

Business and Human Rights Case Study of PT Graha Benua Etam

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ABSTRACT

Triple bottom line of the business and human rights implementation, which links corporate social responsibility (CSR), the economy, social welfare, and culture (EKOSOB), the national business and human rights task force (GTN BHAM), which produces PRISMA (Penilaian Resiko Hak Asasi Manusia), and National Action Plan for Human Rights (RANHAM), are factors that businesses need to take into consideration. Case evidences involving PT. Graha Benua Etam's Coal Mining and 17 Mining Enterprises, shows that these factors are still not being considered in actuality. This study is a normative judicial analysis using a statute approaches. The purpose of this study is to explain how human rights philosophy, principles, and laws are violated. This study also compares Indonesia's implementation to those of ASEAN and the EU. The relationship between the case and international standards like OECD Guidelines, UN Guiding Principle (UNGPR), and ISO 26000 will be explored. The findings of this study demonstrate the need for improved regulation to ensure the application and advancement of business human rights practice sector. This study suggests in order to enhance implementation and avoid recurrence of such incidents, clear regulation, principles, theories, and guidelines should be put in place.

Keywords: Business, Coal Mining, Human Rights

INTISARI

Penerapan *triple bottom line* dalam bisnis dan hak asasi manusia yang berkaitan dengan *Corporate Social Responsibility* (CSR), Ekonomi Sosial dan Budaya (EKOSOB), *National Business and Human Rights Task Force* (GTN BHAM) yang membentuk Penilaian Resiko Hak Asasi Manusia (PRISMA), dan *National Action Plan for Human Rights* (RANHAM) merupakan faktor yang perlu diperhatikan oleh sebuah bisnis. Bukti kasus yang melibatkan PT. Pertambangan Batubara Graha Benua Etam dan 17 Perusahaan Pertambangan, menunjukkan bahwa faktor-faktor diatas masih belum dipertimbangkan dalam pelaksanaannya. Penelitian ini menggunakan metode analisis yuridis normatif dengan pendekatan perundang-undangan, melihat pelanggaran yang masih terjadi. Penelitian ini bertujuan untuk memberikan penjelasan tentang teori, prinsip, dan peraturan HAM yang dilanggar. Penelitian ini juga membandingkan implementasi di Indonesia dibandingkan dengan ASEAN dan UE. Hubungan antara kasus dan standar internasional seperti

Pedoman OECD, Prinsip Panduan PBB (UNGP) dan ISO 26000 yang akan diteliti lebih lanjut. Temuan studi ini menunjukkan perlunya perbaikan regulasi untuk memastikan penerapan dan kemajuan sektor pada praktik bisnis dan hak asasi manusia. Studi ini menyarankan untuk meningkatkan implementasi dan menghindari terulangnya insiden seperti itu, peraturan yang jelas, prinsip-prinsip, teori, dan pedoman haruslah ditegakkan.

Kata kunci: Bisnis, Hak Asasi Manusia, Pertambangan Batubara

INTRODUCTION

Today, business is essential to promote economic growth. Corporations are having trouble integrating human rights into its business processes, nevertheless, in human rights. United Nations Guidelines on Business and Human Rights (UNGP) state, corporations should make commitments to respect human rights, carry out due diligence on those rights, and offer remedies when things go wrong. Businesses are said to prioritize the effects of human rights on their business decisions when it comes to human rights.¹

Table 1. Data reports regarding the violation of human rights in 2018²

No	Sector	Field	Number of Cases
1.	Natural Resources	General	194
		Land Occupation	65
		Criminalization	29
2.	Terorism	Arrest	99
		Shooting	15
3.	Torture	General	73
4.	Death Sentence	-	15
5.	Extra Judicial Murder	-	182
6.	Expression	General	89
		Action Ban	32
		Forced Murder	75
7.	Freedom of Religion and Belief	General	78
		Persecution	35
		Activity Ban	29
		Minority Intimidation	19

Source: Komnas HAM report 2018

¹ Equality and Human Rights Commission, 'Human Rights and Business' (*equalityhumanrights.com*, 2019) <<https://www.equalityhumanrights.com/en/advice-and-guidance/human-rights-and-business>> accessed 27 August 2022.

² Anisa Dewi Anggri Aeni, 'Kasus Pelanggaran HAM Sepanjang 2018' (*suakaonline.com*, 2018) <<https://suakaonline.com/kasus-pelanggaran-ham-sepanjang-2018/>> accessed 29 August 2022.

According to Komnas HAM report, figure above display the total number of human rights violations in mining (natural resources) cases from 2018 in Indonesia.

Implementation of human rights is demonstrated by enforcement of human rights issues for individuals in businesses they manage. Businesses and companies, among other parties who committed numerous human rights violations, were rated second, by the National Human Rights Commission's (Komnas HAM) report.³

Komnas HAM said that there had been no significant changes in recent years. Based on Komnas HAM data in 2017, the police still occupy the first position which has received many complaints from the public, followed by corporations in the second place with 866 files. Violations of environmental human rights are usually mostly committed by corporations which include forestry, plantations, mining, oil, and natural gas.⁴ This aligned with the last updated data of Komnas HAM which is Complaints Infographic Data Reports November 2020, that shows corporations always rank second as the party that is most often accused of committing human rights violations.⁵

Data from Responsible Mining Index (RMI) Report 2022 elaborates, average value of mining firms regarding enforcement of human rights is just 18%. According to research, only Anglo American receive score more than 50%, with Newmont, and AngloGold Ashanti are leading as well. It demonstrates that significant improvement in this is still possible.⁶

Article 33, paragraph 1, of the 1945 Constitution regulates, which established a joint enterprise economy based on kinship.⁷ It may be stated, collaboration should not only consider one's own interests but also work together and benefit others, i.e., through preserving human rights. Article 33 paragraph 3 of the 1945 Constitution, state has control over land, water, and natural resources for the benefit of the populace.⁸ Resulting governments responsibility ensuring that firms during practice do not exploit usage of natural resources and responsible to maintain principles of business and human rights.

The following questions by this research: First, what is the definition, theory, principle, and Indonesia's implementation of business and human rights? Second, how does PT. Graha Benua Etam's Coal Mining and 17 Coal Mining Entities implement business and human rights based on the theory, laws and regulations, and principles? Third, how does Indonesia's implementation of

³ Ayu Kholifah, 'Menakar Perlindungan HAM Dalam Revisi UUMinerba Melalui UN Guiding Principles on Business and Human Rights' (2021) 6 Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial 27-28 <<https://jurnal.ar-raniry.ac.id/index.php/Justisia/article/view/10610>>.

⁴ Raka Aprillia Eka Putra, 'Meninjau Kembali Pelanggaran HAM Di Sektor Pertambangan' (*viva.co.id*, 2022) <<https://www.viva.co.id/vstory/opini-vstory/1490034-meninjau-kembali-pelanggaran-ham-di-sektor-pertambangan>> accessed 11 December 2022.

⁵ Komnas HAM, 'Laporan Data Pengaduan' (2020) <<https://www.komnasham.go.id/index.php/data-pengaduan/>>.

