

Legal Analysis of Business Strategy and Human Rights Based on Presidential Regulation Number 60 of 2023

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ABSTRACT

Indonesia, as a developing country, faces major challenges in balancing economic development with protecting the rights of indigenous people. The history of economic development shows that the industrialization phase often ignores the rights of communities, especially indigenous communities. In this context, Presidential Regulation (Perpres) Number 60 of 2023 concerning the National Strategy for Business and Human Rights is an effort to overcome this problem. This research aims to examine the concept of protection and empowerment of indigenous peoples in business practices and its urgency based on the perspective of the Presidential Decree. Presidential Decree Number 60 of 2023 seeks to overcome this problem by encouraging harmonization of regulations, drafting policies for protecting human rights in business, as well as increasing access to information and restoring rights for victims of human rights violations.

INTRODUCTION

Human rights are part of the true and natural nature of humans, as a gift from God that must be worshiped, obeyed and respected. The theory of human rights is part of the true and natural nature of humans, as a gift from God that must be worshiped and obeyed. The essence of human rights itself is an effort to observe human existence in human life in a straightforward manner through actions so that the needs of one person and the needs of many people are balanced. Firm efforts are made for the sake of these balanced needs. Policies must also be made so that human rights are protected, respected, maintained and upheld. This is what makes individuals and individuals mutually protect human rights. The state through the government and civil society also participate in protecting human rights. In the 1945 Constitution, it is implied that all humans are required to respect human rights. Humans must know that all are equal in the eyes of the law. Without any differences. In a country, everyone has the right to work, to speak up for their opinions, to be in a community, to embrace a religion according to what they believe, and to go to school.

Nicolai Alexandrenovict Berdyaev, a Russian thinker, stated that human life is not only given to a group even though humans are social beings. Life becomes meaningful if each individual dedicates the quality of his life in a group, (Fuad Hasan, 1989, 87-88). The definition of human rights has a broad meaning. In liberal thought, it states that the basis of human rights is a person, but there are also those who disagree by stating that human rights emphasize more on the wider community, socialists. Pancasila is the origin of human rights adopted by the state of Indonesia. Conceptually, in Pancasila, it means that human rights must apply to a person and the wider community as socialism. In the second principle, it means that human rights are recognized.

The history of the role of law in economic development in developed countries is divided into 3 (three) phases, namely the unification phase, industrialization and welfare state. Indonesia as a developing country is in demand to undergo all three phases at once. This is because developing countries tend to experience economic development lags compared to developed countries, so that carrying out all three phases at once is considered to be a solution to be able to compete. Departing from these three phases, the industrialization phase is a phase that tends to be unstable and risky to people's rights. The industrialization phase of a country in carrying out its economic development will be marked by significant industrial development. The law in this phase will usually be more pro-business actors, because what is being pursued is rapid industrial and economic growth.

The rapid development of the era, especially in the fields of economy and technology, makes Transnational and Multinational corporations something very important to be considered by a country. A corporation is able to process natural resources so that employment opportunities are open to the wider community. This will increase state revenue from taxes. However, these positive things can also have negative impacts, especially human rights violations can occur.

Human rights violations in the economic sector can occur such as violations of employee rights, people's cultural rights, rights to food, rights to sources of employment, and rights to a healthy place.

Indonesia, as a developing country that has the desire to align the industrialization phase with the welfare state phase in its economic development process, must of course prepare a series of mature plans and regulations. The government has actually tried to accommodate this. The issuance of Presidential Regulation Number 60 of 2023 concerning the national business and human rights strategy is an effort by a country. This Presidential Regulation is one of the regulations issued in order to protect and strengthen the protection of human rights for every individual in society. This regulation is present and is one of the very important regulations for respecting the human rights of every person. If viewed in depth, in its considerations it can be seen that the state is aware of the importance of protecting and restoring human rights in order to achieve a prosperous, safe, just and prosperous community life. So on that basis the government feels the need to form a business policy in the country and human rights to form a goal that upholds human rights. Law Number 12 of 2011 Article 7 states the hierarchy or order of laws and regulations in Indonesia which are divided: The highest 1945 Constitution; MPR Decree; UU/PP; Provincial Regulation; and Regency/City Regulation. So it is seen that the Presidential Regulation is included in the regulations that apply in Indonesia.

