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Elaboration of the Concept of Serious Human Rights Violations in Indonesia: Jus Cogens in the Framework of Corporations Criminal Responsibility

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Abstract
The handling of serious human rights violations committed by corporations in Indonesia remains legally and practically uncertain, particularly regarding the recognition of corporations as subjects of international human rights law. This issue has become increasingly urgent, as some corporations with strong financial influence are able to pursue profit at the expense of fundamental human rights, often without facing adequate legal consequences. The lack of a clear and enforceable framework for holding corporations criminally accountable risks enabling impunity and undermining justice for victims. This research aims to address that gap by developing a legal concept of corporate criminal responsibility specifically for gross human rights violations, tailored to the Indonesian context. The study adopts a statutory, conceptual, and case-based approach to explore how corporate liability can be effectively integrated into the national criminal justice system. It also emphasizes the need for harmonization between Law Number 26 of 2000 on Human Rights Courts and Law Number 1 of 2023 on the Criminal Code, in order to ensure legal coherence and uphold jus cogens norms—universal principles of international law that prohibit severe human rights abuses such as genocide, torture, and crimes against humanity. By proposing a structured approach to corporate accountability, this research seeks to strengthen Indonesia's legal capacity to respond to serious human rights violations and contribute to the broader goal of promoting justice and the rule of law.
Keywords: Corporations; Criminal Liability; Human Rights; Serious Violations.

Introduction

Corporations are considered to have limited status as subjects of international law. This status differs from other international legal subjects, such as countries or international organizations. Based on this proposition and the

fact that individuals (*natural persons*) are also legal subjects, with the existence of rights and obligations based on international human rights law, corporations must also be considered to have the same rights and responsibilities.[1] The logical consequence of this equation is that corporations can be held accountable or prosecuted if they are proven to have violated obligations under international law.[2] The relationship between human rights and corporations is often interpreted and understood as very different. A corporation is always associated with an artificial person or legal entity formed by or based on the authority of a country's or nation's laws.[3]

Serious human rights violations committed by corporations in Indonesia occur frequently. This can be seen based on data from the National Human Rights Commission of the Republic of Indonesia (Komnas HAM RI) from 2019 to September 2021, which received 1,366 complaints regarding alleged human rights violations committed by corporations.[4] These violations span various sectors, particularly the palm oil and nickel industries, which have systematically harmed both the environment and workers' rights. In the palm oil sector, major companies have been reported to exploit laborers under dangerous conditions, with inadequate pay and exposure to harmful chemicals without proper protection.[5] Meanwhile, the nickel industry, especially within the Indonesia Morowali Industrial Park (IMIP) in Central Sulawesi, has faced intense scrutiny due to a high number of workplace accidents, including dozens

[1] Adriano, 'Menguji Konsep Pertanggungjawaban Pidana Korporasi' (2013) 28 Yuridika.[332].

[2] M Yahya Harahap, *Hukum Perseroan Terbatas* (Sinar Grafika 2019).[54].

[3] Black Law Dictionary, 'The Definition of "Corporation"' <https://cekhukum.com/corporation-blacks-law-dictionary/> accessed 3 September 2023.

[4] Komnas HAM RI, 'Terima Aduan Pelanggaran Korporasi, Komnas HAM RI Koordinasi Dengan KADIN' (*Kabar Latuharhary*, 2022) <https://www.komnasham.go.id/index.php/news/2022/3/10/2098/terima-aduan-pelanggaran-korporasi-komnas-ham-ri-koordinasi-dengan-kadin.html> accessed 22 May 2023.

[5] Amnesty International, 'The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names' (*Amnesty Indonesia*, 2016) <https://www.amnesty.org/en/documents/asa21/5243/2016/en/> accessed 3 September 2023.

of worker deaths since 2015, largely attributed to poor safety standards.[6] Historically, multinational corporations have also been implicated in serious abuses, such as ExxonMobil's case in Aceh, where the company was accused of complicity in torture and killings by military personnel it hired to secure its gas operations.[7] Normatively, Indonesia has laid the foundations for human rights protection in Pancasila as a state philosophy, a basic value that is relatively fixed (unchanged). This concept is contained in the preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Ideal values are related to the essence of the five principles of Pancasila. These basic values are universal, containing good and true ideals, goals, and values.[8]

Implementing human rights in Pancasila relies on the teachings of the second principle, namely regarding the implementation of "*kemanusiaan yang adil dan berada"* (just and civilized humanity). Therefore, the concept of human rights in Pancasila, when explained philosophically, can be interpreted as the essence of human nature as an individual and/or social being in society. The concept of human rights in Pancasila should also be based not only on the free exercise of each individual but also on social obligations in society to create a balance between rights and obligations between fellow social humans and/or humans as independent creatures and God's creatures who have a balance of body and soul.[9] Through the following diagram, several types of human rights contained in the second principle (*sila kedua*) are known:[10]

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[6] A Anantha Lakshmi and Diana Mariska, 'Production First, Safety Later': Inside the World's Largest Nickel Site' (*Financial Times*, 2024) <https://www.ft.com/content/56013ee9-f456-4646-895c-aeb65a685f85 > accessed 8 November 2024.

