legislation in Indonesia.

### **The UNGPs and Polycentric Governance**

John Ruggie, the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, calls the ‘Protect, Respect, and Remedy’ framework and the UNGPs a polycentric governance system. However, Ruggie did not explain in clear detail the meaning of polycentric governance, especially how the polycentric system is organised and managed.

Scholars from various disciplines have utilised the polycentric concept in different approaches and ways. They stated that in general, polycentric governance is characterised by the existence of a regulatory system, some of which are overlapping, not hierarchical and (managed) by many government authorities with different scales. Therefore, in this system, the state is not the only source or (which has) the basis of authority; in fact, the state may only have a minor role or even no authority at all.<sup>5</sup>

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<sup>5</sup> Jamie Darin Prekert and Scott J Shackelford, ‘Business, Human Rights and the Promise of Polycentricity’ (2014) 47 *Vanderbilt Journal of Transnational Law*.[\[1\]](#).

On the other hand, several interdependent actors or decision-making centres, both state and non-state actors, who may be formally dependent on one another, form networks and interactions among them, each adding values, reinforcing and compensating for the limitations and weaknesses of each. Each individual actor in the system is commonly free from domination by others and can make its own rules and develop its own norms within its sphere of influence. However, there are great opportunities for actors to learn from each other and adopt better strategies. Professor Michael McGinnis explains<sup>6</sup> that “the basic idea of polycentric governance is that any group... faced with some problem, collective action must be able to address that problem in whatever way they deem most appropriate, which can and should include the creation of new governance structures that can facilitate the problem solving process. In other words, “...a governance system can be said to be completely polycentric if it facilitates creative problem solving at all levels...”.

Jamie Darin Prenkert and Scott J Shackelford<sup>7</sup> analyse the importance of polycentric governance to embrace self-regulation initiatives and bottom-up approaches in making multi-stakeholder governance a means to encourage collaboration in addressing global collective problems. This process can be done by ‘organizing and structuring our perception of the world’. The concept of polycentrism helps ‘to make judgments on the relevance and importance of information, to analyze certain situations, and to create new ideas’. Implementing polycentrism can encourage regulatory innovation and flexibility in accepting new issues, including increasing the ability to adapt to these new issues. However, Prenkert and Shackelford also warn about the vulnerabilities that often occur in polycentric governance. Networks (incorporated) in polycentric governance are vulnerable to institutional fragmentation and bottlenecks due to overlapping

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<sup>6</sup>Michael D. McGinnis, ‘Costs and Challenges of Polycentric Governance: An Equilibrium Concept and Examples from U.S. Health Care’ (2011) <[http://php.indiana.edu/~mcginnis/Beijing\\_core.pdf](http://php.indiana.edu/~mcginnis/Beijing_core.pdf)>.

<sup>7</sup>Jamie Darin Prenkert and Scott J Shackelford (n 5).[1].

authorities that still must meet the standards of coherence, effectiveness and sustainability. This can happen as a result of not having an individual person or organisation with full authority, often leading to confusion and delays. There is also another problem when one country or several countries do not want to be exposed to political pressure from smaller forums.

Based on the explanation above, the polycentric system is focused on solving problems. Polycentric governance is created as a means of overcoming problems that require collective action, especially when the state is not ready, unwilling or too slow to address (a problem). As a single order, polycentric governance describes a dynamic regulation that emerges and rests on a system of public and private government, each of which has different values and adds to each other, compensates for each other's weaknesses, and plays a mutually supportive role.<sup>8</sup>

Within the business and human rights framework, polycentric governance was introduced primarily by Ruggie when he first carried out his duties as a Special Rapporteur to the Secretary-General of the United Nations. Ruggie recognises the same challenges and opportunities when carrying out his mandate to address human rights issues and transnational corporations. Ruggie admits that it is unlikely that corporate human rights responsibilities can be integrated into a comprehensive and binding legal instrument or international treaty. Thus, in the early days of carrying out his duties, Ruggie stated that his 'first official act was to apply "normicide"'.<sup>9</sup> Normicide is an action designed to establish a 'clean break' from norms and to open the door for constructive engagement with the business community.<sup>10</sup>

