



RESPONSIBILITY OF MINING CORPORATIONS TOWARDS HUMAN RIGHTS: AN ANALYSIS OF INTERNATIONAL STANDARDS AND THEIR IMPLEMENTATION IN INDONESIA

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Abstract

The mining sector in Indonesia is often associated with human rights violations, ranging from land grabbing, environmental pollution, to violence against affected communities. However, under the international legal framework, corporations have an obligation to respect human rights as stipulated in the United Nations Guiding Principles on Business and Human Rights 2011. This principle emphasizes that corporations are required to conduct Human Rights Due Diligence to prevent and address the negative impacts of their activities. This study uses a normative juridical method with a legislative and conceptual approach to examine the responsibility of mining corporations towards human rights. The analysis focuses on harmonization between international standards and Indonesian national law, specifically Articles 28A-28J of the 1945 Constitution, Law No. 39 of 1999 concerning Human Rights, Law No. 32 of 2009 concerning Environmental Protection and Management, and Law No. 3 of 2020 concerning Minerals and Coal. The results of the study indicate that although Indonesia has a regulatory framework that accommodates the principle of corporate human rights responsibility, its implementation is still weak. Key obstacles include weak oversight, limited access to justice for victims, and the widespread practice of Strategic Lawsuits Against Public Participation (SLAPPs) against environmental human rights defenders. The study concludes that strengthening mandatory due diligence mechanisms, optimizing the role of the National Commission on Human Rights (Komnas HAM), and enforcing administrative and criminal sanctions are key to ensuring the accountability of mining corporations in Indonesia.

Keywords: Mining Corporations, Human Rights, Due Diligence, UNGPs, Minerba Law

INTRODUCTION

Indonesia is a country with abundant natural resources, particularly in the mineral and coal mining sector. Its extensive reserves of nickel, bauxite, copper, gold, and coal make Indonesia one of the world's largest producers of mining commodities.¹ These natural resources play a strategic role in supporting national development, increasing state revenue, creating jobs, and strengthening Indonesia's position in international trade. In 2024, the mining sector was recorded as contributing approximately 6.8% to the national Gross Domestic Product (GDP) and becoming one of the largest foreign exchange earners through mineral and coal exports.² However, the rapid development of the mining industry also has various social, economic, and environmental consequences that cannot be ignored. Mining activities often give rise to conflicts between corporations and local communities due to land disputes, evictions, environmental pollution, loss of livelihoods, and ecosystem damage that impact the quality of life of surrounding

¹Ministry of Energy and Mineral Resources, *Handbook of Energy and Mineral Resources of Indonesia 2024* (Jakarta: KESDM, 2024), p. 10.

²Ibid., p. 15.

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communities.³In many cases, indigenous communities are the most vulnerable groups because the customary territories they have traditionally controlled are often the location for the issuance of mining business permits without adequate consultation.⁴Data from the National Commission on Human Rights (Komnas HAM) shows that between 2019 and 2023, there were 223 agrarian conflicts related to the mining sector. Of these, at least 47 cases involved acts of violence, intimidation, and criminalization against indigenous communities and human rights defenders who fight for their rights to land and a healthy and secure environment.⁵This situation demonstrates that mining activities not only have economic implications but also have the potential to lead to violations of various human rights, such as the right to a healthy environment, the right to health, the right to decent work, the right to information, and the rights of indigenous communities to land and natural resources.⁶

In its early development, international human rights law positioned states as the primary subjects bearing the obligation to respect, protect, and fulfill human rights. However, the development of economic globalization and the increasing influence of multinational corporations have given rise to a new paradigm that positions corporations as actors also responsible for respecting human rights.⁷The old paradigm, which solely placed human rights obligations on states, is deemed inadequate given the numerous human rights violations that occur in business and investment activities involving large corporations.⁸This development reached a crucial point when the United Nations Human Rights Council adopted the *United Nations Guiding Principles on Business and Human Rights* (UNGPs) in 2011. This instrument affirms that corporations have an independent responsibility to respect human rights regardless of the state's ability or willingness to carry out its obligations.⁹The UNGPs are built on three main pillars (*Protect, Respect, and Remedy Framework*): the state's duty to protect, the corporate responsibility to respect, and the victim's right to access effective remedies.¹⁰Through this framework, companies are required to conduct *Human Rights Due Diligence* to identify, prevent, mitigate, and account for the negative impacts of business activities on human rights.¹¹In addition to the UNGPs, various other international instruments also encourage increased corporate accountability for human rights, including the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* and the development of discussions on the *Legally Binding Instrument on Business and Human Rights* at the United Nations.¹²These developments demonstrate that respect for human rights has become an essential part of modern corporate governance and the principles of sustainable business conduct. In fact, many developed countries have begun implementing regulations requiring companies to conduct *human rights due diligence* throughout their business supply chains.¹³