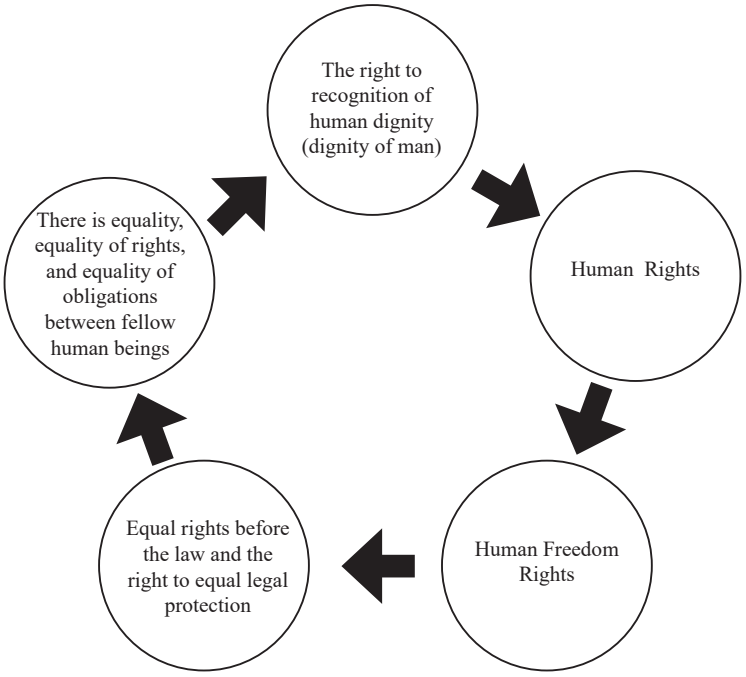
[7] Mohammad Taufan, 'Furnace Explosion at Chinese-Owned Nickel Plant in Indonesia Kills at Least 13 and Injures 46 Others' (*Associated Press*, 2023) <https://apnews.com/article/d5c9d-98584d70a23608b773821e9cfab > accessed 24 December 2023.

[8] Amalia Rizki Nurhikmah and Nicki Nugrahaningtyas, 'Dinamika Pancasila Sebagai Dasar Negara Dan Pandangan Hidup Bangsa' (2021) 2 Jurnal Pancasila.[60].

[9] Sri Rahayu Wilujeng, 'Hak Asasi Manusia: Tinjauan Dari Aspek Historis Dan' (2013) 18 Humanika.[5].

[10] Dicky Febrian Ceswara and Puji Wiyatno, 'Implementasi Nilai Hak Asasi Manusia Dalam Sila Pancasila' (2018) 2 Lex Scientia Law Review.[234].

Diagram 1. Human rights in the second principle of Pancasila



Source: Author's analysis

The recognition of the principle of criminal liability for corporations and relevant sanctions is an aspect that has been recognized internationally. First, the discussion will cover the principles of corporate criminal responsibility and applicable penalties. The relationship between human rights law and corporations that carry out transnational business and investment law is a matter of debate among international jurists. Certain parties believe that international human rights law only has a role in accompanying the interpretation of international investment law. The jurisprudence of international investment dispute resolution arbitration only refers to the concept and understanding of human rights law to clarify the knowledge of a particular concept.[11]

Acts of international crime will attract the world's attention when corporations carry out international investments in seeking as much profit as possible by using any means that cause serious crimes that lead to serious

[11] Riezdiani Restu Widyoningrum, 'Penyelesaian Sengketa Investasi Asing Melalui Mekanisme Arbitrase Internasional (Studi Kasus: Rafat Ali Rizvi Melawan Republik Indonesia)' (2023) 1 Student Research Journal.[283-284].

human rights violations. According to paragraphs 3 and 4 of the Preamble to the International Criminal Statute, these acts need to be known. Court (ICC), the ICC is a legal body that criminalizes "the most serious crimes of concern to the international community" because "they threaten the peace, security and prosperity, the existence of the world".[12]

Table 1. The Position of Human Rights in International Law

Case	Discussion on Human Rights
Mondev International Ltd v. United States of America ICSID Case No. ARB/(AF)/99/2	In this case, human rights, which guarantee the "right to a court" for all people as regulated in the ECHR, are said to be only useful as an analogy in implementing NAFTA and explicitly state that the obligations under the ECHR do not apply in this case.[13]
Tecnicas Medioambientales Tecmed , SA v. United Mexican States ICSID Case No ARB (AF)/00/2	In this case, human rights norms are applied in expropriation (nationalization). The arbitrators hearing this case considered the definition of expropriation according to ECHR jurisprudence and the approach usually followed by the IACHR.[14]
Azurix Corp. v. The Argentine Republic ICSID Case No. ARB/01/12	In this case, the arbitrators again emphasized the approach in the Tecmed case when human rights law jurisprudence was limited to guiding the examination of expropriation cases..

Source: Summary by the author citing the writings of Iman Prihandono.[15]

Concerning state responsibility for serious violations of human rights, state responsibility for acts of basic human rights violations is not a new concept in international law. At the beginning of its development, an important element of the request for state responsibility required an element of damage, injury, or loss that occurred to another party or state to be used as a basis for filing a claim. However, in the modern era, "loss" is no longer considered a necessity in every case for the emergence of state responsibility. This provision applies, among other things, to violations of international law provisions relating to human rights, which are condemned according to international law, even though they do not harm other parties or countries.[16]

[12] Antonio Cassese, *International Criminal Law Second Edition* (Oxford University Press Inc 2008).[53-54].

[13] European Convention om Human Rights (EHCR), The North American Free Trade Agreement (NAFTA).