⁶ Responsible Mining Index, 'RMI Report 2022 Results' (2022) <<https://2022.responsibleminingindex.org/en/results/thematic/1453>>.

⁷ The 1945 Constitution of Indonesia., Article 33 paragraph 1.

⁸ *ibid.*, Article 33 paragraph 3.

business and human rights compare to those of ASEAN and the EU and may the OECD, UN Guiding Principle, and ISO 26000 international standards be used to business and human rights?

METHODS

The study technique employs a judicial normative writing method with a statute approach. Primary, secondary, and tertiary sources were employed in this study. Primary sources include a range of laws and regulations, including 1945 Constitution of the Republic of Indonesia (UD 1945), Law Number 32 of 2009 on Protection and Management of Environment (Law 32/2009), Law Number 3 of 2020 on Mineral and Coal Mining (Law 3/2020) on Amendment to Law Number 4 of 2009 (Law 4/2009) on Mineral and Coal Mining, Law Number 39 of 1999 on Human Rights (Law 39/1999), Law Number 40 of 2007 (Law 40/2007) on Limited Liability Company, Government Regulation Number 78 of 2010 on Reclamation and Post Mining Activities (Government Regulation 78/2010), Government Regulation Number 47 of 2012 (Government Regulation 47/2012) on Social and Environmental Responsibility of Limited Liability Company, and Presidential Decree Number 36 of 1990 on Ratification Convention on the Rights of the Child (President Decree 36/1990), and International Covenant on Civil and Political Rights. Secondary sources include journals, articles, research, and literature related with business and human rights. Tertiary sources are based on the internet used in this research.

RESULTS AND DISCUSSION

1. Business and Human Rights Overview

1.1. Definitions, Theory and Principle of Human Rights

Humans are endowed with some rights of being human.⁹ "Universal Declaration of Human Rights" is the most significant advancement in defense and acknowledgment of human rights.¹⁰ It is the responsibility of the state to protect, respect, and fulfill everyone's inalienable right in any activity.¹¹

Figures considered most instrumental in laying foundations of natural law theory are John Locke and JJ Rousseau. John Locke proposed postulation idea that all individuals endowed with inherent rights to life, liberty, and property, which are their own and cannot be revoked by the State. Through a 'social contract' called protection of inalienable rights. This is left to the state, if the ruler ignores social contract by violating natural rights of individuals, then people are free to take down the ruler and replace with government that will respect these

⁹ Arini Robbi Izzati, 'Pola Penertiban Terhadap Perempuan Pekerja Seks Di Wilayah Kota Yogyakarta Dalam Perspektif Hak Asasi Manusia' [2016] Universitas Islam Indonesia 33 <<https://dspace.uui.ac.id/bitstream/handle/123456789/8981/tesis.pdf?sequence=1>>.

¹⁰ *ibid.*, pp. 42.

¹¹ Muhamad Raziv Barokah, 'Formulasi Adopsi United Nations Guiding Principle on Business and Human Rights Dalam Good Corporate Governance Oleh Perseroan Terbatas Di Indonesia' (2016) 3 Universitas Islam Negeri Syarif Hidayatullah 1 <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/32446/3/MUHAMAD_RAZIV_BAROKAH-FSH.pdf>.

rights. Rousseau followed social contract theory, as natural law does not create individual natural rights, but the sovereign rights of citizens as unit.¹²

Natural law theory sees human rights are born from God as part of human nature that are inherent in number of rights that cannot be removed.¹³ Thomas Aquinas states natural law is part of God's law through human reasoning. Aquinas's ideas lay the foundations for autonomous individual rights.¹⁴

Manfred Nowak, an Austrian human rights lawyer, based some principles¹⁵ including:

- (1) Universality: People have the same rights, regardless their differences. Based on the Vienna Declaration article 5, "all human rights are universal, indivisible, interdependent, and interrelated."
- (2) Indivisible and Interdependent: All human rights are important and it is not permissible to exclude certain rights or certain categories of rights from their consideration.¹⁶
- (3) Interrelated: One right always related to another and contributes to human dignity. When one link is broken, the rights of others jeopardized.

Rhona K.M. Smith added another principle to support Manfred Nowak's principle which contains¹⁷:

- (1) Equality: As human beings, people are equal, and each person has intrinsic dignity. Equality before the law, opportunity, access to education, must be fulfilled which included in human rights.
- (2) Non-discrimination: If similar situations are treated differently or different situations are treated similarly, the situation classified as discriminatory or unequal. No one should be discriminated because of their differences. Sustaining human rights also entails promoting equality and eradicating discrimination.

1.2. Definitions, Theory and Principle of Business and Human Rights

UN Guiding Principles on Business and Human Rights (UNGPs) act as the foundation for businesses make a public commitment to respect human rights.¹⁸ Corporations can implement United Nations "Protect, Respect, and Remedy" Framework (UNGPs), also known as Ruggie's

¹² Izzati, op. cit., pp. 35.

¹³ *ibid.*, pp. 36.

¹⁴ *ibid.*, pp. 34.

¹⁵ *ibid.*, pp. 43-47.

¹⁶ UNFPA, 'Human Rights Principles' (*United Nations Population Fund (UNFPA)*) <<https://www.unfpa.org/resources/human-rights-principles>> accessed 23 January 2022.

¹⁷ Izzati, op. cit., pp. 45-47.

¹⁸ *ibid.*

Principles, which was adopted into UN Human Rights Council Resolution No. 17/4 on June 16, 2011. UNGP is bare minimum for what businesses must do in order to claim that they have not violated human rights.¹⁹ Making profit, according to Nash June and Max Kirsch's cost accounting theory, puts profit as the main goal to exclusion of social interests,²⁰ but requires company to fulfill human rights when conducting business. Lawrence M. Friedman's theory, Legal Culture, states the higher a person's awareness of the law, the higher the level of human compliance with existing norms.²¹

Neglecting human rights in business violates Jeremy Bentham's utilitarianism theory "The Greatest Happiness for The Greatest Number," as lot of people are involved in running a business especially in mining production.²² Another idea is the view of John Rawls which introduced the concept 'distributive justice.' which are fairness and equality.

Everyone has the same right to the broadest basic liberties, as broad as the same freedoms for all.²³ Ronald Dworkin and John Rawls said human rights based on the obligation to treat citizens equally.²⁴

There are three principles for corporate responsibility for human rights under UNGP. First, state's obligation to protect human rights, like violations committed by third parties including businesses. Second, company's responsibility to respect human rights, by not avoiding negative effects of corporate operations. Third, victims' access to effective remedies must be expand through judicial and non-judicial mechanisms.²⁵

State's obligation to protect human rights divided into two main guides.

- (1) States obligated to protect, take appropriate steps to prevent, investigate, punish, and remedy violations of human rights.²⁶ State committed human rights violations when they do not carry out functions of prevention, prosecution, and remediation, with authority owned by the state.²⁷

¹⁹ Barokah, op. cit., pp. 3.

²⁰ *ibid.*, pp. 53.

²¹ *ibid.*, pp. 53-54.

²² Izzati, op. cit., pp. 37.

²³ *ibid.*, pp. 39.