At the national level, Indonesia has demonstrated its commitment to the protection of human rights through the ratification of various international human rights instruments, including the International Covenant on Civil and Political Rights through Law Number 12 of 2005 and the International Covenant on Economic, Social and Cultural Rights through Law Number 11 of 2005.¹⁴Guarantees for human rights have also been constitutionally regulated in Articles 28A to 28J of the 1945 Constitution of the Republic of Indonesia which affirm various basic rights of citizens, including the right to a good and healthy environment.¹⁵

Furthermore, human rights protection in the context of business activities is also reflected in various national regulations, such as Law Number 39 of 1999 concerning Human Rights, Law Number 32 of 2009 concerning Environmental Protection and Management, and Law Number 3 of 2020 concerning Mineral and Coal Mining.

³National Commission on Human Rights, *Annual Report on Agrarian Conflict Monitoring 2023* (Jakarta: Komnas HAM, 2024), p. 22.

⁴Surya Tjandra, *Land Rights and Agrarian Conflict in Indonesia* (Jakarta: Kompas, 2020), p. 87.

⁵National Commission on Human Rights, *Annual Report on Agrarian Conflict Monitoring 2023*, p. 30.

⁶Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

⁷John G. Ruggie, *Just Business: Multinational Corporations and Human Rights* (New York: WW Norton & Company, 2013), p. 5.

⁸*Ibid.*, p. 12.

⁹United Nations Human Rights Council, *Guiding Principles on Business and Human Rights*, UN Doc. A/HRC/17/31 (2011), Principle 11.

¹⁰*Ibid.*, Principles 1–31.

¹¹*Ibid.*, Principles 15–24.

¹²OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (Paris: OECD Publishing, 2023), p. 43.

¹³European Union, *Directive (EU) 2024/1760 on Corporate Sustainability Due Diligence* (2024).

¹⁴Law Number 12 of 2005 and Law Number 11 of 2005

¹⁵Article 28A–28J of the 1945 Constitution of the Republic of Indonesia.

¹⁶However, these provisions still do not explicitly regulate corporate obligations to carry out *human rights due diligence* as recommended in the UNGPs. As a result, there remains a gap between international standards and the implementation of national laws in ensuring respect for human rights by mining corporations. ¹⁷In practice, weak government oversight, limited access to justice for victims, low levels of law enforcement against environmental violations, and the widespread practice of *Strategic Lawsuits Against Public Participation* (SLAPPs) against environmental activists indicate that human rights protection in the mining sector still faces serious challenges. ¹⁸Therefore, a study on mining corporations' responsibility towards human rights is important to assess the conformity between international standards and Indonesian national law, as well as to formulate the necessary steps to strengthen corporate accountability in respecting, protecting, and fulfilling the rights of communities affected by mining activities.

Formulation of the problem

Based on the background mentioned above, this research raises two problem formulations:

1. What are the standards of mining corporations' responsibility for human rights under international law?
2. How are the implementation and implications of these standards within Indonesia's national legal framework?

Research methods

This research uses a normative juridical legal research method, namely research that focuses on the study of legal norms contained in laws and regulations, legal principles, doctrines, and international legal instruments related to the research object. The approaches used include the statute approach, the conceptual approach, and the historical approach. The statutory approach is used to examine various legal provisions governing corporate responsibility and the protection of human rights, while the conceptual approach is used to analyze the concept of corporate responsibility towards human rights based on developing legal theories and doctrines. The historical approach is used to understand the development of corporate responsibility regulations in international law and national law over time.¹⁹

The legal materials used in this study consist of primary legal materials and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, and *the United Nations Guiding Principles on Business and Human Rights* (UNGPs) of 2011. ²⁰In addition, this study also uses various international instruments relevant to business and human rights issues as analytical materials.