[14] The Organization of American States (OAS), Inter-American Commission on Human Rights (IACHR) 1959.

[15] Iman Prihandono, *Permasalahan Hak Asasi Manusia Dalam Sengketa Arbitrase Investasi Internasional* (Airlangga University Press 2023).[6].

[16] Dinah Shelton, *Remedies in International Human Rights* (Oxford University Press Inc 2015).[32].

Several countries, have carried out corporate criminalization from various countries providing comprehensive references, including using the principle of universal jurisdiction in a measurable manner which can prosecute serious human rights violations even if committed abroad or transnationally and applying international law directly to national law with a focus on *customary international law*. Compliance with *jus cogens* norms as used in Canada, including many qualifying acts in serious violations of human rights in Australia, which is also carried out to eliminate impunity, and as in the Netherlands, provides comprehensive punishments for corporations that commit crimes so that it will prevent corporations from committing crimes or repeating crimes in the future.

Jus cogens is a normal general international law accepted and recognized by the international community, with its main characteristic being non-derogable rights.[17] The concept of *jus cogens* is based on accepting fundamental and superior values in the system. It is similar to public order and public policy in the domestic legal order. Therefore, the state should take legislative, administrative, judicial, and practical policy steps to ensure that the rights that are its obligations can be fulfilled. Hence, corporations that commit serious violations of human rights need to be prosecuted based on state policies that aim to respect and protect and fulfill fully the human rights of every individual.[18]

This development is also implied in Articles 42 and 48 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, International Law Commission August 2001 which eliminates the requirement for damages regarding acts that can be blamed under international law as a new right for injured states, especially, right to claim responsibility.[19] Likewise, the provisions of Article 48 letter and letter d of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) give each participating country the authority to

[17] International Law Commission (ILC) of the United Nations, Vienna Convention on the Law of Treaties 1969.

[18] Andrey Sujatmoko, *Hukum HAM Dan Hukum Humaniter* (Raja Grafindo Persada 2015).[12].

[19] Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press Inc 2006).[87].

file a lawsuit against another participating country even though the country suing is not a victim of human rights violations committed by the government accused of committing the violation. The existence and application of *jus cogens* in international legal institutions is not limited to the ICC Statute and the European Convention but also the entire international legal system in general, which has previously included corporations as subjects of international law so that states as members of the global community within the framework of international law can sue.[20]

The basic theory of corporate criminal liability is rooted in the recognition that a corporation, although a legal fiction, acts through its organs—namely, its directors, employees, and agents—and therefore can be held accountable for crimes committed in the course of its operations.[21] This liability may be constructed through various models, including the identification doctrine, vicarious liability, and the aggregation theory, which allow for attributing criminal intent and action to the corporate entity. This framework is crucial in the context of international and transnational crimes, particularly when corporations are involved in conduct that leads to gross human rights violations. This important breakthrough regarding state responsibility, as mentioned above, is formally clear not only based on violations of international agreements or customary international law but also because the crime is considered to fulfill the principle of *hosti humani generis* (enemies of all mankind) so that it becomes an act that violates International Criminal Law as a serious violation of human rights whose jurisdiction applies universally.[22] Based on the description above, the main legal issue is how to apply criminal law to corporations and their accountability for serious human rights violations and the implementation of law enforcement for serious human rights abuses by corporations in Indonesia by analyzing the qualifications of criminal acts of perpetrators of human rights violations in Indonesia.

[20] Hendro Luhulima, 'Identifikasi Dan Validitas Norma-Norma Jus Cogens Dalam Hukum Internaisonal' (2018) 34 Justitia Et Pax.[79].

[21] Celia Wells, 'Corporate Criminal Liability: Exploring Some Models in European Criminal Law' (2011) 11 Criminal Law Forum.[263].

[22] Peter Judson Richards, 'Hugo Grotius, Hosti Humani Generis, and the Natural Law in the Time of War' (2008) 2 Liberty Unibersity Law Review.[905].

Enforcing Criminal Law on Corporations and Holding Them Accountable for Serious Human Rights Violations

In international law, the concept of responsibility is often termed responsibility and/or liability, so there is no standard term regarding the idea of responsibility in international law.[23] According to Black Law's Dictionary, *responsibility* is "*the obligation to answer for any act done, and to repair any injury it may have caused; liable, legally accountable for answerable"*.[24] Responsibility results in an obligation to repair the damage that has been caused. Meanwhile, the phrase liability has the meaning:

> "*The word is a broad legal term. It has been referred to as of the most comprehensive significance, including almost every character of hazard or responsibility, absolute, contingent or likely; condition of being responsible for a possible or actual loss, penalty, evil, expense, or burden*".[25]

However, Alan E. Boyle in his *"State Responsibility and International Liability for Injurious Consequences of Acts Not Prohibited by International Law: A Necessary Distinction?*" clearly differentiates between responsibility and liability. Responsibility is the state's obligation arising from violations of international law. In contrast, liability is the state's obligation for losses arising from legal actions under international law.

Responsibility is a legal concept used when there is a violation of binding norms and principles in law, whether a violation of national law or international law. According to the opinion of the International Court of Justice in the *Chorzow Factory* case, which believes that liability is part of international law, every violation of an agreement will give rise to a *duty of reparation*. Liability will arise when the action taken causes something that requires repair (reparation) that is valid according to law.[26] It can be concluded that responsibility is an effort made by a legal subject to repair what has been damaged or to return something to the state

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[23] Titon Slamet Kurnia, *Reparasi (Reparation) Terhadap Korban Pelanggaran HAM Di Indonesia* (Citra Aditya Bakti 2005).[177].