Ruggie's approach is based on the assumption that the 'rigid' and 'antiquated' treaty-based regulatory model is ineffective and unsuitable for addressing modern

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<sup>8</sup> Adzkar Ahsinin, 'Perkembangan Pengaturan Rezim Bisnis Dan Hak Asasi Manusia: Sejauh Mana Respon Hukum Internasional Menormakannya' <<https://referensi.elsam.or.id/wp-content/uploads/2019/04/Adzkar-Ahsinin-Relasi-Bisnis-dan-HAM-PelatihanACCESS-26-Maret-2019.pdf>>.

<sup>9</sup> Florian Wettstein, *Human Rights, Emerging Markets, and International Business* (OXFORD HANDBOOKS ONLINE 2019) <[www.alexandria.unisg.ch/260573/1/oxfordhb-9780190683948-e-39.pdf](http://www.alexandria.unisg.ch/260573/1/oxfordhb-9780190683948-e-39.pdf)>.

<sup>10</sup> Tara Melish, *Putting 'Human Rights' Back into the UN Guiding Principles on Business and Human Rights: Shifting Frames and Embedding Participation Rights* (César Rodríguez-Garavito, ed, Cambridge University Press 2014).[77].

global challenges. The traditional top-down, rigid and highly prescriptive model assumes there is a common approach to solving 'one size and all' global issues in which all actors, anywhere, should adapt uniformly.<sup>11</sup> Therefore, to fill and manage these gaps, the UNGPs framework was developed with a 'new' approach that respects the value and diversity of stakeholders who need to be constructively involved in solving 21<sup>st</sup>-century problems, carried out in creative ways to align the interests of all stakeholders. It is for this reason that UNGPs is gaining wide support and institutional adoption across stakeholder groups.<sup>12</sup> The ratification of the UNGPs received full support from 28 countries that are members of the UN Human Rights Council and 12 cross-regional sponsors. It was carried out without voting.

Implementing polycentric governance in UNGPs is believed to be a new governance theory that will encourage other actors' involvement to increase their capacity. Therefore, responsive regulations, informal cooperation, public-private partnerships and multi-stakeholder dialogue processes can be a means to address business and human rights issues and challenges.

In practice, UNGPs encourage all stakeholders to have different roles and functions in reflecting and implementing polycentric governance systems. Ruggie illustrates the operation of UNGPs as differentiated but complementary responsibilities.<sup>13</sup> The UNGPs integrate the following three reasons into a single normative platform<sup>14</sup>:

1. For the States, focus on the duties or legal obligations of the states under international human rights regimes to protect against human rights violations by third parties, including businesses, as well as policy reasons that are consistent and support to fulfill their obligations;

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<sup>11</sup> *ibid.*[78].

<sup>12</sup> BHR Institute, 'Capaian Dan Tantangan Implementasi United Guiding Principles on Business and Human Rights (UNGPs): Satu Dekade Prinsip-Prinsip PBB Mengenai Bisnis Dan Hak Asasi Manusia Di Indonesia' (2021) <<https://bhrinstitute.id/wp-content/uploads/2021/06/Kabar-BHR-Vol-3-Juni-2021.pdf>>.

<sup>13</sup> Adzkar Ahsinin (n 8).[58].

<sup>14</sup> Ifdhal Kasim, 'Pengantar Dalam 'Menjangkau Tanggung Jawab Korporasi', Lembaga Studi Dan Advokasi Masyarakat' (*ELSAM*, 2016).[ix]

2. For businesses, even though the fulfilment of legal obligations in each State may differ in terms of implementation and enforcement, the UNGPs focus on the need to manage business risks that involve human rights violations. These efforts require due diligence to avoid violating the rights of others and to address potential violations;
3. For individuals and affected communities, the UNGPs provide the basis for further realization of their rights to gain remedy, through judicial and non-judicial mechanisms.