Secondary legal materials consist of various legal literature in the form of books, scientific journal articles, research results, reports from international organizations, reports from the National Commission on Human Rights (Komnas HAM), and other documents related to mining corporations' responsibilities towards human rights. ²¹All of these legal materials were collected through library research and analyzed qualitatively using descriptive-analytical methods to gain a comprehensive understanding of international standards and the implementation of mining corporations' responsibilities towards human rights in Indonesia.²²

¹⁶Law Number 39 of 1999 concerning Human Rights; Law Number 32 of 2009 concerning Environmental Protection and Management; and Law Number 3 of 2020 concerning Mineral and Coal Mining.

¹⁷National Commission on Human Rights, *Academic Paper on the Revision of Law Number 39 of 1999 concerning Human Rights* (Jakarta: National Commission on Human Rights, 2022), p. 45.

¹⁸Jakarta Legal Aid Institute, *SLAPP Monitoring Report 2020–2024* (Jakarta: LBH Jakarta, 2024), p. 17.

¹⁹Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review* (Jakarta: Rajawali Pers, 2015), pp. 13–15.

²⁰The 1945 Constitution of the Republic of Indonesia; Law Number 39 of 1999 concerning Human Rights; Law Number 32 of 2009 concerning Environmental Protection and Management; Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining; and the United Nations Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, UN Doc. A/HRC/17/31 (2011).

²¹Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2021), pp. 181–196.

²²Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Bayumedia Publishing, 2019), pp. 300–305.

RESULTS AND DISCUSSION

2.1 Standards of Corporate Responsibility for Human Rights in International Law

2.1.1 United Nations Guiding Principles on Business and Human Rights 2011

The United Nations Guiding Principles on Business and Human Rights (UNGPs) are the most influential international instrument in the development of the modern business and human rights regime. This instrument was drafted by John Ruggie, Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, and was adopted by consensus by the United Nations Human Rights Council through Resolution 17/4 in 2011.²³ The presence of the UNGPs is a significant milestone because for the first time the international community has a global standard that specifically regulates the relationship between business activities and respect for human rights. Before the birth of the UNGPs, regulations regarding corporate responsibility for human rights were still sectoral and scattered across various international instruments. As a result, there was no clear standard regarding the obligations of companies when their business activities have a negative impact on society. This situation is increasingly complex with the development of economic globalization and the increasing role of multinational corporations, which in many cases have economic resources that even exceed the capabilities of some developing countries.²⁴ Therefore, the UNGPs exist to fill this normative gap by establishing a framework that balances the interests of economic development and human rights protection.

The UNGPs are built on three main pillars: *the State Duty to Protect Human Rights*, *Corporate Responsibility to Respect Human Rights*, and *Access to Remedy*.²⁵ The first pillar affirms the state's obligation to protect individuals from human rights violations committed by third parties, including corporations. The second pillar positions corporations as actors with an independent responsibility to respect human rights. The third pillar ensures that victims of human rights violations have access to effective redress mechanisms through both judicial and non-judicial channels. In the context of this research, the second pillar has the greatest relevance because it directly relates to the responsibilities of mining corporations. According to Principle 11 of the UNGPs, all companies have a responsibility to respect internationally recognized human rights.²⁶ This responsibility is independent of a country's ability to fulfill its human rights obligations. In other words, even if a country has a weak legal system or ineffective law enforcement, a company remains obligated to respect human rights in all its business activities.

The principle of respect for human rights is realized through three main components. First, a company must have a human rights policy commitment *formally* stated and endorsed by the company's highest management level.²⁷ This policy serves as an internal guideline that binds all business units and serves as the basis for corporate decision-making. Internationally, major companies such as Rio Tinto, BHP, and Anglo American have adopted human rights policies that explicitly recognize respect for the rights of workers, indigenous peoples, and environmental protection. Second, companies are required to conduct *human rights due diligence*. This principle is at the heart of the UNGPs because it serves as a preventive measure against human rights violations.²⁸ Human rights due diligence differs from conventional legal audits because it focuses not only on compliance with laws and regulations but also assesses the actual and potential impacts of a company's activities on community rights. This process includes risk identification, impact assessment, integration of assessment results into company policies, monitoring the effectiveness of mitigation measures, and public reporting.

In the mining sector, due diligence is crucial because natural resource exploration and exploitation activities carry significant human rights risks. These risks include the eviction of indigenous communities, loss of local livelihoods, workplace accidents, environmental pollution, and even social conflicts involving security forces.²⁹ Therefore, mining companies must not only conduct an Environmental Impact Analysis (AMDAL) but also conduct a comprehensive human rights impact analysis for all affected stakeholders. Third, companies must provide effective redress mechanisms for victims. Principle 22 of the UNGPs emphasizes that if a company causes or contributes to adverse human rights impacts, it is obligated to provide or cooperate in a legitimate redress process.