[24] Henry Campbell, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurispudence, Ancient and Modern* (West Publishing Company 1991).[1476].

[25] Titon Slamet Kurnia (n 23).[175-176].

[26] ibid.[178].

it was in before the legal violation occurred.

According to Khanna, there are three corporate liability standards: strict liability, negligence, and corporate *mens rea* (e.g., knowing intent and corporate negligence).[27] A corporation that is involved in criminal activity will meet strict liability. On the other hand, negligence liability will arise if the company fails to exercise its rights. On the other hand, for corporate *mens rea*, the corporation must engage in harmful conduct and meet the necessary *mens rea* requirements.[28] The existence of *mens rea* can be seen from the actions of corporate organs that influence corporations, which is an alternative approach to taking action against legal entities as criminal subjects.[29]

To determine the existence of *mens rea* in a corporation, there are several doctrines in this table.

Table 2. Doctrines of *mens rea* in a corporation

Doctrine	Discussion on doctrine
Strict Liability Doctrine	Based on this doctrine, it is sufficient to prove the existence of *actus reus*; then, a person committing commission (committing an act that is violated by law) or negligence can be subject to criminal liability. However, corporations are only criminally liable under this doctrine for certain offenses that do not require *mens rea*.[30]
Vicarious Liability Doctrine	This theory is rooted in the *respondeat superior theory*, which is known in the civil law system. Based on this theory, there is a relationship between superiors and subordinates or principals and agents, which is known as the adage "*quit facit per alium facit per se*".[31] According to Han Hyewon and Nelson Wagner, a worker's actions count towards the corporation only if:[32] (i) He acted within the scope or nature of his employment; (ii) He acted with at least partial intent to benefit the corporation; and (iii) These actions and intentions can be charged to the corporation.

[27] Vikramaditya S Khanna, 'Is the Notion of Corporate Fault A Faulty Notion?: The Case of Corporate Mens Rea' (1999) 79 Boston University Law Review.[369].

[28] ibid.

[29] Ali Rido, *Badan Hukum Dan Kedudukan Badan Hukum Perseroan, Perkumpulan, Koperasi, Yayasan, Wakaf* (Cetakan Ke-IV Alumni ed, 1986).[53].

[30] ibid.[73].

[31] Jowit Earl and Clifford Walsh, *Jowitt's Dictionary of English Law* (Second Edition, Sweet and Maxwell Ltd 1977).[1564].

[32] Han Hyewon and Nelson Wagner, 'Corporate Criminal Liability' (2007) 44 American Criminal Law Review.[399].

Doctrine of Delegation	This doctrine provides for the transfer of criminal responsibility carried out by employees to corporations, which means delegating authority from one person to another to carry out the authority they have.[33] This doctrine requires the actions of several people to be attributed to the corporation.
Doctrine of Identification	According to this doctrine, corporations are incapable of acting and cannot possibly have *mens rea*. This results in the prosecutor identifying the perpetrator of the criminal act before demanding corporate responsibility. If the perpetrator is "the directing mind" of the corporation, then criminal responsibility lies with the corporation.[34]
Doctrine of Aggregation	This doctrine is a development of the identification doctrine that needs to be revised. This doctrine makes it possible to combine the faults of several people to be attributed to a corporation. According to this doctrine, all the relevant persons' acts are considered to be acts performed by one person alone.[35]

Source: Authors' analysis

The analysis of the theory of corporate responsibility above can be applied if the corporation is the main perpetrator of the crime (*Principal Perpetrator*). Furthermore, the legal subject that can be subject to criminal charges is the *Secondary Perpetrator* or supporting actor. In this context, it determines that corporations can be held criminally responsible for assisting core international crimes. As explained above, corporations as subjects of international law have been recognized in various paradigms, doctrines, and international customary law—theories and doctrines for determining corporate criminal liability.

Corporate criminal liability for serious human rights violations in international criminal law can be applied to corporations. The OECD Guidelines and UN Global Compact[36] regulate ethical business behavior to eradicate all forms of behavior that violate human rights. According to the UN High Commissioner for Human Rights, corporations have three levels of business involvement in human rights violations:

[33] Sutan Renny Sjahdenini, *Pertan*ggungjawban Pidana Korporasi (Grafiti Pers, 2006).[94-94].

[34] ibid.[100].

[35] Kristian, 'Penerapan Sistem Pertanggungjawaban Pidana Bagi Lembaga Perbankan Ditinjau Dari Sistem Pertanggungjawaban Pidana Korporasi'' (2019) 17 Syiar Hukum Jurnal Ilmu Hukum.[127].

[36] The Organisation for Economic Co-Operational and Development (OCED), The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct 1976.

direct, profitable, and tacit involvement. On the other hand, according to the norms in the *Sub-Commission on the Promotion and Protection of Human Rights*, the emphasis is on prohibiting corporations from carrying out business activities related to war crimes, crimes against humanity, and crimes of genocide.