Based on the above elaboration, States shall remain as the main actor (duty holder) in the process of promoting and protecting human rights. The State as the main actor cannot be separated from its resources and authority to make binding laws for every legal subject, both natural persons and legal persons, within their jurisdiction.<sup>15</sup> Meanwhile, the self-regulation model developed by corporations and formulated in standards and codes of ethics has no (outward) coercive power but merely possesses moral strength and is voluntary.

### **The Role of Civil Society in the Development of Business and Human Rights Policies**

The terms non-governmental organisations (NGOs) and non-profit organisations are nomenclatures generally used to cover various organisations that made up civil society.<sup>16</sup> Such organisations are generally characterised by their non-profit orientation. Thus, there are many rationales behind the formation of an NGO. Issues handled by these organisations range from small pressure groups dealing with environmental, agrarian, human rights violations, education, women's shelters, cultural associations, religious organisations, foundations and humanitarian aid programs to large international organisations with hundreds or even thousands of branches or members in different parts of the world.

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<sup>15</sup> *ibid.*

<sup>16</sup> Justina Pinkeviciute Patricia Brander, [et.al.], *COMPASS Manual for Human Rights Education with Young People* (Council of Europe Publishing 2020) <[www.coe.int/en/web/compass/human-rights-activism-and-the-role-of-ngos#main-content](http://www.coe.int/en/web/compass/human-rights-activism-and-the-role-of-ngos#main-content)>.

The prominent role of civil society is seen from the results or outputs produced. More broadly, it is to encourage the feeling of optimism in their actions, such as promoting human rights defence or environmental conservation in the world.

In the context of Indonesia, since the early 1970s, civil society has been at the forefront of promoting democratisation, respect for human rights, and transparent and accountable governance.<sup>17</sup> In the reformation era post-1998, the role of civil society was strengthened by the laws and regulations that provided a basis for civil society to participate in good and transparent governance, protection, enforcement and promotion of human rights.<sup>18</sup> Such participation includes encouraging the development of business and human rights policies.

For civil society, the ratification of the UNGPs is a great opportunity to fight for the defence and protection of communities affected by business operations. It is also a means to seek justice and compensation.<sup>19</sup>

Civil society's involvement in business and human rights advocacy in Indonesia cannot be separated from the polycentric governance approach developed by Ruggie. This lies from how civil society in Indonesia perceives the dimensions of the impact of human rights violations by corporations and sees the opportunities for recovery for victims affected by corporate operations. Thus, the presence of the UNGPs encourages local, national and international NGOs to create business and human rights issues as dedicated programmes and institutional activities.

The first step taken by Indonesian civil society in developing business and human rights policies is to disseminate and strengthen the institutional capacity of other stakeholders, particularly businesses and the government. This is followed by the establishment of various communication forums that bring together stakeholders to jointly promote business and human rights. One such forum is the Business & Human Rights Working Group (B & HRWG) established on 7 April 2016.

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<sup>17</sup> Firdaus, 'Pembela Hak Asasi Manusia Pada Isu Sumber Daya Alam Di Kabupaten Timor Tengah Selatan Provinsi Nusa Tenggara Timur' (2017) 8 Jurnal HAM.[85].

<sup>18</sup> Concerning Human Right 1999.

<sup>19</sup> Ifdhal Kasim (n 14).[vii].



Members of the B & HRWG come from various groups that are concerned with developing constructive dialogue on issues related to business and human rights, both individuals and groups of businesses and academia. Within this framework, B & HRWG acts as a vehicle that promotes fair business and encourages respect for human rights among corporations.<sup>20</sup> The initiative to establish this forum is highly relevant to the UNGPs, which apply a polycentric governance approach as the basis for their implementation.