²³UN Human Rights Council, Resolution 17/4, *Human Rights and Transnational Corporations and Other Business Enterprises* (2011).

²⁴Surya Deva and David Bilchitz, *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge: Cambridge University Press, 2013), p. 12

²⁵John Ruggie, *Guiding Principles on Business and Human Rights* (New York: United Nations, 2011), p. 1.

²⁶*Ibid.*, Principle 11.

²⁷*Ibid.*, Principle 16.

²⁸*Ibid.*, Principle 17

²⁹OECD, *OECD Due Diligence Guidance for Responsible Business Conduct* (Paris: OECD Publishing, 2018), p. 21.

³⁰This redress can take the form of compensation, rehabilitation, restitution, an apology, or a guarantee that similar violations will not recur. Furthermore, the UNGPs introduce the concept of *leverage*, which is the ability of a company to influence the behavior of other parties with whom it has business relationships. ³¹This concept is important because many human rights violations occur not directly by the parent company, but by contractors, subcontractors, or suppliers in the supply chain. Therefore, a company's responsibility extends beyond internal operations to encompass business relationships related to the company's activities. From an international legal perspective, although the UNGPs are considered *soft law* instruments that are not formally binding, their influence has been significant in shaping the development of national regulations in various countries. Several countries, such as Germany, France, Norway, and the European Union, have incorporated due diligence obligations into their national legal systems. ³²In 2024, the European Union even passed the Corporate Sustainability Due Diligence Directive (CSDDD), which requires large companies to conduct due diligence on human rights and environmental impacts throughout their supply chains.³³

When linked to the mining sector in Indonesia, the standards set by the UNGPs have not been fully implemented. Most companies still view compliance with AMDAL as the sole instrument for mitigating social and environmental risks. However, AMDAL is more oriented towards environmental impacts and has not comprehensively identified the risks of human rights violations, such as the rights of indigenous peoples, workers' rights, women's rights, or the right to public participation. This situation has created a gap between the international standards recommended by the UNGPs and current business practices. Thus, the UNGPs have provided a strong normative foundation for regulating corporate responsibility for human rights. Through human rights policy obligations, human rights due diligence, and redress mechanisms, the UNGPs position corporations as actors with an active responsibility to prevent and address the human rights impacts of their business activities. In the Indonesian context, these principles can serve as a primary reference in developing more comprehensive national regulations regarding mining corporations' responsibility for human rights.

2.1.2 OECD Guidelines for Multinational Enterprises 2023

In addition to the UNGPs, an international standard that has a significant influence on the regulation of corporate responsibility towards human rights is the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct 2023. These guidelines were published by the Organisation for Economic Co-operation and Development (OECD) as an instrument that provides standards of responsible business conduct for multinational companies operating across borders.¹³⁴

The OECD Guidelines were first published in 1976 and have continually evolved to reflect global economic dynamics. The latest revision, in 2023, strengthens companies' obligations to respect human rights, protect the environment, manage climate change risks, and implement principles of good corporate governance.² Unlike ³⁵the UNGPs, which focus on a conceptual framework for business and human rights, the OECD Guidelines provide more operational guidance on how companies should identify, prevent, and address negative impacts from their business activities.

Chapter IV of the OECD Guidelines specifically addresses human rights. This provision emphasizes that companies must respect internationally recognized human rights, avoid complicity in human rights violations, and address negative human rights impacts arising from their business activities and business relationships.³ ³⁶This obligation applies not only to activities carried out directly by the company, but also to the activities of suppliers, contractors, subsidiaries, and other business partners within the company's supply chain.

One of the important contributions of the OECD Guidelines is the development of the concept of *risk-based due diligence*. This concept positions companies as the parties responsible for actively identifying risks to people and the environment before they develop into actual violations.⁴ Thus ³⁷, the primary focus is not simply ensuring compliance with national laws, but rather preventing negative impacts on communities affected by business activities. In the mining sector, this approach is particularly relevant because extractive industries are characterized

³⁰Ruggie, *Guiding Principles on Business and Human Rights*, Principle 22.

