



Padjadjaran Journal of International Law

International Law Department Universitas Padjadjaran

ISSN: 2549-2152, EISSN: 2549-1296

Volume 8, Number 1, January 2024

DOI: <https://doi.org/10.23920/pjil.v8i1.1606>

Protecting Indonesian Children in Adapting Climate Change Based on Business and Human Rights Principles

Tobias Binsar Ezra¹, Chloryne Trie Isana Dewi²

Abstract

Based on research data, the climate change condition has increased globally. Indonesia is a part of this condition with over 100% increase in carbon emissions over the last 12 years. When it comes to the context of climate change, children have a different position as they become the most medically vulnerable group and are pivotal to Indonesia's future, demanding special attention. Previous research pointed out that one of the possible major contributors towards climate change and carbon emissions is companies in industrial and energy activities. With the availability of the child rights convention and national law, this article will answer the notion of whether the existing National Law in Indonesia is sufficient to prevent and protect the rights of Indonesian children in the future, along with an analysis of how business and human rights can push companies to comply and be held accountable in case of violation. The methodology that will be used in this research is the normative juridical method, creating a specific approach to laws and regulations based on data analysis. This article concludes that Indonesia will need to include more Climate change and Business and Human Rights aspects to handle the future implications of climate change impact. This article also concludes that to have a strong hard law system in Indonesia, an integration of International frameworks and Business and Human rights principles into the national law is essential.

Keywords: business; human rights; child rights; climate change; regulation

A. INTRODUCTION

Climate change is a situation where temperature and precipitation, wind, and other particles naturally change over long periods.³ The cause of the current condition of climate change issue can be regarded as a condition of the natural process of change in temperature.⁴ However, due to the amount of carbon emissions that are being emitted over the years from various sources such as transportation and industrial business, the

process has been disrupted, thus increasing temperature change⁵, which leads to the current crisis of climate change that we are facing. Based on several data surveys and analyses, the industry and business sector is one of the big contributors to the condition of current climate change; this stems from the impact that they brought, such as high carbon emissions.⁶ One of the supporting evidence of business linkage related to carbon emissions can be seen from changes in carbon emissions

¹ Faculty of Law, Padjadjaran University, Bandung, Indonesia, email: tobiasbinsar1501@gmail.com

² International Law Department, Faculty of Law, Universitas Padjadjaran, Bandung, Indonesia.

³ United Nations, "What Is Climate Change," n.d., https://unfccc.int/files/press/backgrounders/application/pdf/press_factsh_science.pdf.

⁴ *Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility*, 1st ed. (Nomos Verlagsgesellschaft mbH, 2013), <https://www.jstor.org/stable/j.ctv941w8s>.

⁵ *Ibid.*

⁶ Danfoss Impact, "Danfoss Nordborg Factory Site, towards Zero Emission Factories," 2022, <https://cdn.sanity.io/files/5zabm86v/production/b3d8c5677e5b52992943c81a070923816300b9bd.pdf>.

recorded when industrial and human activities are more passive. Indonesia is placed in 4th position as one of the countries that have a very high level of emissions. From a legal stance, Business and Human Rights were set on finding corporate responsibility that will minimize and prevent harmful impacts of commercial activities on individuals and communities with expectations that are based on a specific core set of human rights obligations.⁷ Combined with the current climate condition of Indonesia, a strong indication of the high need for Business and Human Rights implementation becomes highlighted to handle climate change.

The impact of climate change on the rights of children in Indonesia can manifest in many scenarios; an example of this issue can be seen in cases such as lack of nutrition for children, death from heat waves, and lack of access to clean water. From the perspective of lack of nutrition, it can be seen that Indonesia is one of the world's largest producers in terms of agricultural products, thus creating a notion that Indonesia should be safe from issues such as lack of nutrition. However, it was pointed out in the report that was mentioned in G20 that Indonesia will suffer a large decrease in the agricultural sector by the year 2050. This includes a decrease in crop production, such as rice and maize, ranging from 4-8%, putting Indonesia as an example of a country that is at risk of being impacted by climate change⁸. This also came with the supporting factor of the recent events in smaller regions like East Sumba, which are facing heavy drought without any preparation and prevention assistance from the government. This issue led