²⁴ *ibid.*, pp. 38.

²⁵ Nur Kholis and others, *Pelanggaran Hak Asasi Manusia Dalam Kasus Eks Lubang Tambang Batu Bara Di Kalimantan Timur* (Komisi Nasional Hak Asasi Manusia (Komnas HAM) 2016) <<https://www.jatam.org/wp-content/uploads/2021/07/Pelanggaran-HAM-dalam-Kasus-Lubang-Tambang.pdf>>.

²⁶ United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (United Nations, Office of the High Commissioner for Human Rights 2011) <https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>, pp. 3.

²⁷ Barokah, op. cit., pp. 38.

- (2) States oblige that businesses operating in their jurisdictions must always respect human rights.²⁸ This defines, host investor countries will not exploit human rights in other countries in order to benefit the state and its state-owned enterprises.²⁹

Essence of resolving human rights violations is through two types of recovery: First, substantively, remedies seek to resolve past human rights violations. Second, procedurally, recovery must be impartial, free of politics, and corruption, and attempt to obstruct them.³⁰

3 mechanisms for restoration of human rights based on the Ruggie's Principles access to remedy mechanism.³¹

- (1) State Based Legal Mechanisms: Aimed as a step for human violations that occur through judicial bodies and other legal channels.
- (2) State Based Non-Legal Complaint Mechanisms: Served through mediation, adjudication, and other methods that are rights-compatible, depending on the issues involved and each interest.
- (3) Non-State Based Complaint Mechanisms: Include those developed by business enterprise on its own or in partnership with connected parties, an industry association, or a group of stakeholders. These processes are not legally binding, but they may use a judicial process.

1.3. Implementation of Business and Human Rights in Indonesia

In 2018 President Joko Widodo issued Presidential Decree No. 33 of 2018 (Perpres 33/2018) amending Presidential Regulation No. 75 of 2015 on the National Action Plan for Human Rights (RANHAM) 2015–2019.³²

Perpres 33/2018 specifically regulates National Action Plan for Business and Human Rights (RAN) and serves as a guideline for avoiding, dealing with, resolving, and redressing human rights breaches in the business sector.³³ By virtue of this regulation, Komnas HAM is permitted to perform human rights assessment of all Indonesian firms. Perpres 33/2018 was

²⁸ United Nations, op. cit., pp. 3-4.

²⁹ Barokah, op. cit., pp. 38-39.

³⁰ *ibid.*, pp. 44.

³¹ Barokah, op. cit., pp. 44-45.

³² Infid, 'Belajar Dari Negara-Negara Yang Telah Mengimplementasikan UNGPs' (*International NGO Forum on Indonesian Development (INFID)*, 2021) <<https://www.infid.org/publication/read/belajar-dari-negara-negara-yang-telah-mengimplementasikan-ungps>> accessed 20 August 2022.

³³ Claire Methven O'Brien and others, 'National Action Plans: Evaluating Current Status and Charting Future Prospect for an Important New Governance Tool on Business and Human Rights' [2015] SSRN Electronic Journal 118 <https://www.researchgate.net/publication/315367532_National_Action_Plans_Evaluating_Current_Status_and_Charting_Future_Prospets_for_an_Important_New_Governance_Tool_on_Business_and_Human_Rights>.

a success, and led to the publication of Handbook and Training Guidebook on Business and Human Rights by the end of 2018.³⁴

Indonesia created Regional Conference on Business and Human Rights 2021 (RCBHR), which intends to serve as a forum for dialogue and exchange of experiences between the parties particularly from Asia-Pacific Area. Presence of RCBHR 2021 was to commemorate a decade of ratification of Human Rights Council Resolution 17/4 of 2011 addressing the UN Guiding Principles/UNGPs, as well as to implement Indonesia's membership in the UN Human Rights Council from 2020 to 2022.³⁵

Indonesia expressed its support by using principles contained in the UNGP as a reference for businesses or companies in Indonesia to follow in upholding human rights.³⁶ Through a process known as 'Human Rights Due Diligence,' where firms must follow to respect human rights.³⁷

Ministry of Law and Human Rights also established National Business and Human Rights Task Force (GTN BHAM) and developed PRISMA (Penilaian Resiko Hak Asasi Manusia). PRISMA is a web-based application way to engage people to the principles of business and human rights through voluntary due diligence.³⁸ Meanwhile GTN BHAM coordinate business and human rights efforts at national level, consisting of Ministries, Institutions, and Non-Governmental Institutions.³⁹

Corporate Social Responsibility or CSR is a notion undertaken by corporation as a kind of social/environmental responsibility that corporation is no longer based on a single bottom line or the value of the company/economy only, which is reflected in its financial condition, but also on triple bottom line, which the company must be responsible in addition to being financially responsible to social and environmental rights/ Economic, Social, and Cultural Rights (EKOSOB).⁴⁰ EKOSOB is key instrument in international human rights that encompasses rights to education, food, shelter, health, job, reasonable income, and healthy environment. Resulting, state is also required to satisfy these rights so the relationship

³⁴ Infid, loc. cit.

³⁵ Kemlu, 'Inisiatif Untuk Penguatan Implementasi Kebijakan Prinsip UNGPs Di Asia-Pasifik Dan Memperkuat Prinsip Bisnis Dan HAM Tidak Bisa Datang Dari Satu Negara' (*Portal Kementerian Luar Negeri Republik Indonesia*, 2021) <<https://kemlu.go.id/portal/id/read/3171/berita/inisiatif-untuk-penguatan-imple-mentasi-kebijakan-prinsip-ungps-di-asia-pasifik-dan-memperkuat-prinsip-bisnis-dan-ham-tidak-bisa-datang-dari-satu-negara#!>>.

³⁶ Barokah, op. cit., pp. 47.

³⁷ *ibid.*, pp.54.

³⁸ Kemenkumham, 'Pemerintah Indonesia Berkomitmen Untuk Perkuat Implementasi United Nations Guiding Principles on Business and Human Rights (UNGPs)' (*Direktorat HAM*, 2021) <<https://ham.go.id/2021/06/01/pemerintah-indonesia-berkomitmen-untuk-perkuat-imple-mentasi-united-nations-guiding-principles-on-business-and-human-rights-ungps/>> accessed 6 August 2022.

³⁹ *ibid.*

⁴⁰ Gusti Fadhil Fithrian Luthfan, 'Tanggung Jawab Sosial Dan Lingkungan Perusahaan Di Indonesia Ditinjau Dari Guiding Principles on Business and Human Rights' [2018] Universitas Islam Indonesia 121-123 <<https://dspace.uui.ac.id/handle/123456789/13214>>.

between CSR, EKOSOB, and human rights can be recognized.⁴¹ Businesses in the mining industry are expected to carry out CSR as a form of accountability for the use of natural resources, such as coal, which is a state-owned natural resource.⁴² Corporations that conduct business in the field of and/or related to natural resources are obligated to practice social and environmental responsibility.⁴³ Businesses that fail to fulfill their social and environmental duties face sanctions in accordance with the provisions of the legislation.⁴⁴

2. Business and Human Rights Case Study

2.1. East Kalimantan's ex-Coal Mining Case Study Summary

This research will analyze a case study of PT. Graha Benua Etam (GBE) and 17 enterprises in matter of ex-coal mining pits in East Kalimantan. There is no data indicating whether this case has been legally binding, but it has been handled by Komnas HAM and Jaringan Advokasi Tambang (JATAM) Nasional.