In Presidential Decree Number 60 of 2023, Articles 1 and 2 concerning business strategies in a country and human rights state that Stranas BHAM is a state effort that is used as a guideline for use by ministries, regional regulations, business actors and others in order to increase business activities without eliminating human rights protection. When viewed in the appendix to Presidential Decree Number 60 of 2023 concerning business efforts in a country and human rights, it is realized that business activities by business owners certainly have consequences for the people and do not guarantee that human rights violations do not occur. Workers' rights such as working hours, excessive overtime, inappropriate wages, no leave given, discrimination, worship is prohibited, and employing minors. This is the scope of human rights violations. Other negative impacts of business activities are not only in the work environment but also have consequences for the people. Such as a polluted and unclean environment and even problems with the place (land). So, it can be concluded that business owners are responsible for protecting human rights in the workplace and around the workplace.

The Indonesian government has constitutional obligations to respect, protect, and advance human rights, and implement international agreements in the field of human rights. Indonesia supports international guidelines that are legally binding and non-binding. The state must be built based on the 1945 Constitution which is carried out in accordance with the principles of more advanced development and still does not abandon human rights values; that a state as the main actor in national progress is obliged and responsible for maintaining and protecting human rights so that a sense of justice, peace, security, and a prosperous society is created; that anyone, especially business

actors, certainly has an obligation and responsibility to maintain, protect, and respect human rights based on the 1945 Constitution so that workers and the community live a safe, peaceful, just, and prosperous life; that in order for legal certainty and justice to be guaranteed in people's lives, it can give birth to the enforcement, protection, respect, and advancement of human rights in business activities, business policy efforts are needed in a country and human rights.

Business and Human Rights Policy is an initiative to signify the commitment of human beings in a country, government, business sector, and civil society, in prioritizing the principles stated in the UINGps or United Nations Guiding Principles on Business and Human Rights. UINGps is a global guideline adopted by countries around the world, including Indonesia, as a framework, to ensure that human rights violations do not occur in business activities. R.Herlambang Perdana Wiratraman in Rudy Hendra Pakpahan, Elka NAMSihombing, based on article 28I paragraph 4 and 5 of the 1945 Constitution, there is a state responsibility or accountability of a country regarding human rights, explaining that "the state's responsibility in protecting, advancing, upholding, and fulfilling human rights, especially the government and so that this is achieved based on the guidelines of a democratic legal state, it is stated in laws and regulations related to how human rights are implemented with assurance". This is the guideline for seeing the legal responsibility of the state, especially the Indonesian government so that there is progress in human rights.

Through the UNGPs, countries, including Indonesia, are committed to ensuring that human rights principles are integrated into business activities at the national and international levels to the extent that it can encourage respect for human rights to be important for awareness of corporate social responsibility and the importance of respecting human rights in all aspects of business operations. In the Indonesian context, introducing the UNGPs to business actors is an important step in building a corporate culture based on human rights principles. This can encourage the adoption of internal policies that pay attention to the social and environmental impacts of business activities, as well as strengthening fair and inclusive dispute resolution mechanisms. Thus, the National Strategy for Business and Human Rights becomes an important instrument in operationalizing the principles of the UNGPs at the national level. This reflects Indonesia's commitment to protecting human rights, promoting sustainable development, and ensuring that the business sector contributes positively to the welfare of society. The three pillars of the UNGPs are the UN Guidelines on Business and Human Rights: Maintain, Respect, and Address.

In accordance with the description that underlies this research, the formulation of the problem in this research is: What is the concept of community protection and empowerment in business practices regulated in Presidential Decree Number 60 of 2023 and what is the responsibility of business actors in respecting human rights in the business environment?

LITERATURE REVIEW

Human rights are rights that every person has since birth which are bestowed by the Almighty. According to Atnike Nova Sigiro, the Principle of

Human Rights is very important to be implemented in everyday life, especially in carrying out business efforts, because in business, customers often have human rights violations. The Principle of Human Rights consists of 3 as a form of responsibility in business, namely:

1. Responsibility to protect human rights while the business is operating.
2. Accountability in respecting human rights.
3. The victims and the people need to have a way or access to resolve problems if human rights violations occur in the implementation of human rights and business.