The establishment of the B & HRWG simultaneously correlates with the advocacy and organising work carried out by 12 other civil society actors<sup>21</sup> intensively involved in promoting human rights policies. These civil society actors engage in three interrelated advocacy areas:

1. encourage the government through its access and authority;
2. encourage the promotion of business and human rights issues in the form of institutional programmes, including conducting discussions, seminars, workshops, internalisation (for membership-based civil society organs); and
3. encourage companies to integrate the principles in the UNGPs into company policies and operations.

The collaborative steps and actions carried out by civil society actors contribute to making Indonesia a responsive country in implementing the UNGPs framework into business policies and operations. This can be seen from the various steps and policies taken by the ministries and institutions in charge of promoting and protecting human rights and companies and company associations.

The initiative by Indonesian National Committee for Human Rights (*Komite Nasional Hak Asasi Manusia*, Komnas HAM) to develop a National Action Plan for

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<sup>20</sup> Lembaga Studi dan Advokasi Masyarakat, 'Peluncuran Business and Human Rights Working Group: Mempromosikan Bisnis Yang Berkeadilan' (*ELSAM*, 2021) <<https://elsam.or.id/peluncuran-business-and-human-rights-working-group-mempromosikan-bisnis-yang-berkeadilan/%3E>> accessed 5 November 2021.

<sup>21</sup> Lembaga Studi dan Advokasi Masyarakat, 'Identifies at Least 12 Civil Society Organisations That Carry out Various Activities Promoting the Development of Business and Human Rights Policies. For Further Information, See Adzkar Ahsinin and Others, *Perkembangan Bisnis Dan HAM Di Indonesia: Perseps*' (*ELSAM*, 2019).[80-82].

Business and Human Rights is a good step encouraged by the Institute for Community Studies and Advocacy (*Lembaga Studi dan Advokasi Masyarakat*, ELSAM) in ensuring the importance of involvement of national human rights institutions in designing and launching norms related to business and human rights. This initiative was confirmed in Komnas HAM Regulation No 1/2017 on the Ratification of the National Action Plan for Business and Human Rights.<sup>22</sup> The process carried out by Komnas HAM in developing the National Action Plan for Business and Human Rights has inspired other ministries and institutions to improve the learning process and adaptation of UNGPs to the national level. This can be seen from the steps and policies of the Indonesian government after the release of the National Action Plan for Business and Human Rights.

Other achievements can be found in the processes and results carried out by the Business and Human Rights Focal Point, which was initially coordinated by the Ministry of Economy and then shifted to the Directorate General of Human Rights, Ministry of Law and Human Rights in 2020. The Business and Human Rights Focal Point is tasked with coordinating the implementation of the UNGPs in Indonesia.<sup>23</sup>

Another policy issued by the government because of partnerships between ministries and institutions and civil society organisations is the issuance of Minister of Marine Affairs and Fisheries Regulation No 35/Permen-KP/2015 on Human Rights System and Certification for Fisheries Business. This ministerial regulation was formed as a response by the Indonesian government to various human rights violations that occurred in the fisheries industry, such as human trafficking, people smuggling, labour, children exploitation, torture, wage discrimination, salary below minimum wage, and working without health protection and proper work safety in violation of various labour provisions and worker protection instruments issued by the International Labour Organization (ILO).<sup>24</sup>

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<sup>22</sup> Komnas HAM, 'Rencana Aksi Nasional Bisnis Dan Hak Asasi Manusia' (2019) <[www.komnasham.go.id/files/20180214-rencana-aksi-nasional-bisnis-dan-DH79.pdf](http://www.komnasham.go.id/files/20180214-rencana-aksi-nasional-bisnis-dan-DH79.pdf)>.

<sup>23</sup> Hajerati (n 2).

<sup>24</sup> BHR Institute, 'BHRI: Perkuat Pelindungan Terhadap Awak Kapal, Indonesia Perlu Segera Ratifikasi Konvensi ILO 188' (*Kabar BHR*, 2021) <<https://bhrinstitute.id/bhri-perkuat-pelindungan-terhadap-awak-kapal-indonesia-perlu-segera-ratifikasi-%0Akonvensi-ilo-188/%3E%0A>> accessed 5 November 2021.