East Kalimantan has a total of 1488 IUP-scale mining permits that are issued. Coal Mining Concession Work Agreement permission was given by government through the Ministry of Energy and Mineral Resources (PKP2B). Overall area for IUP is 5.4 million hectares plus the PKP2B area of 1.8 million hectares, and the total area of the mine is 7.2 million hectares from 12.7 million hectares from the East Kalimantan mainland, or 70% of the province's landmass.⁴⁵

With original premise of giving IUPs without undertaking a feasibility assessment, number of licenses given creates overlapping mining zones in highly inhabited regions. Mine pits are left unprotected, with no fencing or warning signs.⁴⁶ Results of the hole's poisonous water and heavy metals, 24 people died per June 2016 and 22 of them were children. Based on reports, the children each came from Samarinda (15 children), Kutai Kartanegara (8 children), and North Pasir Panajem (1 child).⁴⁷ These cases were addressed in a number of ways, including not prosecuted under the law, not paying compensation to the victim's family, and directors who were not held accountable and fled.⁴⁸ This case alone shows there were 8 educational facilities affected by the mine, ranging from elementary, junior high, to islamic boarding

⁴¹ *ibid.*, pp. 121.

⁴² Dimas Hutomo, 'Kewajiban Perusahaan Tambang Melaksanakan CSR' (*hukumonline.com*, 2019) <<https://www.hukumonline.com/klinik/a/kewajiban-perusahaan-tambang-melaksanakan-csr-lt5c468d7988077>> accessed 19 September 2022.

⁴³ Law Number 40 of 2007 on Limited Liability Company., Article 74.

⁴⁴ *ibid.*, Article 74 paragraph 3 jo. Government Regulation of the Republic of Indonesia No. 47 of 2012 on Social and Environmental Responsibility of Limited Liability Company., Article 7.

⁴⁵ Kholis and others, *op. cit.*, pp. 1.

⁴⁶ *ibid.*, pp. v.

⁴⁷ *ibid.*, pp. 2.

⁴⁸ *ibid.*, pp. iii, 7, 10, 13.

schools. It is also reported that for a month the students worked together to clean the classroom because of the dust in the dry season and mud in the rainy season.⁴⁹

Observed from the events of this case, which were caused by not reclaiming ex-excavated and victims burning to death in coal piles, Komnas HAM discovered at least five types of violations that became a problem in human rights in business, which are relating with the right to live, right to a healthy and clean environment, right to security, right to justice, and right of the child.

3. East Kalimantan's ex-Coal Mining Case Analysis - Business and Human Rights Regulation, Theory, and Principle

3.1. Regulation Analysis

3.1.1. Types of Human Right Violation

First, right to life is expressly guaranteed in the constitution as stated, every person shall have the right to live and to defend his/her life and existence.⁵⁰ It can also be explained that right to life is one of the fundamental rights enshrined in the International Covenant on Civil and Political Rights stipulated that, every person has an inalienable right to life. This right is guaranteed by law. No one's life should be taken away arbitrarily.⁵¹ Non-derogable rights are absolute rights that cannot be reduced by state parties, even in times of emergency.⁵²

Furthermore, everyone has the right to live, maintain life and improve their standard of living.⁵³ State, through its Law Enforcer Apparatus, must take firm legal action to force perpetrators to avoid cases.⁵⁴ Despite the fact that it claimed many victims, including children, no compensation was given until the company's directors fled, which violated the law, and that even the authorities did not take effective action to address this case, which clearly violates human rights aspects, particularly the right to life.

Second, United Nations has established corporate responsibility to respect human rights through Business and Human Rights Guidelines, one of the objectives of which is corporate responsibility to respect human rights in aspect of right to healthy and clean environment by not avoiding negative impacts from corporate operations.⁵⁵ However, based on the case, observed that the emergence of toxic water and heavy metals has been unabated.

Constitution provides that everyone has the right to live in physical and spiritual prosperity, to live in a pleasant and healthy living environment, and to get health services.⁵⁶ Likewise,

⁴⁹ *ibid.*, pp. 23.

⁵⁰ The 1945 Constitution of Indonesia., Article 28 A.

⁵¹ International Covenant on Civil and Political Rights., Part III, Article 6 paragraph 1.

⁵² Kholis and others, op. cit., pp. 38.

⁵³ Law Number 39 of 1999 on Human Rights., Article 9 paragraph 1.

⁵⁴ Kholis and others, op. cit., pp. 39.

⁵⁵ *ibid.*, pp. 41.

⁵⁶ The 1945 Constitution of Indonesia., Article 28 H.

law on human rights declares, everyone has right to a good and healthy environment.⁵⁷ To support the well-implemented right to live in a healthy environment in Indonesia, the law regulates, it is responsibility of public officials to restore the environment as a result of environmental damage they cause.⁵⁸ Moreover, the minister has the authority to impose administrative sanctions if the local government deliberately fails to impose sanctions.⁵⁹ According to the evidence, local government failed to impose sanctions, and not carrying out post-mining obligations which are environmental restoration and including reclamation resulting in environmental damage to the coal mining area in East Kalimantan.⁶⁰

Third, Komnas HAM discovered abuses particularly on right to sense of security as a result of the corporation. Fears and concerns expressed by local residents, both in terms of security for themselves and their families, assets, particularly houses and sources of livelihood (rice fields/gardens/business places), are the result of the above-mentioned coal mining activities. It also sparked a slew of anti-mining protests and demonstrations, as well as threats from corporations, mass organizations, and threats to criminalize police officers.⁶¹ Whereas this clearly violates the constitution, which states everyone has the right to personal protection, as well as the right to security and protection from fear-based threats, which are human rights.⁶² According to Human Rights Law, everyone has right to a sense of security and protection from threat.⁶³

Fourth, in order to realize citizens' right to justice, state must supervise, guide, and respond to all reports submitted by citizens by processing corporations that violate their obligations in the mining industry.⁶⁴ According to the constitution, right to recognition, guarantee, protection, and legal certainty is a human right that cannot be diminished under any circumstances.⁶⁵ However, from the time of the deaths until June 2016, 24 cases were not pursued until the trial stage. Only two of the four occurrences investigated have had their cases heard in court, with the others still undecided on how to proceed.⁶⁶

Fifth, the regulation states that protection of children's rights begins with the Convention on the Rights of the Child (CRC), which was ratified by Presidential Decree Number 36 of 1990.⁶⁷ In this case, the protection of children's rights was ignored, in violation of the provisions of Article 28B of the Constitution of 1945, as well as articles 52 and 53 of the Human Rights Law, that every child has the right to life, protection by the family and the

⁵⁷ Law Number 39 of 1999 on Human Rights., Article 9 paragraph 3.

⁵⁸ Law Number 32 of 2009 on the Protection and Management of the Environment., Article 82.