³¹Ibid., Principle 19

³²Olivier De Schutter, *Towards Mandatory Human Rights Due Diligence* (Brussels: European Parliament Study, 2020), p. 15.

³³European Union, Directive (EU) 2024/1760 on Corporate Sustainability Due Diligence.

³⁴OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (Paris: OECD Publishing, 2023), p. 3.

³⁵Ibid., p. 5.

³⁶Ibid., Chapter IV Human Rights.

³⁷OECD, *Due Diligence Guidance for Responsible Business Conduct* (2018), p. 17

by high risks to human rights. Mining activities often involve large-scale land use, community relocation, changes in local socioeconomic structures, and exploitation of natural resources that impact the environment. Therefore, mining companies are required to conduct comprehensive risk identification across all stages of business activities, from exploration and construction, production operations, and post-mining.⁵³⁸

1. Another advantage of the OECD Guidelines is the National Contact Point (NCP) mechanism. NCPs are institutions established by OECD member countries to handle complaints regarding alleged violations of the OECD Guidelines by multinational companies.^{6 39}This mechanism provides an alternative dispute resolution process outside the courts that is more accessible to affected communities.
2. Although NCP decisions are not legally binding, they have a significant impact on a company's reputation. Many multinational companies choose to resolve disputes through NCP mechanisms because of the reputational impact that could arise if they are found to be in violation of OECD standards.⁷⁴⁰
3. For Indonesia, the OECD Guidelines are crucial because Indonesia is currently in the process of becoming an OECD member. Consequently, responsible business standards as stipulated in the OECD Guidelines have the potential to serve as a reference for national policy reform, including in the mining sector. Adopting OECD principles can strengthen human rights and environmental protection while enhancing the competitiveness of Indonesian companies in a global market that increasingly demands sustainable business practices.
4. Thus, the OECD Guidelines expand the corporate responsibility standards introduced by the UNGPs by introducing a more operational due diligence approach, expanding supply chain coverage, and providing a non-judicial grievance mechanism through National Contact Points. This instrument demonstrates that respect for human rights is no longer seen merely as a moral obligation but as an integral part of modern corporate governance.

4.1.3 Draft Treaty on Business and Human Rights .

Since 2014, the UN has been discussing a legally binding instrument on business and human rights. The latest 2023 draft requires member states to establish corporate due diligence obligations and criminal liability for gross human rights violations.⁴¹

2.2 Indonesia's National Legal Framework regarding the Responsibilities of Mining Corporations

2.2.1 Constitution and Human Rights Law

Article 28I paragraph 4 of the 1945 Constitution requires the state to protect, promote, uphold, and fulfill human rights. ⁴²Article 71 of Law No. 39 of 1999 emphasizes that the government is obliged and responsible for respecting, protecting, upholding, and promoting human rights ⁴³. Although the main subject of obligation is the state, Article 28J paragraph 1 of the 1945 Constitution imposes an obligation on every person to respect the human rights of others.⁴⁴

2.2.2 Law No. 32 of 2009 concerning Environmental Protection and Management

Article 65, paragraph 1 of the Environmental Management and Management Law states that everyone has the right to a good and healthy environment. ⁴⁵Article 87, paragraph 1 stipulates absolute liability for businesses that cause environmental pollution and/or damage. ⁴⁶Article 91 regulates class action lawsuits and lawsuits by environmental organizations.⁴⁷

³⁸OECD, *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector* (2017), p. 21.

³⁹OECD, *National Contact Points for Responsible Business Conduct Annual Report 2023*, p. 8.

⁴⁰*Ibid.*, p. 15.

⁴¹UN Human Rights Council. Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations, 5th Revised Draft, July 2023.

⁴²Article 28I paragraph 4 of the 1945 Constitution of the Republic of Indonesia

⁴³Article 71 Law no. 39 of 1999 concerning Human Rights.

⁴⁴Article 28 J paragraph 1 of the 1945 Constitution of the Republic of Indonesia

⁴⁵Article 65 paragraph 1 of Law No. 32 of 2009 concerning Environmental Protection and Management

⁴⁶*Ibid.* Article 87 paragraph 1

⁴⁷*Ibid.* Article 91.

2.2.3 Law No. 3 of 2020 concerning Minerals and Coal.

Article 162 of the Mining Law requires IUP/IUPK holders to prepare and implement reclamation and post-mining plans. ⁴⁸Articles 158-161 stipulate criminal sanctions for violations. However, the Mining Law does not explicitly mandate human rights *due diligence*.