According to article 9 paragraph (4) of Ministerial Regulation No 35/Permen-KP/2015 on Human Rights System and Certification in Fisheries Business, the minister is authorised to form a Fisheries Human Rights Team that has the following tasks:

1. Determining the requirements and criteria for implementing and supervising Fisheries Human Rights certification;
2. Accrediting assessment institutions to carry out assessment tasks in fisheries human rights certification, fisheries human rights training institutions and other supporting institutions;
3. Grant, reject, suspend and revoke fisheries human rights certificate to a Fisheries Entrepreneur; and
4. Carry out other duties and functions assigned by the Minister in the context of protecting and respecting human rights in the fisheries sector.

Normatively, this minister of maritime affairs and fisheries regulation has adopted the principles and standards of human rights in the fisheries industry. The framework of this ministerial regulation makes human rights due diligence a mandatory requirement that must be fulfilled by fisheries companies that will operate in the territory of Indonesia. However, in practice, this regulation on fisheries still requires massive effort and support to be implemented comprehensively. To date, there are still not much data and information that shows the implementation and level of compliance of fisheries companies with this regulation.<sup>25</sup>

Meanwhile, the issuance of Presidential Regulation No 33/2018 on the Amendments to Presidential Regulation No 75/2015 on the National Action Plan for Human Rights 2015–2019 can be deemed the greatest contribution civil society has made on the enforcement of business and human rights.<sup>26</sup> This presidential regulation expressly mandates the Ministry of Foreign Affairs to compile the National Guidelines for Business and Human Rights and other efforts to encourage

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<sup>25</sup> BHR Institute, 'Capaian Dan Tantangan Implementasi United Guiding Principles on Business and Human Rights (UNGPs): Satu Dekade Prinsip-Prinsip PBB Mengenai Bisnis Dan Hak Asasi Manusia Di Indonesia' <<https://bhrinstitute.id/capaian-dan-tantangan-implementasi-ungps-satu-dekade-prinsip-prinsip-pbb-mengenai-bisnis-dan-hak-asasi-manusia-di-indonesia/>> accessed 5 November 2021.

<sup>26</sup> Further manifested in Presidential Regulation No 53/2021 on the National Action Plan for Human Rights of 2021–2025.

the progress of business and human rights issues in Indonesia, including seminars, focus group discussions, advocacy, education and mentoring.<sup>27</sup>

Regarding intervention against corporations, civil society's achievements are reflected in several policies and steps taken by companies in Indonesia in their efforts to respect human rights. These companies at least acknowledge and are able to demonstrate that they:

1. Have policy commitment supporting the responsibility of respecting human rights;
2. Conduct human rights due diligence perennially to identify, prevent, mitigate and quantify human rights impact; and
3. Determine processes that enable remediation against impacts their activity and business has contributed that undermines human rights.

Adzkar Ahsinin and others<sup>28</sup> explained that ‘...(companies) that have policy commitments related to human rights include PT. SMART and PT. Asia Pulp Paper’. These two companies are trade names of the Sinar Mas Group. The policy commitments of these companies are then translated into standard operating procedures of the companies that serve as references for their daily operations. However, several companies have commitments to human rights policies that are not written. Some of them are PT. Bumi Konawe Minerina and PT. Sulawesi Resources, both are subsidiaries of Solway Investment Group, a nickel mining company based in Russia. Solway Investment Group in Russia, as the holding company, has a commitment to human rights policies, although these policies have not been integrated into the company's overall operations.

The achievements due to the intervention of Indonesian civil society are made even more complete with the promulgation of Presidential Regulation No 53/2021 on the National Action Plan for Human Rights of 2021–2025. This presidential regulation contains several agendas for human rights actions to be implemented by the Indonesian government in the period of 2021-2025. It also contains strategic objectives to be used as a reference for ministries, institutions, and provincial and

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<sup>27</sup> Adzkar Ahsinin (n 8).[123].