⁵⁹ *ibid.*, Article 77.

⁶⁰ Kholis and others, op. cit., pp. 30-31 and 42.

⁶¹ *ibid.*, pp. 42-43.

⁶² The 1945 Constitution of Indonesia., Article 28 G paragraph 1.

⁶³ Law Number 39 of 1999 on Human Rights., Article 30.

⁶⁴ Kholis and others, op. cit., pp. 45.

⁶⁵ 1945 Constitution of the Republic of Indonesia, Article 28 D and I.

⁶⁶ Kholis and others, op. cit., pp. 46.

⁶⁷ *ibid.*, pp. 46-47.

state, and the right to maintain and improve one's standard of living since conception.⁶⁸ It is also governed by Child Protection Law Number 23 of 2002.⁶⁹

3.1.2. Non-compliance with Policies regarding Environmental Permits, and Reclamations

According to the case reports, PT. Graha Benua Etam violated the government regulation as stated that the holder of a production operation IUPK is required to carry out reclamation and post mining,⁷⁰ it has been proven according to the case, that they did do as per say, causing damages and injury towards the people who lived near the ex-Coal Mining.

While mine pits are left unprotected with no fencing or warning signs, as a result of the hole's poisonous water and heavy metals. The situation has clearly violated article 98 of Law 32/2009, it is stated that any person who intentionally commits violation the ambient limits of standard of air quality, water quality, seawater quality, or the standard criteria of environmental damage, shall be punished by imprisonment for a minimum of three years and a maximum of ten years, as well as a fine of at least Rp3,000,000,000 and a maximum of 10,000,000,000.⁷¹ The issue does not end there, mining pits from five coal mining concessions in Samarinda were discovered to have extremely low acidity (pH), far below the standard set by the government, violating East Kalimantan Regulation Number 2 of 2011 on Water Quality Management and Water Pollution Control. Heavy metal concentrations were found in all the samples examined. They had a pH of 3.2 ppm, which is the highest of any samples. The water piped to homes, where it was used for swimming and the firms constructed public bathrooms and the company built public toilets. Cancer and other degenerative and accumulative diseases are possible health consequences.⁷²

In 2013 there were a total of eight school facilities that also affected, ranging from elementary, junior high, to Islamic boarding schools. This situation can be seen in Loa Kulu, Kutai Kartanegara, where the students were forced to work together for a month to make their classrooms clear again. Dust in the dry season and mud in the rainy season caused by the effect of coal mining. Thus, it is proven that the AMDAL regulation seems to only be 'powerful' on paper, but in relation none of it is implemented, where this indicates how the corporation has violated the Law 32/2009.⁷³

The Regent/Mayor is obligated to supervise the compliance of the person in charge of the business to the provisions established in the laws and regulations in the field of environmental protection and management.⁷⁴ Neglecting reclamation actions on former mining pits is unquestionably a serious violation of environmental permits, for which the

⁶⁸ The 1945 Constitution of Indonesia., Article 28 B ; Law Number 39 of 1999 on Human Rights., Article 52-53.

⁶⁹ Kholis and others, op. cit., pp. 47-48.

⁷⁰ Government Regulation Number 78 of 2010 on Reclamation and Post-Mining Activities., Article 2 paragraph 1.

⁷¹ Law Number 32 of 2009 on the Protection and Management of the Environment., Article 98.

⁷² Kholis and others, op. cit., pp. 22.

⁷³ *ibid.*, pp. 23.

⁷⁴ Law Number 32 of 2009 on the Protection and Management of the Environment., Article 71 Paragraph 1.

Minister of Environment and Forestry has the authority to impose sanctions in the form of administrative sanctions on permit holders if the Local Government intentionally fails to apply sanctions.⁷⁵

The disregard of sanctions by the Samarinda City Government and the East Kalimantan Provincial Government in the case of PT. Graha Benua Etam and 17 other mining enterprises are strongly emphasized. This negligence resulted in environmental devastation, which caused death at the site of the former coal mining pit. Supervision is carried out by the Minister, Governor, and Mayor/Regent, and if it is not carried out in line with the provisions of Articles 71 and 72, criminal sanctions may be applied, as provided for in Article 112 of Law Number 32/2009.

Written in the Law 32/2009, the Regent/Mayor is obligated to supervise the compliance of the person in charge of the business the provisions established in the laws and regulations in the field of environmental protection and management.⁷⁶ Moreover, local government officials who intentionally fail to supervise the compliance of the person in charge of businesses and/or activities to the laws and regulations and environmental permits, resulting in pollution and/or environmental damage and the loss of human life, shall be punished with imprisonment for a maximum of one year or a maximum fine of IDR 500,000,000.00.⁷⁷

3.1.3. Children's Right Protection

As shown by the law, every child had the right to be protected by his or her parents, family, society, and the state.⁷⁸ The case above shows there were 8 educational facilities affected by the mine. In Loa Kulu, Kutai Kartanegara Regency, for a month the students worked together to clean the classroom, the AMDAL that regulates the distance seems to only be "powerful" on paper.⁷⁹ The National Human Rights Commission of the Republic of Indonesia has been monitoring the deaths of children in ex-coal mining excavations since 2012. The results have been compiled and submitted in the form of recommendations to the central and regional governments, as well as the police. Nevertheless, it turns out that until now the incident has been repeated and as of June 2016 there were 24 victims who died in the former mining pit and 1 victim died in the coal pile.⁸⁰

It is clear from this case that children's rights have been violated. It has been voiced in theory, but it has not been implemented optimally. Children should have the right to attend school, but due to hazardous mining pits and the failure to implement AMDAL, children's education rights are jeopardized and some are even dying.

⁷⁵ *ibid.*, Article 77.

⁷⁶ *ibid.*, Article 71 Paragraph 1.

⁷⁷ *ibid.*, Article 112.

⁷⁸ Law Number 39 of 1999 on Human Rights., Article 52 paragraph 1.

⁷⁹ Kholis and others, *op. cit.*, pp. 23.

⁸⁰ *ibid.*, pp. 24.

The Indonesian Government has actually ratified the Convention on the Rights of the Child (CRC) by Presidential Decree Number 36 of 1990. The CRC itself has 4 basic principles, which is The Principle of Non-Discrimination [1], The Principle of The Best Interest of The Child [2], The Principle of The Right to Life, Survive and Development [3], and The Principle of Respect for The Views of the Child [4]. The Principle of Non-Discrimination means all the responsibilities enshrined in the CRC must be carried out for each child, regardless of their age. The principle of best interest of the child prioritizing what is best for the child, where one of which is Successful Education. The Principle of The Right to Life, Survival, and Development prompts that it must be acknowledged that every child has the right to life, as well as the right to survival and development. Lastly, The Principle of Respect for The Views of The Child means that every decision should consider the child's viewpoint, especially when it comes to concerns affecting his life.⁸¹

The number of deaths of children who drowned in ex-coal mining quarries and the absence of efforts to secure or evacuate children who are in the location violates the third principle of CRC jo. 1945 constitution, which states that every child has the right to protection.⁸² From this case it can be seen that the local government has taken away the right of every child to live, by ignoring, and not being given strict sanctions to the coal companies that make the ex-mining pits left without any reclamation or warning boards. Also, breach the second and third principle of CRC regarding education and development, as seen instead of studying to develop themselves, students must first work together to clean the classroom due to action of the corporation.