Corporate accountability for gross violations of human rights occurs when corporations commit acts, with *mens rea*, falling within the jurisdiction of the ICC, including war crimes, crimes against humanity, and genocide. These crimes are not only prosecutable under treaty-based or customary international law, but also constitute breaches of *jus cogens* norms—peremptory norms of international law from which no derogation is permitted.[37] As such, the prosecution of corporations for their involvement in these violations is grounded not merely in positive law but in universally binding legal obligations. While Indonesia's new Criminal Code (KUHP 2023) provides a formal legal basis for imposing criminal sanctions on corporations, including provisions allowing for the prosecution of corporate entities,[38] *jus cogens* remains the underlying normative framework that justifies and compels accountability for gross human rights abuses. The inviolable nature of *jus cogens* obliges all states, including Indonesia, to ensure that corporations do not enjoy impunity when involved in acts that constitute crimes against the international community as a whole.

Application of Criminal Act Qualifications for Human Rights Violators in Indonesia

Legal subject acts, which are corporate acts, have been explained and are an element of article 46 of Law Number 1 of 2023 concerning Criminal Procedure Law (KUHP 2023), so legal subjects which are representations of corporations include a) giving orders, b) controlling holders, or c) the beneficial owner of the Corporation, who is outside the organizational structure, but can control the Corporation, we can

[37] Erika de Wet, 'The International Constitutional Order' (2006) 55 International and Comparative Law Quarterly.[51].

[38] Indonesian Parliament, Indonesia Criminal Code (KUHP Nasional) 2023 1.

understand that the phrase in this article is a representation of the vicarious theory. Furthermore, what is meant by a corporation in the provisions of the Criminal Code is regulated in Article 45, paragraph 2 of KUHP 2023. Then, as in KUHP 2023, it is regulated that actions that fall within the scope of the Corporation mentioned above can be criminally responsible if they comply with Article 48 of KUHP.

Referring to Law Number 26 of 2000 concerning Human Rights Courts (Law 26/2000), it is evident that the law focuses exclusively on individual perpetrators, as it does not explicitly recognize corporations or legal entities as subjects of prosecution. Meanwhile, the enactment of Law No. 1 of 2023 on the new Criminal Code (KUHP 2023) introduces comprehensive provisions on corporate criminal liability, particularly in Articles 45 to 51, which establish corporations as subjects of criminal law. Despite this development, Law 26/2000 continues to function as *lex specialis* in the prosecution of gross human rights violations and therefore retains its primacy in such cases. The KUHP 2023 does not replace or override the specific procedures and scope regulated under Law 26/2000, but it may serve as a general legal framework that complements it, particularly in areas that are not expressly regulated, such as the accountability of corporate actors. In this context, provisions in Book I of the KUHP, including Article 45 on corporate liability and Article 20 letter (c) on participation (penyertaan), may be used as interpretive references, provided such application remains consistent with fundamental legal principles such as *nullum crimen sine lege* and *lex specialis derogat legi generali*. Accordingly, while Law 26/2000 remains the principal legal instrument for adjudicating gross human rights violations, the KUHP 2023 provides an important normative foundation that can support the construction of corporate criminal responsibility, particularly in anticipation of future harmonization between the two legal regimes.

It is crucial to introduce the *ratio legis* into the criminal law system in Indonesia, particularly in the context of qualifying criminal acts of perpetrators. This is a significant step that can greatly impact the legal landscape in Indonesia:

a) The Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) article 7 (1) and the ICTR Statute article 6 (1) separate the direct

perpetrator from the person who ordered it, and then the Rome Statute in article 25 (2) and (3) regulates regarding direct perpetrators, it is explained that there are four types of direct perpetrators, including:

a. committing a crime yourself;
b. jointly committing a crime;
c. through other people who cannot be held criminally responsible (innocent): children, or people who do not know that a crime will occur;
d. through other people who also want the crime to occur, namely their accomplices.[39]

Based on criminal law theory in Indonesia, direct perpetrators are also regulated in positive law, and are included in the category of participation (*deelneming*), which includes perpetrators (*dader*) and participants (*mededaderschap*) as stipulated in Article 55 paragraph 1 of Law Number 8 of 1981 concerning Law Criminal Procedure (KUHP) explains those convicted as a perpetrator of a criminal offense include:

1) those who do it, who order it to do it, and who participate in doing it;
2) those who, by giving or promising something, abuse power or dignity, with violence, threats or misdirection, or by providing opportunities, facilities or information, deliberately encourage other people to do something.

Then, in the KUHP 2023, perpetrators of criminal acts are regulated in paragraph 5. The inclusion of articles 20 letters a – d explains that every person is convicted as a perpetrator of a criminal offense by:

a) committing a criminal act yourself;
b) committing a criminal act through means or ordering other people who cannot be accounted for;
c) participating in committing a criminal act; or
d) encouraging other people to commit criminal acts by giving or promising something, abusing power or dignity, committing violence, using threats of violence, committing misdirection, or providing opportunities, facilities, or information.