2.3 Implementation and Implementation Gaps in Indonesia

2.3.1 Due Diligence Practices.

Some large mining companies in Indonesia have adopted human rights and ESG policies. However, due diligence remains voluntary and non-standard. Many companies focus solely on environmental impact assessments (EIA) without conducting specific human rights impact assessments. ⁴⁹

2.3.2 Access to Recovery

Victims of human rights violations caused by mining face structural barriers: high litigation costs, information asymmetry, and the risk of criminalization. Legal Aid Institute (LBH) data recorded 87 SLAPP cases against environmental defenders between 2020 and 2024. ⁵⁰Non-judicial mechanisms such as the National Commission on Human Rights (Komnas HAM) and the Ministry of Environment and Forestry (KLHK) do not yet have binding enforcement powers. ⁵¹

2.3.3 Law Enforcement

Environmental and human rights crime enforcement in the mining sector is weak. From 2019 to 2023, the Ministry of Environment and Forestry recorded 1,247 violations, but only 12% resulted in criminal sanctions. ⁵²This indicates a weak deterrent effect.

2.4 Implications for Indonesia

2.4.1 Mandatory Due Diligence Regulatory Requirements

Indonesia needs to adopt regulations requiring large companies to conduct human rights and environmental due diligence, similar to the EU's 2024 Corporate Sustainability Due Diligence Directive. ⁵³This obligation must cover the supply chain and have effective administrative sanctions.

2.4.2 Strengthening the Role of the National Commission on Human Rights

The National Commission on Human Rights (Komnas HAM) needs to be empowered to issue binding recommendations and monitor the implementation of remediation by companies. Revision of Law No. 39 of 1999 could be a stepping stone. ⁵⁴

2.4.3 Protection of Human Rights Defenders.

The issuance of the Supreme Court Regulation on Anti-SLAPP is urgently needed to protect the public and NGOs that fight for environmental human rights. ⁵⁵

2.4.4 Comparison of Corporate Obligations according to the UNGPs and Indonesian National Law

To see the extent to which harmonization has occurred, here is a comparison of the UNGPs Pillar 2 standards with the Indonesian legal framework as follows:

⁴⁸Article 162 of Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining.

⁴⁹Business and Human Rights Resource Center. Corporate Human Rights Benchmark 2023: Mining Sector Report, 2023.

⁵⁰Jakarta Legal Aid Institute. SLAPP Monitoring Report 2020-2024. Jakarta: LBH Jakarta, 2024

⁵¹National Commission on Human Rights. Evaluation of Non-Judicial Complaint Mechanisms for Corporate Human Rights Cases, 2023.

⁵²Ministry of Environment and Forestry. Environmental Law Enforcement Performance Report 2023. Jakarta: KLHK, 2024.

⁵³European Union. Directive (EU) 2024/1760 on Corporate Sustainability Due Diligence, 2024

⁵⁴National Commission on Human Rights. Academic Paper on the Revision of Law No. 39 of 1999, 2022.

⁵⁵Republic of Indonesia Supreme Court. Draft Supreme Court Regulation on SLAPP Prevention, 2024

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No.	Elements of UNGPs Pillar 2	Indonesian Legal Provisions	Harmonization Notes
1.	Human Rights Commitment Policy	There are no explicit obligations. Only regulated in ISO 26000 and POJK No. 51 of 2017 for issuers.	Gap. Mandatory regulations are needed for high-risk companies.
2.	Human Rights Due Diligence	Partially regulated in AMDAL Law No. 32 of 2009 articles 22-36 and K3 Risk analysis. Does not yet cover the entire supply chain.	Partial AMDAL focuses on the environment, not yet systematic for civil-political human rights
3.	Remediation and Grievance Mechanism	Available through civil lawsuits under Article 87 of Law No. 32 of 2009, complaints from Komnas HAM and LKPP.	There is, but it's not binding and is slow. Victim access is limited.
4.	Transparency and reporting	POJK No. 51/2017 requires sustainability reports for issuers. Limited to public companies.	Limited to public companies. MSMEs and small IUPs are not covered.