3.1.4. Law Number 3 of 2020 on Mineral and Coal Mining

Law 3/2020 is intended to apply Constitutional Court (MK) rulings, fulfill legal needs, synchronize with the Regional Government Law, and rationalize articles that are not applied. In the explanation of Law 3/2020, it is stated that minerals and coal are non-renewable natural resources contained in the earth, and controlled by the state for the prosperity of the people.⁸³

Law 3/2020 has defined mining legal area terminology, which refers to and includes all land space, ocean, and earth as a part of Indonesia.⁸⁴ Related to the mining principle, businesses who have the IUP or IUPK holders are required to implement and utilize reclamation of the ex-coal mining.⁸⁵ The IUP and IUPK holders are obliged to provide a post-mining plan that

⁸¹ *ibid.*, pp. 47.

⁸² The 1945 Constitution of Indonesia., Article 28 B paragraph 2.

⁸³ Lelisari Lelisari, Hamdi Hamdi and Imawanto Imawanto, 'Kemunduran Pengaturan Tanggung Jawab Sosial Perusahaan Dalam Sektor Pertambangan Mineral Dan Batubara' (2021) 9 Jurnal IUS Kajian Hukum dan Keadilan 409-410 <<https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/907>>.

⁸⁴ Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, *Laporan Akhir Analisis Dan Evaluasi Hukum Terkait Pengelolaan Pertambangan Mineral Dan Batubara Yang Berkelanjutan* (Oktober 20, 2020) 17 <https://bphn.go.id/data/documents/4_buku_pokja_pertambangan.pdf>.

⁸⁵ Law Number 3 of 2020 on Amendment to Law Number 4 of 2009 on Mineral and Coal Mining., Article 96 b.

includes the reclamation and management plan for the ex-mining pits and also an extra capital to guarantee the fee of reclamations.⁸⁶ IUPK holders in the operation must execute reclamation and management plan for the ex-mining pits until it reaches 100% or is considered a success.⁸⁷ In contrast, according to the case, none of the regulations are abided or implemented. As reported by the case that the corporation left the ex-coal mining without doing reclamations, and thus causing mine pits that they dig to mine are left unprotected with no fencing or warning signs. As a result, hole's poisonous water and heavy metals are created, proving how the corporation disregards the regulation from making the post mining plan, even until the requirement of reclamation.

Relating with business and human rights, it is regulated that the IUP and IUPK holders are obliged to set out a community development and empowerment initiative of corporate social responsibility to the people and also to allocate and provide the capital needed for the implementation of the program which must be consulted to the minister, local government and the civilians.⁸⁸ The corporation violated the regulation as they do not provide fencing or warning signs as an effort of being responsible to prevent cases such as this from happening. Moreover, the corporation does not pay compensation to the victim's family, and directors who were not held accountable and simply fled to avoid responsibility, indicating that the corporation is not conducting corporate social responsibility and creating community development and empowerment as even a serious matter is caused by them for which they are held responsible, but they instead do not take action and simply flee.

This is supported by article 77 of Law 32/2009 which stated that Minister of Environment and Forestry has authority to impose sanctions in the form of administrative sanctions on permit holders if Regional Government intentionally fails to apply sanctions.⁸⁹

As seen from the case, the local government is intentionally neglecting reclamation actions on former mining pits is unquestionably a serious violation of environmental permits. Moreover, Samarinda City Government with the East Kalimantan Provincial Government use their authority to grant IUPs without conducting a feasibility assessment, and the number of licenses granted increases thus creating overlapping mining zones in highly inhabited regions. Therefore, this shows both the Samarinda City Government with the East Kalimantan Provincial Government and the corporations which consist of PT. Graha Benua Etam and other 17 enterprises have intentionally disregarded the business and human rights regulation especially on community development and empowerment initiatives of corporate social responsibility.

⁸⁶ *ibid.*, Article 99-100 paragraph 1.

⁸⁷ *ibid.*, Article 123 A paragraph 1 and 2.

⁸⁸ *ibid.*, Article 108.

⁸⁹ Law Number 32 of 2009 on the Protection and Management of the Environment., Article 77.

On with the mining's industry must monitored as a part of the Continuation of Operation Contract/Agreement, IPR, or SIPB by the minister in various activities sectors amongst all that are regulated and related to the case are as follows⁹⁰:

(1) The safety in the mining pit.

Three activities sectors that are regulated have been violated by PT. Graha Benua Etam and other 17 mining companies. First, regarding the safety in the mining pit, as mentioned that mine pits due to the mining activities are left unprotected, without fences or warning signs being placed. Soon it was found that the mining pits from five coal mining concessions in Samarinda had extremely low acidity (pH), far below the standard set by the government. Heavy metal concentrations were found in all the samples examined. They had a pH of 3.2 ppm, which is the highest of any samples and that the water piped to homes, where it was used for swimming and the firms constructed public bathrooms thus leading to cancer, other degenerative and accumulative diseases as health consequences.

(2) Management of environment, reclamation, and post mining

Relating with the management of environment, reclamation, and post mining is also not obeyed. As observed, none of the regulations relating with reclamations, and various aspects from providing fences, warning signs, low water PH, heavy metals are not implemented by the corporation thus indicating the mismanagement of the environment. Furthermore, even after the incident occurred as a party who are liable and obliged to be responsible in managing the environment, they show not even the slightest sense of responsibility.

(3) Local community development and empowerment

Instead of helping to implement CSR, provides a decent environment, they caused harm and damage to the living environment and property of the people, potential disease and death due to unhealthy living style, and even escaping from its responsibility. Furthermore, this case shows 8 educational facilities affected by the mine. It is also reported that for a month the students worked together to clean the classroom. This indicates instead of improving the quality of children who may become potential figures to become successful individuals, they actually reduce the quality by forcing children to spend time cleaning the classroom, which can affect the quality of education and reduce the development and empowerment of children.

Any person who uses minerals and/or coal that do not come from the holder of an IUP, IUPK, IPR, SIPB, or permit shall be punished with imprisonment for a maximum of five years and a fine of one hundred billion rupiahs.⁹¹ On the other hand, both the central or local

⁹⁰ Law Number 3 of 2020 on Amendment to Law Number 4 of 2009 on Mineral and Coal Mining., Article 141 paragraph 1 point f, g, j.

⁹¹ *ibid.*, Article 161.

government assures the issuing of permits is required and obligated for the implementation of mining business activities in the specified Mineral and Coal WIUP.⁹² It can be seen in the case, while the corporations have the IUP, it was granted without conducting a feasibility assessment, thereby violating the laws of permits that are not in line with the provisions. More importantly, this undermines the people's right to a good quality of living in terms of health.

3.2. Theory Analysis

Based on the theory of John Locke and JJ Rousseau, the corporation has breached the right to life, liberty and property.⁹³ The case showcases people dying proving that rights of living are disregarded, so is liberty and property as their freedom to live happily is endangered and ruined as their property is damaged due to the acts of the business.