to destroyed crops, struggles with access to clean water, and food shortages. The issue has also been going on for quite a while in regions such as East Sumba since 2022⁹. The impact of intensive heat can also be seen as another impact of climate change in Indonesia; according to the latest reports it was pointed out that if the condition of climate change follows the current increase, Indonesia will be growing with a large emission pathway and will create lasting heat waves by 2050 with a rate of duration increase of 8000%.¹⁰ With a large increase in heatwaves that are predicted to come by 2050, it is mentioned that Indonesia's workforce will be hit greatly, especially in the agriculture sector.¹¹ The emergence of this issue can be seen in the conditions of major regions like Surabaya, East Java, and Jakarta, which are going through extreme heat waves around October 2023. The other factors of climate change impact can also be seen in Indonesia in terms of lack of access to clean water; this was proven by research projects conducted by The Indonesian Institute of Sciences (LIPI), which reported in 2012 that Indonesia has the lowest availability of clean water services in Southeast Asia. Before 2015, the community's realization of access to clean water and sanitation reached 70.97% and 62.14%, respectively, of the goal of 100% by 2019¹². Based on the impact of the mentioned factors previously, the average health quality of an adult would undergo a big toll on this condition; however, it becomes even worse for younger children, with physiological and immune systems still in the early stages of development, who are more vulnerable to the impact of climate change.¹³ Based on a

⁷ Anita Ramasastry, "Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability," *Journal of Human Rights* 14, no. 2 (April 3, 2015): 237–59, <https://doi.org/10.1080/14754835.2015.1037953>.

⁸ CMCC, (n.d), "G20 CLIMATE RISK ATLAS Impacts, policy, economics", <https://files.cmcc.it/g20climaterisks/Indonesia.pdf>. P10-11. Accessed 13 September 2023

⁹ Sigiranus Marutho, Kompas, (2022 October 22), "Rambangaru Sumba Timur Alami Kekeringan Ekstrem, 215 Hari Tanpa Hujan", [https://regional.kompas.com/read/2022/10/22/154034878/rambangaru-sumba-](https://regional.kompas.com/read/2022/10/22/154034878/rambangaru-sumba-timur-alam-kekeringan-ekstrem-215-hari-tanpa-hujan?page=all)

[timur-alam-kekeringan-ekstrem-215-hari-tanpa-hujan?page=all](https://regional.kompas.com/read/2022/10/22/154034878/rambangaru-sumba-timur-alam-kekeringan-ekstrem-215-hari-tanpa-hujan?page=all). Accessed 18 October 2023

¹⁰ G20 Climate Risk Atlas, (n.d), "Indonesia", <https://www.g20climaterisks.org/indonesia/>. Accessed 4 September 2023

¹¹ *Ibid*.

¹² Saputri, A.A.I. (2018). Implementation of financing compass for welfare partner operational system Grameen Bank in Banyumas Regency. *Ijtima'iyya: Journal of Muslim Society Research*, 3(1): 21-36. <https://doi.org/10.24090/IJTIMAIYYA.V3I1.1674>. Accessed 5 August 2023

¹³ "A/HRC/35/13: Analytical Study on the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child - Report of the Office

comprehensive report issued by the Asian Development Bank in 2021, it was well stated that Indonesia was on track to experience a wide array of significant climate-related changes by the 2050s¹⁴. These projected alterations in the country's climate and environment indicate that the country is likely to face an increase in average temperatures, leading to more frequent and intense heat waves.¹⁵ Prolonged periods of extreme heat could have adverse effects on public health, agriculture, and ecosystems.¹⁶

With a clearer understanding of the impact that climate change can bring on the health of children, it is crucial to understand the real meaning of the right to health without any misconceptions that lie around the concept itself; this includes a few points, such as¹⁷ the fact that the right to health should not and is not the same as the right to be healthy; in this regard, it is important to understand that the two rights are not the same; this is very well related to the fact that a person's wellbeing and health condition can be affected by many factors that are beyond the direct impact and capability of the states. On the other hand, the right to health usually contains the confirmation of aspects such as the right to access medical facilities and services to be available to those who need them. In addition, it is also important to consider that the condition of the state's financial constraints does not exempt its obligation to fulfill the right to health. Regardless of the financial constraints and state conditions, a state must still work towards fulfilling its obligations to the right to health. The common misconception in this aspect is that the state can delay its obligation when hard and constraining

conditions arise, which is not the case, thus resulting in the state still being obligated to uphold the right to health to the maximum of its available resources.¹⁸

Another great indication could also be found based on the in-depth report created by the Intergovernmental Panel on Climate Change (IPCC); it was well highlighted in the report that the urgency of sustainable practices, investments in renewable energy, better land-use planning, and strengthening community resilience would ensure a safer and more sustainable future for countries.¹⁹ It is important to emphasize that it is incredibly important to create a collaboration between governments, industry, communities, and international organizations on mitigating the impact of climate change and protecting Indonesia's environment, resources, and people.²⁰ This is also well related to the fact that with a large population, Indonesia needs the proper strategy and immediate action to preserve the future protection of children's rights to be safe and sound from the possibility of climate change impact, thus proving the stance for Business and Human Rights (BHR) as a big player.