So, human rights are a gift from God that is inherently basic (main) that must be protected, respected, and upheld by everyone without exception. Human rights must be maintained. This means that everyone must not be arbitrary towards others. Must not take actions that harm other humans. All things must be maintained so that order, security, and peace are created in life. Human rights have an essential nature, meaning that rights are given by the Almighty to humans without exception. Human rights also have a universal nature, meaning that these rights exist in every person on this earth regardless of religion, race, skin color, in essence without looking at human background. Therefore, human rights must not be revoked by anyone, must not be taken away by anyone and handed over to others. Human rights must not be shared with anyone.

In the business world, of course there are big and small businesses. The name of the business still involves other people even though it is a small business. Small businesses still relate to the community or buyers. Big businesses certainly have members of workers or employees. Therefore, it is undeniable that human rights violations can occur. Every human being must respect each other, protect each other so as to stay away from what is called human rights violations. Every worker has the right to get a salary, to get leave, and so on. Consumers have the right to get clear and correct information from the businessman about the goods purchased. Do not let these rights be violated. The many human rights violations that have occurred have given rise to efforts made by a country to protect human rights. Human rights protection is a way or effort to protect and defend a person's natural rights. The establishment of the National Human Rights Commission is also one of the efforts to protect human rights. Human rights protection institutions established in Indonesia are, the National Human Rights Commission, the Constitutional Court, the Judicial Commission, the Ombudsman Institution, the LPSK (Witness and Victim Protection Agency), the KPAI (Indonesian Child Protection Commission), and the National Commission on Violence Against Women. The above institutions are efforts made by the Indonesian state to protect human rights in Indonesia.

Without human rights inherent since birth, it is impossible to live as a human being. This is a statement from Baharudin Lopa which he concluded from Jan Materson's opinion. The presence of human rights in each person makes humans understand how-to live-in society. If only one person has human rights, other humans will be arbitrary because there are no guidelines that can be carried out in social life. We can see that all humans have human rights without

exception, regardless of anything. God gives it but there are still many human rights violations. Even though everyone has it. Many humans do not realize what if it happens to them. So, what if there are no human rights inherent in each person. Then this life could be even worse. In this beloved country of Indonesia, Law no. 39 of 1999 regulates human rights. With the existence of human rights, it needs to be respected and protected because the existence of human rights is what creates balance, conformity of rights and obligations, individual and public interests. Efforts to protect human rights are not only the task of the government or high-ranking state officials, but it is the task of everyone, individuals. Demanding rights means not being free from obligations that have been fulfilled. An employee in a business venture may not have his rights given even though he has carried out his obligations. Therefore, it is necessary to state how the fulfillment of workers'/employees' rights in a job.

METHODOLOGY

This research uses normative legal research method/normative juridical. Ediwawarman in his book "Monograph of Legal Research", states that normative juridical research is legal research in the library, namely conducting research from the library, namely secondary materials. This type of secondary research is related to the problems that are the focus of the research by emphasizing the analysis on written regulations and applicable laws. Review the literature sourced from book data, articles, doctrines, laws, and added from the author's opinion and comparing the interrelated variables to describe and explain the phenomena of human rights protection or HAM at the level of business practices, especially regarding the rights of customary law communities. This is a data collection technique in this research. The data sources used in this research are secondary data, sourced from existing literature studies in order to obtain theories or concepts that can be used in compiling research. The data used in compiling this research are legal journals, legal books, legal decisions, and several legal writings on several official internet pages.

RESEARCH RESULT AND DISCUSSION

The Concept of Community Protection and Empowerment in Business Practices as regulated in Presidential Decree Number 60 of 2023

The economic development of a country can be uniquely influenced by companies. On the one hand, corporations have the ability to process natural resources, which creates jobs, so that state revenues increase, and consumers increase. Thus, they have the potential to drive economic growth. On the other hand, business operations can also cause social, environmental, and human rights losses, especially for businesses in the raw material processing sector that exists in nature. The shifting of trees or forests that are converted into jobs in mining, plantations, and industry that change the environment, which has an impact on people's lives, culture, and economy, especially for prosperous communities.