Based on doctrine and positive law, the meaning of the perpetrator is by the provisions of paragraph 5 of the inclusion of Article 20 letter a of KUHP 2023,

[39] Diajeng Wulan Christianti, *Hukum Pidana Internasional* (Sinar Grafika 2012).[99].

namely committing a criminal act himself and by the requirements of the Rome Statute Article 25, which is interpreted as the perpetrator committing a crime alone and jointly committing a crime (this form of responsibility is known as *co-perpetrator*, namely those who jointly commit a crime).[40]

b) Based on Article 55 paragraph (1) 2 of the KUHP or Article 20 letter d of KUHP 2023, attempts are limited to encouraging others to commit criminal acts. There are five efforts to advocate or mobilize alternatives: First, giving or promising something. Second, abuse of power or dignity. Third, with violence. Fourth, with threats or misdirection. Fifth, provide opportunities, facilities, or information. Between ordering to do (*Doenplagen*) and moving or recommending (*Uitlokken*), there are three principle differences: 1) The party who commits a criminal act in *doenplegen* must remain exempt from punishment. Meanwhile, people who are encouraged or encouraged to commit criminal acts can be held criminally liable; 2) Efforts in unlocking are limited, while in *doenplegen* any means can be used; 3) it is impossible for the *uitlokker* to realize all the elements in the offense formulation himself because they are alternative.

c) Assistance in Indonesian criminal law theory is known as *medeplichtige;* there are two parties consisting of two or more people: the first is the perpetrator or maker or *de hoofd dader*, the second is the assistant or *medeplichtige.*[41] There are two forms of assistance: assistance when a crime is committed and assistance to commit a crime.[42] In trials of serious violations of international human rights, apart from direct perpetrators, legal subjects who can be punished are *secondary perpetrators* or perpetrators who assist. The definition and material acts of *aiding* and *abetting* are described as follows:[43]

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[40] Moeljatno, *Asas-Asas Hukum Pidana* (Rineka Cipta 2009).[110-111].

[41] ibid.[128].

[42] Jan Rammelink, *Hukum Pidana: Komentar Atas Pasal-Pasal Terpenting Dalam Kitab Undang-Undang Hukum Pidana Belanda Dan Padanannya Dalam Kitab Undang-Undang Hukum Pidana Indonesia* (Gramedia Pusaka Utama 2003).[322].

[43] The United National Criminal Tribunal for Rwanda, Kajelijeli Trial Judgement 2003.[765].

> Aiding and abetting are different legal concepts. "Assisting" means providing assistance to another person in committing a crime. "Abetting" means facilitating, encouraging, advising, or inciting the commission of a crime. Legal usage, including in the Statutes and case law of the ICTR and ICTY, often links the two terms so that they are treated as a single, broad legal concept.

Based on this, the concept of assistance (*Aiding* and *Abetting*) in trials for serious violations of International Human Rights and the concept of criminal law in Indonesia have the same idea, so the application of punishment is also the same so that the concept of assistance (*Aiding* and *Abetting*) in the jurisprudence of trials for serious violations of International Human Rights can be used in human rights courts in Indonesia

d) In the criminal law system in Indonesia, what meets the qualifications for incitement is *uitlokking*. As previously discussed, attempts to encourage or encourage other people to commit criminal acts are limited based on Article 55, paragraph (1) 2 of KUHP or Article 20 letter d of KUHP 2023. There are five efforts to advocate or mobilize alternatives: First, giving or promising something. Second, abuse of power or dignity. Third, with violence. Fourth, with threats or misdirection. Fifth, it provides opportunities, facilities, and information. Five conditions must be met in the form of participation in *uitlokking*:[44] 1) intentional action to encourage or encourage another person to commit a criminal act; 2) other people can carry out the act that is encouraged or recommended. This means this will also exist in the person being moved or encouraged. This relates to psychic causality; 3) the person being moved or encouraged carries out the criminal or attempted criminal act desired by the mover or advocate. Bad faith alone is not enough without the realization of the action by the person who is recommended or encouraged; 4) recommending or mobilizing in ways that have been determined in a limited manner as intended in Article 55 paragraph (1) 2 or Article 20 letter d of KUHP 2023 above; 5) the

[44] The United National Criminal Tribunal for Rwanda (ICTR), Akayesu Trial Judgement 1998.[126].

person who is motivated or encouraged must be held criminally responsible.

e) In the jurisprudential paradigm of International Human Rights Justice, what is included in the type of initial action, in this case, is (a) preparatory action to commit a crime, (b) the action is not completed so that it has not harmed other people, and (c) is punished as a separate action, namely regardless of whether the crime has occurred or not.[45] Looking at the sources of international law, there are three acts, namely attempt, conspiracy, and planning, which are the same in the Indonesian national legal system, namely:

1. *Poging* (Attempted criminal offense)

   Poging in the old KUHP is regulated in Article 53 paragraph 1 and in the KUHP 2023 it is regulated in Article 17 paragraph 1 which explains "... *terjadi jika niat pelaku telah nyata dari adanya permulaan pelaksanaan dari Tindak Pidana yang dituju, tetapi pelaksanaannya tidak selesai, tidak mencapai hasil, atau tidak menimbulkan akibat yang dilarang, bukan karena semata-mata atas kehendaknya sendiri"* (Attempts to commit a criminal act occur if the perpetrator's intention is clear from the beginning of the implementation of the intended criminal act, but the implementation is not completed, does not reach results, or does not cause prohibited consequences, not solely because of his own will).

2. *Samenspannning* (Evil Conspiracy)

   In Indonesia's national legal system, *Samenspanning* or "evil conspiracy" is regulated in Article 88 of the Old Criminal Code, and Article 13 of the KUHP 2023, *"...apabila dua orangxatau lebih telah sepakat akan melakukan kejahatan (Tindak Pidana)"* (It is said to be an evil conspiracy if two or more people have agreed to commit a crime (Criminal Act)).