In terms of actions, Indonesia has made several attempts to try and handle the incredibly poor conditions of climate change. However, reality has proven that the condition has not only become more critical, but it has also started to severely impact human rights condition. In consideration of the importance of Human rights protection, it becomes obvious that the perspective of the Business and Human Rights principle holds an important key to preserving and protecting the condition of Human rights, specifically Child Rights. As we

of the United Nations High Commissioner for Human Rights," OHCHR, accessed January 19, 2024, <https://www.ohchr.org/en/documents/reports/ahrc3513-analytical-study-relationship-between-climate-change-and-full-and>.

¹⁴ *Ibid.*

¹⁵ World Bank Group and Asian Development Bank, *Climate Risk Country Profile: Indonesia* (World Bank, 2021), <https://doi.org/10.1596/36379>.

¹⁶ Public Health Institute, "Extreme Heat, Climate Change and Health," n.d., https://www.cdc.gov/climateandhealth/pubs/extreme-heat-final_508.pdf.

¹⁷ *Ibid.*, p. 5

¹⁸ *Ibid.*

¹⁹ Katherine Calvin et al., "IPCC, 2023: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II, and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (Eds.)]. IPCC, Geneva, Switzerland," First (Intergovernmental Panel on Climate Change (IPCC), July 25, 2023), <https://doi.org/10.59327/IPCC/AR6-9789291691647>.

²⁰ Federation of American Scientists, "Indonesia: GHG Emissions and Climate Change Policy," January 6, 2023, <https://sgp.fas.org/crs/row/IF12300.pdf>.

delve deeper into the discussion, the following section of this article will discuss the in-depth condition of the arrangement in Indonesia; it will discuss further whether Indonesia is capable of creating good prevention and protection for the future implication of climate change for Indonesian Children, the following section will also analyze all the possible action related to the forms of legal action and accountability can the government do to push companies to comply with Business and Human Rights In Indonesia.

B. ANALYSIS AND DISCUSSION

1) National Law Capabilities: Measurement for Indonesian Child Rights Protection from Future Climate Change Implication

a. Analysis of Law No. 32 of 2009 on The Protection and Management of The Environment

In terms of future implications, climate change poses a major threat and plays an alarming role in impacting human rights, especially children's rights and wellbeing. This issue of protecting the "future" should become a serious point as Indonesia itself has already undergone three changes in environmental law ranging from 1982-2009²¹, this also continues with the recent update brought inside Law of the Republic of Indonesia No. 11 of 2020 on Job creation, Thus proving that point that with the everchanging aspect of environmental crisis, Indonesia must update its legal capabilities to go toe to toe with the existing issue of climate change rise and its future implication. The first action needed to protect children's rights from climate change is to understand the current condition of Indonesia. In this case, it can be

concluded that as a country, Indonesia has a versed number of regulations that are related to the issue of climate change and carbon emission. Based on the report and research data mentioned in previous sections, it was well mentioned that one of the biggest contributors to carbon emission in Indonesia, and in this case Jakarta, is energy companies. Jakarta can be made an important subject when comparing cities across Indonesia. In 1980, Jakarta was a small, environmentally friendly, and non-industrialized city with a small population of just 6.5 million.²² In comparison to the current condition of 2022, Jakarta holds around 10.6 million population.²³ With heavy industrialization. This comparison holds particular relevance because Indonesia will have a significant population growth by 2040, with studies indicating an increase of roughly 42 million people between 2020 and 2040²⁴. The case that happened in Jakarta became an important aspect; this is well related to the fact that other areas of Indonesia may experience significant population growth and industrialization similar to Jakarta. In addition, early mitigation might be very beneficial for other regions, such as the future capital city of Indonesia in Kalimantan.²⁵, to prevent facing similar difficulties. With this consideration at hand, it is crucial to take early action to mitigate and adapt to climate change conditions.

