

Why State-Owned Companies Should Be the Spearhead of Mainstreaming Human Rights Due Diligence in Indonesia

Referring to the 4th principle on the UNGPs stated in the State Business Nexus that Human Rights Due Diligence needs to be done for companies owned or controlled by the state, or which receive substantial support and services from State bodies such as export credit agencies and official insurance or investment guarantee agencies. In this case, it mainly refers to State-Owned Enterprises (BUMN), because the authority and power that the state has over BUMN or state-controlled companies.

In the Indonesia context this is still something that Civil Society Movements needs to push because the compliance of 4th Principle of the UNGPs is far from reality. This can be seen in land grabs that has been practiced by State-Owned Plantation Companies by the name of PT Perkebunan Nusantara (PTPN). According to Consortium for Agrarian Reform (KPA) 2022 Annual Report, KPA stated that during the span of 2020-2022 there are 48 Agrarian Conflicts has been done by PTPN. The practice of land grabs and displacement of Local Communities violates multiple principles of the UNGPs such as Principle 11,12,13,17,18,22, and 23 because land grabs and displacement of Local Communities are failure of respecting human rights, avoiding harm, conducting due diligence and engaging with stakeholders and providing remediation.

This is the result because lack of political will of Indonesia's Governments and House Representative to pass on legally binding instruments regarding Inclusive and Responsible Practices (IRB). Even though Report of the UN Working Group on The Issue of Human Rights and Transnational Corporations and Other Business Enterprises recommends that the state establish policies, rules and regulations that lead to a legally binding instrument framework in relation to human rights due diligence.

Until this day there are no national level regulations that is legally binding when speaking of Human Rights Due Diligence in State-Owned Companies (SOEs) which are in lined with International Human Rights Regulations. The only legally binding regulations relating Human Rights Due Diligence is Law No. 40 of 2007 and the Regulation of the Minister of State-Owned Enterprises concerning Social and Environmental Responsibility Programs which are regulated annually, only regulate Social and Environmental Responsibility (TJSL/CSR).

Corporate Social Responsibility (CSR) should be approached with caution. Although it is mandatory and legally binding, it often serves as a tool for companies to enhance their public image while sidestepping genuine accountability for their involvement in actions that harm human rights. This highlights a fundamental difference in perspective between the Business and Human Rights (BHR) principles, which emphasize victims' access to remedies and the state's responsibility to hold companies accountable for human rights violations. In contrast, CSR centers on voluntary efforts and aspirational ideals about how companies should interact with and contribute positively to stakeholders, local communities, and the environment.

It's crucial to recognize that there isn't a one-size-fits-all approach to implementing a mandatory Human Rights Due Diligence (HRDD) regime. When the norms outlined in the UNGPs are translated into legally binding frameworks, they can be interpreted in various ways, leading to different regulatory typologies and legal structures. Effective implementation of HRDD regulations hinges on meaningful dialogue and participation from all relevant parties—policymakers, legislators, businesses, trade unions, civil society organizations, and other stakeholders. These groups must work together to achieve a clear and shared understanding of the legislative and regulatory options that will be put into practice.

Although Indonesia has not yet enacted a Human Rights Due Diligence (HRDD) Process Law, Indonesian companies involved in global supply chains, particularly those with trade partnerships with the European Union, are already subject to the European Union Directive on Corporate Sustainable Due Diligence. This directive, which has been under discussion by the European Parliament from November 2020 to September 2022, requires companies to identify, prevent, and mitigate the adverse impacts of their activities on human rights and the environment. It also aims to establish a transparent, sustainable, and responsible global supply chain.

Given this context, state-owned enterprises in Indonesia must take the lead in mainstreaming HRDD. As key players in the national economy and often involved in international trade, these companies are in a unique position to set standards and practices that align with global expectations. By spearheading HRDD initiatives, state-owned enterprises can not only ensure compliance with international regulations but also drive broader adoption of responsible business practices across the Indonesian corporate landscape. This leadership is crucial for aligning Indonesia's business

environment with global human rights and environmental standards, thereby enhancing the country's reputation and competitiveness on the international stage.