Therefore, a country has a responsibility related to no more human rights violations and is carried out through legal rules and supervised. The state must respect and protect human rights. Protection of people affected by human rights

violations by individuals, groups, organizations, regardless of whether the state does anything.

Countries can be accused of violating human rights. The responsibility of a country from (non-participation) means that the country must not interfere with or interfere with the human rights of others, such as the right to express opinions, the right to assemble, social and political rights. Therefore, the responsibility of a country can be fulfilled in detail if a country avoids silence on human rights violations and the human rights of its citizens are protected. The involvement of a country in protecting companies consists of three parts. First, laws are made to protect companies and provide clear sanctions for their business activities. Second, supervise and check that all policies are effective. Third, supervision, guidelines, and approval are given to all parties responsible for their companies to ensure that they do not violate human rights. Therefore, the main key to a country's efforts to prevent human rights violations at the corporate level is the protection of individuals and the country's jurisdiction over human rights violations committed by companies. To do this, countries can apply world/international regulations that are not/have not been validated, provide support, and supervise efforts made by government organizations.

Companies have a responsibility to the place where people live and care about the community and respect and contribute to the people where they operate. Social contract theory is a CSR theory that was created and developed among other theories. This theory provides an explanation of the relationship between social aspects and companies with life. This theory says that companies must be responsible to society. They have this perspective not only because of the desire to generate royalties, but also because companies must act in accordance with the way society views business. Therefore, if society's perception of business changes, companies must change the way they implement CSR.

CSR not only has moral responsibility but also legal responsibility. Many rules in the law, both regarding human rights. related to companies, regulate CSR obligations and sanctions. Companies can make CSR efforts and empower the people. This is a legal effort to reduce the poverty rate of the people. In terms of community empowerment, CSR program policies can include free schools, formal and informal; developing MSMEs to create business opportunities for the people; caring for employees who work; and other programs. Education and other CSR programs related to community empowerment can achieve progress in terms of development. The principle of CSR can produce welfare, prosperity of the people individually and socially.

According to Presidential Decree Number 60 of 2023, national development must be carried out by considering development progress, namely paying attention to human rights. The state as the main actor in the development of a country, has the responsibility to provide protection and restoration of human rights so that people can live in prosperity, peace, tranquility, and justice. In the business sector, business owners have responsibility for the restoration and respect of human rights based on the rule of law.

This is inseparable from the World Guidelines (UN) on business and human rights, which establish 3 (three) pillars of business and human rights:

1. the responsibility of a state in protecting human rights,
2. Business actors are responsible for respecting human rights, as well as
3. Access related to recovery

Therefore, to support a business culture that respects human rights, a comprehensive strategy is needed to strengthen the protection and empowerment mechanisms of indigenous legal communities. One of the steps outlined in Presidential Regulation Number 60 of 2023 is as follows:

1. Increase the understanding of government, business actors, and the community regarding business and human rights issues and norms.
2. Evaluation, harmonization, and guarantee of regulations related to business and human rights issues as well as the implementation of laws and regulations related to the protection and empowerment of indigenous legal communities have not shown effective results due to overlapping regulations and law enforcement officials who tend to support the government and business actors.
3. Availability of guidelines for business actors to respect human rights in their business activities. One of the government's failures in ensuring the protection and empowerment of indigenous legal communities is the lack of socialization and education in enforcing business and human rights based on the guidelines for national life (Pancasila). As a result, many business actors are negligent towards indigenous legal communities, living in environments that have been transformed into business sector areas.
4. Access to information related to the complaint mechanism for business and human rights cases has been expanded, but many business and human rights cases in various regions in Indonesia are still closed and cannot be accessed by the media. There are many factors that influence this, including indigenous peoples in the regions who cannot get access to the information, law enforcement officers and government officials who often cover up violations by indigenous peoples in the media.
5. Evaluate and improve access to redress for business cases and human rights disputes through judicial and non-judicial channels.