Based on Social Contract theory, if the ruler of the State ignores the natural rights of the individual, the people are free to take down and replace with a government that respects these rights.⁹⁴ In the case, the government gave IUPs without undertaking a feasibility assessment, resulting in overlapping mining zones in highly inhabited regions. The government does not take serious measures as this case is not being prosecuted under the law, not paying compensation to the victim's family, even the directors were not held accountable and just fled from taking responsibility in this case.

All entities have to take part in respecting human rights in the countries where they do business. According to Nash June and Max Kirsch's cost accounting theory, profit is the main goal, but requires company to fulfill human rights in conduct of business.⁹⁵ Lawrence M. Friedman's theory, Legal Culture, states the higher a person's awareness of the law, the higher level of human compliance with existing norms.⁹⁶ Based on the two theories, it is acknowledged that a company's main objective is to reach profit but the problem lies where the corporation violates human rights while doing so.

People's human rights count as the greatest number or majority. Therefore, by disregarding the majority's human rights, the businesses have violated Jeremy Bentham's utilitarianism theory.⁹⁷ They disregard the condition of the majority, which is the worker and people that are living near the company and thus got affected by the incident that happened.

Everyone has rights based on the concept of justice that cannot be negotiated, even if this is related to the issue of public welfare, based on Ronald Dworkin and John Rawls theory.⁹⁸

⁹² *ibid.*, Article 17A paragraph 3.

⁹³ Izzati, op. cit., pp. 35.

⁹⁴ *ibid.*

⁹⁵ Barokah, op. cit., pp. 53.

⁹⁶ *ibid.*, pp. 53-54.

⁹⁷ Izzati, op. cit. pp. 37.

⁹⁸ *ibid.*, pp. 38.

Therefore, it can be seen, businesses are obliged not to violate human rights (justice) of the people. Nevertheless, it is violated, as seen from the rights of living, the right to have a quality education, the rights of property, and the rights to receive compensation are infringed by the corporation.

3.3. Principle Analysis

According to Manfred Nowak's, there are 3 types of human rights principle and two of the three principles are infringed, which are universality and interrelated. Universality defined as people having the same rights, despite their differences. Interrelated is that one right is always related to another, where the rights are linked and contribute to the realization of a person's human dignity.⁹⁹ Based on the two principles and case, the corporation disregards rights that the workers have although knowing that all people regarding the fulfillment of rights should be treated equally, moreover knowing that a right is always interconnect to one another especially on physical needs like living environment which correlates directly to psychological and spiritual needs are not provided and violated by the business.

Rhona K.M. Smith mentioned another principal in regards to human rights which are equality and non-discrimination. Equality is defined as equality of opportunity, access to education, and other things included in human rights. As for non-discrimination, no one should be discriminated because of their differences.¹⁰⁰ Based on the two principles, it can be seen the rights of equality have been breached, as children that actually have the right and opportunity to study instead must use their time at school to clean their classroom from mud and dust due to the actions done by the businesses. In regards to non-discrimination, the business discriminates the rights of workers and citizen by not taking any measure beforehand and responsibility afterwards, seen by the director that fled after the incident occurred.

Other principles that are violated. First, state's obligation to protect human rights. Second, company's responsibility to respect human rights. Third, victims' access to effective remedies must be expanded.¹⁰¹ The corporation have infringed all three. Observed, the state has not done enough to ensure the implementation of business human rights in practice, proven with the incident happened and parties involved were not punished accordingly. Regarding the second principle, the corporation has infringed many aspects of business and human rights and yet all parties involved, do not take any responsibility that suffer due to their actions. This also violated the third principle, by the fact that victims do not get the remedy they deserve, as it is reported that the case is not being prosecuted under the law, not paying compensation, and directors who were not held accountable and fled.

Lastly, state's obligation to protect human rights can be divided into two main guides based on the UNGP. First, states are obligated to protect their citizens from human rights violations

⁹⁹ *ibid.*, pp. 43-45.

¹⁰⁰ *ibid.*, pp. 44-47.

¹⁰¹ Kholis and others, *op. cit.*, pp. 6.

committed by third parties. Second, states should make it clear that all businesses operating in their territories and/or jurisdictions are expected to respect human rights at all times.¹⁰²

According to the two principles and the case, even though the state has tried by utilizing Komnas HAM to be involved, it is still not sufficient as many of the victims have not gotten their rights that have been infringed.

As for the second principle, although the state has put an effort, but the case notes that the government even contributed to allow IUPs without undertaking a feasibility assessment, the number of licenses given creates overlapping mining zones in highly inhabited regions. This indicates that even the states do not respect human rights as the state who have the authority willingly and giving the authority of getting IUPs without taking feasibility tests prior while knowing that in the location nearby are the highly inhabited regions belonging to the civilians that can be harmed of their rights.

4. Business and Human Rights International Perspective

4.1. Implementation of Business and Human Rights in ASEAN and EU

Business and human rights is an aspect that is currently focused in ASEAN nowadays. As the ASEAN countries still has to review, conduct negotiation and improve regional competitiveness to strengthen protection of human rights, in comparison to other countries, such as India, China, Japan, etc. ASEAN itself has actually inaugurated a commission which is ASEAN Intergovernmental Commission on Human Rights (AICHR). AICHR can be used as the main actor in efforts to implement UNGP in the Southeast Asian region by integrating policies at international, regional, and national levels.^{103,104}

Meanwhile, if we do a comparative analysis with the European Union (EU), it has created “Conclusions on Business and Human Rights” in June 2016 as a proof of their commitment to this issue. The EU also created Council Conclusions on Business and Human Rights as a to implement EU Action Plan on Responsible Business Conduct, aimed towards the UNGP’s improvement. Likewise, the situation with Indonesia, EU also incorporated the UNGP into

¹⁰² United Nations, *op. cit.*, pp. 3-4.

¹⁰³ Muhammad Insan Tarigan, ‘Bisnis Dan Hak Asasi Manusia: Apa Yang Dilakukan Asean?’ (2020) 3 Tanjungpura Law Journal 120 <<https://jurnal.untan.ac.id/index.php/tlj/article/view/25708>>.