The table above shows that Indonesia has not adopted comprehensive and binding ⁵⁶*due diligence obligations as recommended by the UNGPs*. This is the main cause of the implementation gap in the field. Regarding the above, the author provides an example of the Morowali Nickel Industry and Human Rights Violations. The Morowali Industrial Estate, Central Sulawesi, is the center of national nickel downstreaming. Since 2015, Chinese investment through the Indonesia Morowali Industrial Park (IMIP) has grown rapidly. However, WALHI and Trend Asia recorded seven fatal work incidents, three customary land conflicts, and PM 2.5 air pollution exceeding WHO quality standards for 2021-2024.⁵⁷

Analysis of the UNGPs Standards can be seen from the Failure of Due Diligence: The investigation found that the company did not conduct a human rights impact assessment on the Mori Bawah indigenous community. The consultation process was merely a formality and did not comply with the principle of Free, Prior, and Informed Consent (FPIC).⁵⁸ Weak Grievance Mechanism: The company's internal grievance mechanism is not independent. Victims who reported it were intimidated and dismissed.⁵⁹ Involvement of Officials: Several cases of violence involved security forces contracted by the company, which is contrary to Principle 6 of the UNGPs on corporate relations with state officials.⁶⁰

Legal Implications in Indonesia: From a national legal perspective, these actions potentially violate Article 66 of Law 32/2009 concerning the right of every person to obtain environmental information, Article 170 of the Criminal Code concerning assault and Article 351 of the Criminal Code concerning assault. Article 28H paragraph 1 of the 1945 Constitution concerning the right to a healthy environment. However, law enforcement is hampered by resource asymmetry, a lack of environmental forensic evidence, and the use of loose provisions of the ITE Law to criminalize activists.⁶¹ The lessons learned from the Morowali case demonstrate that without binding due diligence obligations and independent oversight mechanisms, companies' ESG commitments are merely greenwashing. Indonesia should use this case as a basis for developing mandatory *due diligence regulations*.

CONCLUSION

1. Under international law, mining corporations' responsibilities towards human rights are clearly stipulated in the 2011 United Nations Guiding Principles on Business and Human Rights. The standards include three core

⁵⁶European Commission. *Study on Due Diligence Requirements through the Supply Chain*, 2020, pp. 45-47.

⁵⁷WALHI Central Sulawesi. Report on Environmental and Human Rights Conditions in the IMIP Area 2024. Palu: WALHI Central Sulawesi, 2024.

⁵⁸UN Working Group on Business and Human Rights. Report on Visit to Indonesia, UN Doc. A/HRC/44/32/Add.1, 2020, para. 45-48.

⁵⁹Asian Trends. Dirty Nickel: Human Rights Violations in Morowali Industrial Park, 2023, p. 12-19.

⁶⁰UN Human Rights Council Principle 6, Guiding Principles on Business and Human Rights.

⁶¹LBH Palu. Report on Assistance in the Morowali Case 2022-2024. Palu: LBH Palu, 2024.

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obligations: having a human rights commitment policy, conducting human rights due diligence to identify and prevent negative impacts, and providing access to redress for victims. These standards are global, applicable to all companies regardless of size and location, and are reaffirmed in the OECD Guidelines for Multinational Enterprises 2023 and the draft Binding Treaty on Business and Human Rights.

2. Within Indonesia's national legal framework, the principle of corporate human rights responsibility has been partially accommodated through Articles 28A-28J of the 1945 Constitution, Law No. 39/1999 on Human Rights, Law No. 32/2009 on Environmental Management and Management, and Law No. 3/2020 on Mineral and Coal Mining. However, implementation remains weak. The main gaps lie in the absence of binding due diligence obligations, limited access for victims to redress, poor enforcement of criminal sanctions, and the widespread practice of SLAPPs against environmental human rights defenders. The case of the Morowali nickel industry demonstrates that without mandatory regulations and independent oversight, corporate ESG commitments tend to be ceremonial. To close this gap, Indonesia needs to adopt binding human rights and environmental due diligence regulations for high-risk sectors, strengthen the role of the National Commission on Human Rights (Komnas HAM) and the Ministry of Environment and Forestry (KLHK) in remediation mechanisms, and issue Anti-SLAPP guidelines. These steps are crucial to ensure that international standards are not merely normative but truly protect the rights of communities affected by mining activities.

Suggestion

1. The government needs to draft a Human Rights and Environmental Due Diligence Bill for high-risk sectors including mining.
2. The National Commission on Human Rights and the Ministry of Environment and Forestry need to strengthen non-judicial monitoring and remediation mechanisms, and the Supreme Court needs to issue Anti-SLAPP guidelines to protect environmental human rights defenders.

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