<sup>28</sup> *ibid.*[124].

regional/city regional governments in the context of respecting, protecting, fulfilling, enforcing, and promoting human rights in Indonesia. This presidential regulation includes human rights actions that will be carried out by ministries, institutions, provincial and regional/city governments.<sup>29</sup>

The National Action Plan for Human Rights of 2021–2025 set out business and human rights issues that have been integrated as part of the National Action Plan for Human Rights of 2021–2025. Each target group has a list of issues related to business and human rights. For example, for women’s target groups, there is a mandate to carry out human rights actions in the form of drafting policies by business actors to protect women’s rights in the field of employment. Likewise, with the target group of children and disabilities, there is a human rights action plan to be free from child labour, also for the disability group, there is an action plan to encourage recruitment of people with disabilities by government agencies and business entities. For indigenous peoples, the action plans that are being encouraged include increasing participation of indigenous people in businesses’ licensing process that has the potential to affect the indigenous peoples’ rights, such as land clearing.<sup>30</sup>

The successes of civil society in convincing the Indonesian government and corporations to integrate UNGPs into business policies and operations should be used as the main basis for building a comprehensive policy that covers all business and human rights policies. Therefore, these efforts can encourage and serve as ‘... the foundation that relates business activities and human rights’<sup>31</sup> that is integral and coherent with business policies and operations.

The main concern is that these achievements seem to be ‘washed away’ by the issuance of government policies and/or the actions by companies that do not reflect the responsibilities and obligations contained in the UNGPs.

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<sup>29</sup> BHR Institute, ‘Menilik Isu Bisnis Dan Hak Asasi Manusia Dalam Rencana Aksi Nasional Hak Asasi Manusia (RANHAM) 2020–2025’ <<https://bhrinstitute.id/wp-content/uploads/2021/07/Kabar-BHR-Vol-5-July-2021.pdf>> accessed 5 November 2021.

<sup>30</sup> Presidential Regulation No 53/2021 concerning the National Action Plan for Human Rights 2021–2025.

<sup>31</sup> Majda El Muhtaj, ‘Perkembangan Bisnis Dan HAM Di Indonesia Xxiii’ (*Lembaga Studi dan Advokasi Masyarakat (ELSAM)*, 2019).

Ratification of Law No 11/2020 on Job Creation and Law No 3/2020 on Mineral and Coal (*Mineral dan Batubara*, Minerba) creates complex issues related to the commitments that have been developed by the Indonesian government regarding UNGPs.

The Job Creation Law has the potential to interfere with the protection and enjoyment of citizens' rights. Marginal groups, workers, indigenous peoples, fishermen, farmers, and women may become victims of state policies that only support investment and investors. The Job Creation Law may serve as a threat to the environment.<sup>32</sup> Whereas the basic principles of the UNGPs have clearly outlined that States should '...protect human rights violations by third parties, including business companies, within their territory and/or jurisdiction. This requires appropriate steps to be taken in order to prevent, investigate, punish and remedy these violations through effective policies, legislation, regulations, and the judicial system,'<sup>33</sup> and not to establish a regulation that is deemed to violate the rights of the citizens.

Likewise, the Minerba Law may be deemed to encourage several human rights violations caused by the centralisation of authority in the administration of mineral and coal control, guaranteeing the long-term operation of the mining industry is contrary to spatial planning, as well as providing a basis for law enforcing authorities and companies to criminalise people who oppose mineral and coal mining businesses.<sup>34</sup>

Another challenge Indonesian civil society faces is the government's difficulty in appropriately adapting the UNGPs to the situation and conditions in Indonesia.

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<sup>32</sup> Wahyu Wagiman, 'Pengesahan UU Cipta Kerja: Masa Kelam Perlindungan Hak Asasi Warga Negara' (*Lembaga Studi dan Advokasi Masyarakat (ELSAM)*, 2020) <<https://elsam.or.id/pengesahan-uu-cipta-kerja-masa-kelam-perlindungan-hak-asasi-warga-negara/>> accessed 5 November 2021.