From a legal perspective, one of the important actions is to create a more strict system for businesses operating in Indonesia, specifically those engaged in energy-related pursuits. Based on a

²¹ Achmad Romsan et al., "CLIMATE CHANGE AND COMMUNITY ENVIRONMENTAL CONFLICTS: ARE THEY CORRELATED?," *Sriwijaya Law Review* 1, no. 1 (January 30, 2017): 067, <https://doi.org/10.28946/slrev.Vol1.Iss1.9.pp.067-079>.

²² Edi Sedyawai, *Sejarah Kota Jakarta 1950-1980* (Departemen Pendidikan dan Kebudayaan, 1987).

²³ "BPS Provinsi DKI Jakarta," accessed January 19, 2024, [https://jakarta.bps.go.id/indicator/12/1270/1/jumlah-](https://jakarta.bps.go.id/indicator/12/1270/1/jumlah-penduduk-menurut-kabupaten-kota-di-provinsi-dki-jakarta-.html)

[penduduk-menurut-kabupaten-kota-di-provinsi-dki-jakarta-.html](https://jakarta.bps.go.id/indicator/12/1270/1/jumlah-penduduk-menurut-kabupaten-kota-di-provinsi-dki-jakarta-.html).

²⁴ "Indonesia: Total Population Forecast 2040 | Statista," accessed January 19, 2024, <https://www.statista.com/statistics/713018/indonesia-forecast-total-population/>.

²⁵ "Urgensi Pemindahan Ibu Kota Negara," accessed January 19, 2024, <https://www.djkn.kemenkeu.go.id/kanwil-kalbar/baca-artikel/14671/Urgensi-Pemindahan-Ibu-Kota-Negara.html>. Accessed 11 September 2023

proper look at National Law Number 32 of 2009 on The Protection and Management of The Environment, several main points have been regulated, such as:

1. The basic threshold for any type of environmental damage (Included under Article 21),
2. Basic regulations regarding the condition of supervision and its administrative sanction for non-complying companies (regulated under Chapter 11 Article 71-83)
3. Action related to the preparation and mitigation plan regarding the protection of environmental conditions and management (regulated under Part 3 starting from Article 9)
4. Regulatory surrounding companies that have severely impacted the condition of the environment (regulated under Article 22-33)²⁶

Despite looking well composed, the mentioned article inside the National Law Number 32 of 2009 shares a similar lack of point; it can be seen that there has been an absence of regulations and penalties that can hold businesses accountable for any adverse impacts they may have on environmental damage that impacted Human Rights, particularly child rights. With that analysis done, it can be seen to be quite obvious that National Law Number 32 of 2009 on The Protection and Management of The Environment lacks the missing perspective of Business and Human Rights, which is a crucial factor to consider. The consideration of integrating a perspective of Business and Human Rights into a regulatory system is well related to the aspect that it contains in refraining companies from harmful operations towards the environment

and Child rights. With the principle at hand, Businesses that fail to comply with the Business and Human Rights principles can be held liable for any violations that may arise, ensuring that Human Rights are not compromised.

With the consideration of the impact that climate change can bring on child rights and the best interest of the child, Indonesia can use the United Nations Guiding Principle on Business and Human Rights and Business principles by UNICEF. Based on an analysis that can be made from the two guidelines, the two frameworks have a common point emphasizing the protection and prioritization of child rights. By shifting the focus and consideration of regulations to be based on the impact an activity has on human rights²⁷, Indonesia can establish a more proper and clearer guide for businesses to comply with. The argumentation and example of this practice can be proven by National Law Number 32 of 2009 on The Protection and Management of The Environment. Under that regulation, the way environmental permits and waste are regulated focuses on their impact on the environment and business perspective but lacks the importance and impact that it might bring to human rights, along with its impacts on children. With this gap in the system, Indonesia needs to take a focused approach to updating its regulations.

Protection of child rights from the impact of business activities can also be done through a due diligence process. Even though the human rights due diligence process was initially presented in the UNGPs, which are viewed as a non-binding soft law instrument, it still holds an important role in the Human rights field.²⁸ A Human Rights due

²⁶ "UU No. 32 Tahun 2009," Database Peraturan | JDIH BPK, accessed January 19, 2024, <http://peraturan.bpk.go.id/Details/38771/uu-no-32-tahun-2009>.

²⁷ Bappenas, *Buku Saku Sistem Perlindungan Anak*, 2023, https://perpustakaan.bappenas.go.id/e-library/file_

upload/koleksi/migrasi-data-publikasi/file/Policy_Paper/Buku%20Saku%20SPA%202023.pdf.