3. Preliminary Actions

   In Indonesia's national legal system, new preparations are regulated in Article 15 paragraph 1 of KUHP 2023 which explains "...*jika pelaku berusaha*

[45] Cassese (n 12).[219].

untuk mendapatkan atau menyiapkan sarana berupa alat, mengumpulkan informasi atau menyusun perencanaan tindakan, atau melakukan tindakan serupa yang dimaksudkan untuk menciptakan kondisi untuk dilakukannya suatu perbuatan yang secara langsung ditujukan bagi penyelesaian Tindak Pidana" (Preparation for committing a criminal act occurs if the perpetrator attempts to obtain or prepare means in the form of tools, gather information or prepare action plans, or carry out similar actions intended to create conditions for carrying out an act which is directly aimed at completing a criminal act), then Article 16 of the KUHP 2023 explains "*Persiapan melakukan Tindak Pidana tidak dipidana jika pelaku menghentikan atau mencegah kemungkinan terciptanya kondisi perbuatan persiapan sebagaimana dalam pasal 15 ayat 1"* (Preparation for committing a criminal act is not punishable if the perpetrator stops or prevents the possibility of creating conditions for the preparatory act as in Article 15 paragraph 1).

Table 3. Qualification of Criminal Acts of Perpetrators of Serious Human Rights Violations from International Legal Sources into the Indonesian National Legal System

No.	International Human Rights Justice	Indonesian Criminal Law System
	Direct Actor (Perpetrators of crimes and jointly committing crimes)	*Plegen* (Actor) *Medeplegen* (Participating)
	Command/Order to Do	*Doenplegen* (Ordering to Do)
	Action to help, support, or approve *(Aiding and Abetting)*	*Medeplichtige* (Action to help, support, or approve)
	Incitement	*Uitlokking* (recommend moving)
	Preliminary Actions/Unfinished Actions *(Inchoate Crimes)*	*a.* *Poging* (Attempted criminal offense), *b.* *Samenspanning* (Evil Conspiracy), and c. Preliminary Actions

Source: Author's summary

Implementation of Law Enforcement for Serious Human Rights Violations by Corporations in Indonesia

Discussions regarding gross violations of human rights in the context of contemporary legal developments are important for two reasons; firstly, neoliberal economics has encouraged the strengthening of the role of markets in global economic circulation, which sometimes places the state in a weak and dictated position. Second, the increasing number of conflicts followed by human rights

violations as a result of corporate business activities.[46] The efforts of the business sector to try to dictate to the state along with the strengthening role of the market can be seen in the case of changes to the regional spatial plan for Pati Regency, Central Java. PT Semen Gresik (SG) is trying to expand in the North Kendeng Mountains. In this effort, the government then aligned the 1993 - 2012 regional spatial plan with the expansion needs of SG so that significant changes occurred, namely that agricultural and tourism areas would be changed to industrial and mining areas in the 2009 - 2029 regional spatial plan.[47]

According to data from Komnas HAM, 30% of the 5000 complaints relate to corporate business[48]—for example, the land struggle between Urutsewu farmers and the Indonesian Army. Initially, a dispute arose over ownership of sandy land along the southern coast of Java in Kebumen. However, business activities were involved in the dispute with the granting a Mining Business Permit by the Indonesian Army (TNI AD) to PT Mitra Niagatama Cemerlang, where individuals from the TNI AD, State Intelligence Agency, and National Land Agency served as directors.[49] Urutsewu farmers refused, but various resistance emerged from the Indonesian Army and the government, such as the shooting of residents during pilgrimages and victims during weapons testing. Another famous case is Exxon Mobil, operating in Aceh. Considering that Exxon Mobil handed over the trust of its assets and workers to the Indonesian military and the results of Exxon Mobil's operations reached 1 billion US dollars, the government sent the military in large numbers. It was alleged that there had been murder, torture, and kidnapping, so eleven residents sued Exxon Mobil in Washington, DC, based on the Alien Tort Claims Act (ACTA) and the Torture

[46] Helmi, *Hukum Perizinan Lingkungan Hidup* (Sinar Grafika 2012).[46].

[47] R Abrhamsen, *Sudut Gelap Kemajuan* (Lafadl Pustaka 2004).[115].

[48] Henny Nuraeny, *Tindak Pidana Perdagangan Orang: Kebijakan Hukum Pidana dan Pencegahannya* (Sinar Grafika 2022).[78].

[49] Victorio H Situmorang, 'Kebebasan Beragama Sebagai Bagian Dari Hak Asasi Manusia' (2019) 10 Jurnal HAM.[46].

Victim Protection Act (TVPA).[50] Ultimately, the case was dismissed because it interfered with United States foreign interests.[51]

Protecting citizens' human rights is the responsibility of the state. This proposition departs from the concept that the state has no rights in a human rights system, so only the obligation remains to fulfill the rights guaranteed in human rights instruments.[52] So far, the government's efforts to protect human rights, viewed from the legislative aspect, can be seen in several conventions that have been ratified, including Law Number 59 of 1958, which ratifies the Geneva Convention, Law Number 68 of 1958, which ratifies the Convention on the Political Rights of Women, etc. Indonesia has also enacted two pioneering laws related to human rights, namely Law Number 39 of 1999 concerning Human Rights (Law 39/1999) and Law 26/2000. However, from the series of regulations above, not many corporations have committed serious human rights violations that can be named as defendants. Even though it is starting to emerge, such as in Decision 284/Pid.B/2005/PN. Mdo with PT Newmont Minahasa Raya as the Defendant, there are also many cases of serious human rights violations by corporations that have stopped or are not even on the radar of law enforcement. This underscores the urgent need for stricter measures to hold corporations accountable for human rights violations.