Human rights violations often occur due to the conversion of customary law community areas into business areas by business actors and law enforcement officers, who often act repressively and ignore the rights of customary law people. Customary law people no longer feel protected and justice because the legal settlement process always sides with stakeholders. The National Business and Human Rights Strategy is an outline of national policy that directs state officials, such as; Institutions, ministers, Regional Regulations, business owners and others in advancing business by protecting, respecting, and restoring human rights (Pas.1 v.2).

Responsibility of Business Actors in Respecting Human Rights in the Business Environment

Companies must be one of the actors who are able to show that their companies are capable of respecting human rights as a form of their

responsibility for protecting human rights. They must know and show that they are capable of maintaining and respecting human rights through (1) making policy commitments as a form of support in their responsibility to respect human rights, (2) conducting continuous human rights testing to identify, reduce, prevent and see how many are caused by their actions. Companies must demonstrate their commitment openly, easily accessible and respect human rights through policy commitments. These actions must: (1) obtain approval from a higher level in a company; (2) be informed by appropriate experts, both internal and external; (3) establish and determine the human rights facts that occur for employees, business cooperation actors, and people who participate in the business activities, goods, and business services; and (4) be part of the main efforts and operational steps and natural rights of employees in a company.

In addition to creating policies, companies must implement detailed human rights testing. The main components in the field are statements of policies in respecting human rights and efforts that support these policies, detailed human rights testing, and assessments of human rights consequences, implementing respect for human rights in all benefits and procedures from within / internally in a concrete manner. In the context of corporate responsibility, a level of respect for human rights is required because it is a tool that is carried out without any element of coercion and has no conditions (voluntary and non-binding) related to a company's responsibility.

Companies have responsibilities when their actions may harm the rights of individuals, namely citizens, employees, buyers, and distributors. Possible and real consequences can come from corporate actions and from their relationships with several parties, such as distributors, contractors, and governments. The impact that each business can have varies depending on the environment in which it operates. Determining the effect of human rights on business practices is the difficult part. Businesses that ignore human rights will have negative impacts on people in the short and long term. For companies, ignoring human rights can have significant impacts on business sustainability and acceptance in the global marketplace.

Basic Urgency Considering the Formation of the Presidential Regulation on the National Human Rights Strategy: The 1945 Constitution allows for sustainable development by upholding human rights. The state and society have responsibilities related to protecting and restoring human rights, so that business actors enjoy prosperity, peace, tranquility, and justice. In addition, society also has a responsibility to respect and restore human rights so that society has legal certainty and a sense of justice when obtaining P5 HAM in business activities.

CONCLUSIONS AND RECOMMENDATIONS

Human rights are the natural ownership of every individual given by God to humans from birth. Thus, every human being is responsible for respecting human rights and must be maintained, protected and upheld. This must be done by everyone. Every human being is obliged to respect each other, reflected in the body of the 1945 law, especially which states that every citizen is equal in the eyes of the law. Everyone has the right to work, to have an opinion, to embrace a

religion that they believe in, and to receive an education. In a country, economic growth greatly affects people's lives. Business and human rights cannot be separated because they are closely related. The existence of human rights still has human rights violations. Human rights violations can occur in the business world. Therefore, the government issued Law Number 60 of 2023 concerning state efforts in the business world and human rights to protect and strengthen the protection of human rights. This law was born to fulfill the rights of every human being. UNGPs are a framework guide to check if there are no human rights violations in business activities. There are 3 state protections for business entities, namely first, by forming laws that provide penalties and protect human rights. Second, checking the efforts made are implemented in detail. Third, supervision, guidelines and ratification.

The state has a responsibility to protect human rights, the responsibility of business actors in respecting human rights, and the path to restoring human rights are 3 business and human rights efforts in the formation of Law No. 60 of 2023 as a global UN guideline. In addition, business actors must also continue to respect human rights in the business environment.

ADVANCED RESEARCH

This research was conducted with optimal effort. The best effort was made for this research. However, as the author and compiler of this research, I admit that this research still has shortcomings. There are obstacles in the preparation of this research, namely the limitations of the knowledge and science that I have, limited access to information sources, and other external factors, so that they can affect this research. All means are used to reduce the impact of these obstacles and barriers. Therefore, I am ready and accept all suggestions, criticisms, which are constructive from all readers for the improvement and further development of this research.

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