²⁸ Stéphanie Lagoutte, Thomas Gammeltoft-Hansen, and John Cerone, eds., "The UN Guiding Principles on Business and Human Rights," in *Tracing the Roles of Soft Law in Human Rights* (Oxford University Press, 2016),

diligence process itself consists of several processes; this includes the ability to identify, prevent, mitigate, and account for any potential impact that business activity might bring.²⁹ By properly implementing the due diligence process, the protection and prevention of potential impacts on the environment and child rights can be mitigated early, creating a more suitable condition for children to grow. In addition, it is also worth noting that with a due diligence process, risks of environmental destruction that pose a serious threat can be closely monitored. In conclusion, it is important to understand that with a good due diligence process, prevention of further damage to child rights and effective repair of any damage that may have already occurred would be possible to accomplish.

b. Analysis of Law No. 35 of 2014 on amendments to Law Number 23 of 2002 about child protection and its harmony with Presidential Law Number 60 of 2023 on National Strategy on Business and Human Rights

Human activities are no doubt responsible for the increase in air pollution, which later affects climate change conditions. In this issue, the government must strengthen the regulations that are in line with the conditions of the business in Indonesia so that they are in line with business legal compliance. Companies play a crucial role regarding the issue of lack of access to clean water and lack of clean environment conditions; in this issue,

the government must continue to renew and re-evaluate its regulatory system to find the perfect balance that is capable of protecting human rights.³⁰, especially child rights. In regards to Child rights, the main contributor to the protection of its rights is, of course, none other than Law Number 23 of 2002, which is already updated to Law No. 35 of 2014, as we will refer more to the new updated regulation in this discussion. When we discuss businesses as a subject that has the potential to create big harm to the environment, it falls upon the government to implement regulations that protect children's rights from the impact of harmful actions and acts in the best interest of the Child.³¹ The best interest of the child can be seen in Article 3 of the Child Rights Convention. However, due to the vague definition that it contains, the best interest of the child holds multiple lawful interpretations. The consideration itself includes things such as physical, emotional, intellectual, and educational needs³². In addition to the child's needs, General Comments No. 14 2013 has contained the issue of assessing and determining the child's best interest; in the case of its connection with the regulatory process, Indonesia can focus on the aspect of the child protection and vulnerability along with the impact that can be brought to the health right and educations right.³³ The child's best interest in this case can also be used for the consideration of the regulation-making process it is important to understand as well that this principle can

235–54, <https://doi.org/10.1093/acprof:oso/9780198791409.003.0012>.

²⁹ NOVA BHRE, "Human Rights and Environmental Due Diligence," 2021, <https://www.imvf.org/wp-content/uploads/2021/06/legal-brief-human-rights-and-environmental-due-diligence-of.pdf>.

³⁰ Detania Sukarja and Barran Hamzah Nasution, "Revisiting Legal and Ethical Challenges in Fulfilling Human Right to Clean Air in Indonesia," *Jurnal HAM* 13, no. 3 (December 22, 2022): 557, <https://doi.org/10.30641/ham.2022.13.557-580>.

³¹ General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, paras. 28, 42 and 82.

³² Asgeir Falch-Eriksen and Elisabeth Backe-Hansen, eds., *Human Rights in Child Protection: Implications for Professional Practice and Policy* (Cham: Springer International Publishing, 2018), <https://doi.org/10.1007/978-3-319-94800-3>.

³³ *Ibid.*, p. 63.

be used for due diligence processes that can be used by companies in their operation.

It can be concluded that when deciding the best interest of a child, decisions cannot be based solely on expert evaluations, but also on values and norms that hold meaning for human beings themselves.³⁴ Related to the regulation that Indonesia has, a decent spotlight can be seen in Regulation No. 35 of 2014 on Child Protection. The regulation itself mentioned the concept of the best interest of the child in several articles of the regulations, such as Article 14, 39, 76H³⁵ This creates an understanding that Indonesia is very familiar with the concept of the best interest of the child and should be able to integrate this into their regulation creation process. The main argumentative condition towards Law No. 35 of 2014 on Child Protection is the fact that the Child protection regulation discusses the issue of child rights protection role in Article 72; however, in that point, the closest companies were brought into the discussion only based on their obligation from corporate social responsibility which was stated in point 6 part c *"contribution to be done in the fulfillment of child rights from corporate social responsibility,"* in this case, CSR is far weaker in comparison to Business and Human Rights, as it was mentioned before that Business and Human Rights works in a much more strict and forceful way, thus binding companies to be more mindful of their operation and its impact.