¹⁰⁴ AICHR was inaugurated on the 15th ASEAN Summit on 23 October 2009 in Cha-Am Hua Hin, Thailand by the ASEAN Leaders. The AICHR members are called Representatives, who are nominees of their respective Governments. relating with the decision-making process is done through consultation and consensus., AICHR, ‘About AICHR’ (2020) <<https://aichr.org/about-aichr-2/#:~:text=The ASEAN Intergovernmental Commission on,-Am Hua Hin% 2C Thailand.&text=The AICHR members are called, nominated by their respective Governments>> accessed 19 September 2022.

their country's corporate social responsibility regulation. Where this has a direct impact on the implementation of the National Action Plan for Business and Human Rights (RAN).¹⁰⁵

ASEAN through AICHR can certainly do the same thing with the EU, as AICHR is the human rights committee in ASEAN. Also, AICHR can issue policies to participate in implementing the UNGP by implementing the mandate given to them.¹⁰⁶

AICHR may implement these mandates through education, research, consultation, dialogues, discussion, and socialization of human rights policies to the public to raise the awareness relating to this issue and reporting it to the human rights bodies, like UN Human Rights Council's Universal Periodic Review, or other ASEAN human rights bodies thus declining the victims of human rights violations related to business.¹⁰⁷

4.2. International Standard of OECD, UN Guiding Principle and ISO 26000

Idea of human rights in business has been included and suggested by creation of the OECD Guidelines, UN Global Compact (UNGP), and ISO 26000. OECD is the first regional organization (geopolitical) to regulate corporate responsibility issues at the international level.¹⁰⁸ These OECD Guidelines standards are only limited to countries where Multinational Companies (MNCs) operate and do not apply to countries outside of OECD members. The OECD establishes rules for information disclosure, bribery, consumer protection, research, technology, the environment, labor, competition, and taxes. Following numerous revisions, a section was added confirming that corporations must respect human rights arising from MNCs activities in accordance with the obligations and commitments of the nations in which MNCs operates.¹⁰⁹ To the maximum extent possible, state parties can encourage MNCs to uphold human rights, not just for employees, but also for those persons impacted by their actions.¹¹⁰

45 nations have ratified the OECD. Although the 2011 Guidelines do not bind MNCs, the countries that are affiliated with these MNCs sign a "binding commitment to adopt them." As a result, the Guidelines are solely binding on countries and not on multinational corporations.¹¹¹

Apart from OECD, there are Business and Human Rights Guiding Principles known as the UN Guiding Principles on Business and Human Rights (UNGP/UN Global Compact) that

¹⁰⁵ So far there are 8 EU members that have issued RAN on business and human rights (UK, Netherlands, Denmark, Finland, Lithuania, Sweden, Italy and Germany) and 8 other member states have drafted or planned to initiate a RAN process (Czech Republic, France, Greece, Ireland, Latvia, Portugal, Slovenia and Spain)., Tarigan, op. cit, pp. 121.

¹⁰⁶ such as: increasing public attention to business and human rights issues, encourage member states to take effective action to implement the UNGPs, carry out dialogue and consultation with ASEAN organs, community organizations, and other stakeholders, and create a binding legal instrument., *ibid.* pp 121.

¹⁰⁷ *ibid.* pp 122-123.

¹⁰⁸ *ibid.* pp 114.

¹⁰⁹ *ibid.* pp 114-115.

¹¹⁰ *ibid.* pp 115.

¹¹¹ *ibid.* pp 115.

have been made by the UN Human Rights Council in worldwide standards on Business and Human Rights. This guide is made based on the recognition of several things, namely as follows:¹¹²

- (1) The State's obligation to protect, respect and fulfill human rights and basic freedoms.
- (2) The role of enterprises to comply with existing legislation and protect human rights.
- (3) Requirement for appropriate rights and obligations, suitable and effective remedies when these are infringed.

These Guiding Principles apply to all countries and all businesses, whether transnational or not, regardless of size, sector, ownership location, or structure.¹¹³ To accomplish those three principles in terms of protecting human rights, the UNGP provides 4 state parameters, which in meeting their duty to protect, States should:¹¹⁴

- (1) Enforce laws to require business enterprises to respect human rights, and regularly assess the adequacy of such laws in order to address any gaps;
- (2) Ensure the other laws and policies governing the establishment and operation of businesses do not obstruct but rather enable business respect for human rights;
- (3) Provide business enterprises effective guidance on how to respect human rights throughout their operations;
- (4) Encourage, require, compel, businesses to communicate on how they address their human rights impacts.

The third international principle on business and human rights is ISO 26000. ISO 26000 is an international standard that provides guidance on the principles underlying social responsibility, recognizing, and engaging stakeholders in social responsibility, core subjects and issues related to social responsibility, and how to integrate socially responsible behavior into social responsibility organization. This International Standard emphasizes the significance of social responsibility results and performance development.¹¹⁵

The enforcement of human rights in ISO 26000 are related to civil rights, political rights as well as social, economic, and cultural rights (EKOSOB). Thus ISO 26000 developed a total 7 basic subjects to reflect the contemporary concept of good social responsibility, which are

¹¹² Fithrian Luthfan, op. cit., pp. 106-107.

¹¹³ *ibid.*, pp. 128.

¹¹⁴ United Nations, op. cit., pp. 4.

¹¹⁵ Hana Ghaliyah, '7 Subjek Inti Tanggung Jawab Sosial Dalam ISO 26000, Pandangan Terkini Praktik Tanggung Jawab Sosial' (*sbmedia.id*, 2021) <<https://sbmedia.id/news/detail/7-subjek-inti-tanggung-jawab-sosial-dalam-iso-26000-pandangan-terkini-praktik-tanggung-jawab-sosial>> accessed 19 September 2022.

as follows:¹¹⁶ According to ISO 26000, social responsibility must be integrated into all aspects of an organization's operations, which include the following seven issues. If a company only focuses on one issue, for example, if a company does not only focus on one problem, for example a company that really cares about the environment, and at the same time focuses on employee retention, the business is considered ISO 26000 compliant.¹¹⁷

Based on the three International Standard of OECD, UN Guiding Principle and ISO 26000 that the case above could have been prevented, due to the implementations of the international standard not only theoretically but more importantly in daily routine practice.

CONCLUSION

It is safe to conclude that the primary goal of the company is to maximize profits, but this does not imply that disregard for human rights in business be it in theories, principles or regulations is acceptable. Especially in the mining industry, where natural resources are intended to benefit the people. Strict oversight is in place to ensure that the case of PT. Graha Benua Etam (GBE) and 17 enterprises in the case of the ex-coal mining pits in East Kalimantan does not happen again. Regulations should not be breached, whether from permission, liability, or compensation, among other things. Human rights should also be considered in the context of business, which should be a mutually beneficial relationship because they have exploited nature for profit by prioritizing the triple bottom line in correlation with CSR activity, EKOSOB, GTN BHAM which developed PRISMA, and by implementing the National Action Plan on Human Rights (RANHAM).

Recommendations that can be made are that, from a regulatory standpoint, there is an urgency to provide legal certainty regarding specific rules governing the mining industry, given that the rules are currently unclear to practitioners. In terms of human rights, it is no longer permissible to disregard human rights as in this case, which violates even the most fundamental rights, namely the right to life of individuals, as well as children and the environment, who are victims of business actions. With the availability of international principle standards such as the OECD, UNGP, and ISO 26000, if Indonesia uses these three principles to the fullest extent possible, AICHR can be more efficient in working as compared to the EU. It will undoubtedly assist in minimizing the number of occurrences of violations. Given that PT. Graha Benua Etam is a coal mining firm that, of course, uses natural resources, it can be concluded that the implementation must be carried out.

¹¹⁶ *ibid.*

¹¹⁷ Rendi Mahendra, 'ISO 26000 Sebagai Standar Global Dalam Pelaksanaan CSR' (*ISO Center Indonesia*, 2015) <<https://isoindonesiacenter.com/sekilas-tentang-iso-26000/>> accessed 19 September 2022.

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