Obstacles in law enforcement regarding serious human rights violations by corporations in Indonesia occur for several reasons. According to Payne, obstacles in holding corporations accountable are influenced by international pressure, national judicial authorities, civil society demands, and weak policymakers.[53] One of the challenges faced by Indonesia is the overlapping authority to handle serious human rights violations. Constitutional Court Decision Number 75/PUU-XIII/2015 states

[50] A. Rosser, 'Towards a Political Economy of Human Rights Violations in Post-New Order Indonesia' (2013) 43 Journal of Contemporary Asia.[243].

[51] BC Free, 'Awaiting Doe v. Exxon Mobil Corp.: Advocating The Cautions Use of Executive Opinions in Alien Tort Claims Act Litigation' (2003) 12 Pacific Rim Law & Policy Journal.[467-498].

[52] Kristian Megahputra Warong, 'Kajian Hukum Hak Asasi Manusia Terhadap Kebebasan Berpendapat Oleh Organisasi Kemasyarakatan Di Media Sosial' (2020) 8 Lex Administratum.[47].

[53] Leigh A Payne and Gabriel Pereira, 'Corporate Complicity in International Human Right Violation' (2016) 12 Annual Review of Law and Social Science.[55].

that Komnas HAM has authority over the investigation process, while the Attorney General is the investigator. The potential for disharmony in the handling process, especially understanding a norm, results in the return of case files. For example, what happened in the May 1998 riots, Trisakti, and Petrus (mysterious shooter).[54]

Apart from that, there was also a debate regarding the applicability of the non-retroactive principle in handling serious human rights violations. For this reason, it has been answered with clear regulations, namely Article 43 of the Law 26/2000 jo. Explanation of Article 4 of the Law 39/1999 with *ratio legis*, namely efforts to prevent injustice for victims if perpetrators of human rights violations are not punished solely because of the non-retroactive principle. This provision is confirmed by the position of the Constitutional Court, which rejected the review of the above article.[55] However, the next problem is that the subject of the norms in the two laws above is a natural person, so corporations cannot be charged. The corporation is a criminal expert's term for legal entities in civil law.[56] The justification for corporations being seen as a legal subject is that corporate profits are increasing along with the losses experienced by society. Thus, it would be unfair if corporations were only subject to civil sanctions, and criminal sanctions are needed to prevent this from happening again.[57]

Regarding corporations as a legal subject, they still need to be regulated in the provisions of the Law 39/1999 or the Law 26/2000—however, the provisions of Article 45 paragraph (1) jo. Article 145 of the KUHP has attracted corporations as legal subjects. Thus, using the legal interpretation method, corporations can be charged using existing laws and regulations. However, considering that the KUHP is not yet in force and understands the positivism that Indonesia adheres to, it is much

[54] Nurrahman Aji Utomo, 'Dekonstruksi Kewenangan Investigatif Dalam Pelanggaran HAM Berat' (2019) 16 Jurnal Konstitusi.[811].

[55] Ali Dahwir, 'Penyimpangan Asas Legalitas Dalam Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia' (2014) 4 Jurnal Ilmu Hukum.[117].

[56] Muladi and Diah Sulistyani, *Pertanggungjawaban Pidana Korporasi (Corporate Criminial Responsibility)* (Alumni 2013).[1].

[57] Euston Quah and William Neilson, *Law and Economics Development: Cases and Materials from Southeast Asia* (Longman Singapore Publishers ed, 1993).[1237-1238].

more comprehensive and appropriate to make changes to the Human Rights Court Law and accommodate corporations as legal subjects that can be held accountable while adjusting other legal issues as described above.

Conclusion

In the criminal law system currently in force in Indonesia, corporations can be held criminally responsible for acts they commit, including serious human rights violations as regulated under Law Number 26 of 2000 concerning Human Rights Courts. Although this law does not explicitly include corporations as legal subjects, the provisions of Law Number 1 of 2023 on the Criminal Code (KUHP 2023), particularly Article 45, provide a clear legal foundation for recognizing and prosecuting corporations as perpetrators of criminal acts. The theoretical framework of corporate criminal responsibility, as discussed above, can be applied in cases where the corporation functions as the principal perpetrator, while individuals acting on behalf of the corporation may be prosecuted as accomplices or secondary perpetrators.

At the international level, doctrines and practices of corporate accountability for gross human rights violations—especially those involving crimes under the jurisdiction of international criminal law such as genocide, crimes against humanity, and war crimes—provide important references for domestic enforcement. The classification of such crimes, as recognized by international human rights jurisprudence, can and should be reflected in Indonesia's legal system, particularly in aligning with *jus cogens* norms which are universally binding.

However, despite the existence of these legal foundations, law enforcement related to corporate criminal responsibility in Indonesia has not yet proven effective in practice. To date, there have been no known prosecutions or convictions of corporate entities for gross human rights violations under Law 26/2000. This gap demonstrates the institutional and procedural limitations that hinder the full realization of corporate accountability. Inconsistencies between the general provisions in KUHP 2023 and the specific framework of Law 26/2000 further

complicate enforcement. Therefore, there is an urgent need for legal synchronization between Law 26/2000 and KUHP 2023, both in terms of substantive norms and procedural mechanisms, to ensure that the prosecution of corporate actors aligns with the imperative character of *jus cogens* and fulfills Indonesia's international human rights obligations.

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