<sup>33</sup> Christian Donny Putranto, 'Prinsip-Prinsip Panduan Untuk Bisnis Dan Hak Asasi Manusia: Menerapkan Kerangka Perserikatan Bangsa-Bangsa Tentang Perlindungan, Peggormatan, Dan Pemulihan' (*Lembaga Studi dan Advokasi Masyarakat (ELSAM)*, 2019) <[https://elsam.or.id/wp-content/uploads/2020/10/Menerapkan-Kerangka-PBB-tentang-Perlindungan-Penghormatan-dan-Pemulihan\\_FINAL\\_OK.pdf](https://elsam.or.id/wp-content/uploads/2020/10/Menerapkan-Kerangka-PBB-tentang-Perlindungan-Penghormatan-dan-Pemulihan_FINAL_OK.pdf)> accessed 5 November 2021.

<sup>34</sup> WALHI, 'Menyoal 4 Masalah UU Minerba Yang Merugikan Masyarakat Luas' <[www.walhi.or.id/menyoal-4-masalah-uu-minerba-yang-merugikan-masyarakat-luas](http://www.walhi.or.id/menyoal-4-masalah-uu-minerba-yang-merugikan-masyarakat-luas)> accessed 5 November 2021.

Thus, there is often a difference in perception between the central government and the regional government on this matter.

Likewise, based on the human rights reports issued by Komnas HAM, businesses are often placed as entities subject to many complaints regarding human rights violations. The 2019 Komnas HAM report states that the main issues in cases involving companies are:<sup>35</sup>

1. related to corporate non-compliance with applicable regulations related to proper environmental standards in the area of their operations;
2. labour dispute, where the respondent is a corporation or private company;
3. the use of coercive measures with the involvement of the police in land disputes between society and the company, where the police participated in coercive measures in the land clearing process.

## **Conclusions**

The challenges faced by Indonesian civil society need a response with the right approach so that the achievements and momentum in promoting business and human rights policies cannot be lost. Indonesian civil society must modify the ‘smart mixed’ action plan as Ruggie demonstrated when designing the UNGPs. Therefore, the government and business circles that have been successfully intervened can again carry out measurable and targeted innovations in developing business policies and human rights.

One thing that can be used as a reference to restore cohesiveness between business and human rights stakeholders in Indonesia is to encourage the integration of the UNGPs into regulations that can legally provide support all stakeholders actively and that are binding. The framework for integrating business and human rights issues into Indonesian regulations has a fairly strong backing considering that the UNGPs emphasise the importance of policy coherence related to business and

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<sup>35</sup> Komisioner Komnas HAM RI, ‘Laporan Tahun Komnas HAM 2019’ (2020) <[www.komnasham.go.id/files/20201209-laporan-tahunan-komnas-ham-2019-\\$V1GFW5HE.pdf](http://www.komnasham.go.id/files/20201209-laporan-tahunan-komnas-ham-2019-$V1GFW5HE.pdf)> accessed 5 November 2021.

human rights. The 8th Principle of the UNGPs emphasises that: States must ensure that State-based departments, government agencies, and other institutions conducting business activities are aware of and carry out the State's human rights obligations when fulfilling their respective mandates, including by providing them relevant information, training, and support. This is reaffirmed in Principle 9, which states that: States should maintain adequate space under domestic policies to fulfill human rights obligations when pursuing policy objectives related to businesses with other States or business enterprises, through means such as treaties or investment agreements.

If Indonesian civil society can identify and adapt to the challenges with the right steps, the business and human rights advocacy process can produce a strong legal framework to encourage the government and corporations to implement the values and principles of the UNGPs into daily life and State administration practice. This will strengthen Indonesia's claim as a supporter of the establishment of the UNGPs in June 2011,<sup>36</sup> which will be reflected in the steps and policies issued by the government. It shall by no means become a mere *archaic* decoration with no meaning or value in promoting and protecting human rights in Indonesia.

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<sup>36</sup> Hajerati (n 2).



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