On its contribution, this issue can be upheld with the new existing Presidential Law Number 60 of 2023 on National Strategy on Business and Human Rights; in this case, it can be seen that Indonesia has a proper

determination to protect the condition of its human rights to be safe from any exploit or harmful action by companies. However, the presidential law number 60 of 2023 lacks one small aspect, namely the climate change and environmental impact to child rights and human rights aspects. In general, the presidential Law Number 60 of 2023 holds a very great method, regulation, and process of protecting all possible human rights violations from any company activities, but the focus of the regulation goes mainly into points of business practice activities such as protecting gender equality for workers, equal training for disabled employees, child labor practice erasure.³⁶, thus requiring a small touch to include a brighter discussion about the company's impact on climate change and environmental conditions that can harm the condition of child rights and human rights just like the United Nations Guiding Principles did. In its own defense, the presidential Law no 60 of 2023 did a great job of including the *"Victim recovery mechanism"* and the *"Facilitative action towards the Handling of allegations in human rights violations related to Business practice."* This regulation itself is a step forward as it opens the pathway toward climate change impact litigation, which later will be discussed in the next chapter. On its own, it is safe to conclude that Law No. 35 of 2014 and the new Presidential Law no 60 of 2023, with a little more touch of aspect towards climate change impact and business and human rights to child rights, would create a good harmony if enforced properly, and would create a great defense towards child rights protection in Indonesia.

³⁴ *Ibid.*, p. 64.

³⁵ "UU No. 35 Tahun 2014," Database Peraturan | JDIH BPK, accessed January 19, 2024, <http://peraturan.bpk.go.id/Details/38723/uu-no-35-tahun-2014>.

³⁶ "PERPRES No. 60 Tahun 2023," Database Peraturan | JDIH BPK, accessed January 22, 2024, <http://peraturan.bpk.go.id/Details/265411/perpres-no-60-tahun-2023>.

2) IMPLEMENTATION OF BUSINESS AND HUMAN RIGHTS ASPECTS: MEASURES IN ADAPTING CLIMATE CHANGE IN INDONESIA

a. Business and Human Rights Scope of implementation on companies

In consideration of its general overview, the High Commissioner for Human Rights has emphasized that Businesses and companies must respect Human Rights through the actions that they take³⁷. This includes preserving the area around them and minimalizing the impact of their business process on the condition of climate change. After a complete analysis of how important is the child rights aspect in regard to the impact that climate change can bring, It is also worth noting that the principles of Business and Human Rights create the focus of attention that business companies must create a working environment that supports and protects the enforcement of human rights by real action that shall be conducted throughout the business process. In this issue, companies can start implementing the aspect of Business and Human rights in their activity by not mistaking Business and Human Rights and Corporate Social Responsibility (CSR) due to their similarities. Hence, it is important to note that these principles have distinct meanings. Corporate Social Responsibilities work in a top-down approach, allowing companies to select which issues to address. For example, companies may choose to support community education or donate to disaster relief efforts abroad and will be counted as already participating in CSR. At the same time, the Business and Human Rights approach is completely different and does not work like that. With the natural characteristics of

human rights that are inherent in every person, a corporation cannot choose which human rights to protect. Thus placing companies in a position to oblige and respect human rights at all times.³⁸ The way Business and Human Rights would work in this case is by providing effective remedies for human rights violations committed by businesses. This can be accomplished by broadening the scope of non-judicial mechanisms currently in place or establishing new ones with the consideration of human rights, especially child rights at hand. Such measures can have a positive impact on corporate activities, fostering a more sustainable environment and contributing to the adaptation against climate change. Along with this, the UN High Commissioner for Human Rights has also stated that businesses and companies must respect human rights through the impactful actions they take.

From the perspective of International Law, Business and Human rights can be defined as a principle that puts the state to be obliged under the international human rights law to protect human rights from abuse within their territory of jurisdiction which includes third parties such as business enterprises.³⁹ In business practices, prioritizing the safety of human rights from any violation/impact is an important thing to consider during daily business activities. With companies operating in various industries, there should be a major consideration towards the decision-making process of an activity so that business activities do not have an impact on human rights and climate change.⁴⁰

A prime example of how important business and human rights are can be seen in Article 23 of the

³⁷ "OHCHR and Business and Human Rights," OHCHR, accessed January 19, 2024, <https://www.ohchr.org/en/business-and-human-rights>.

³⁸ Chris Avery, "The Difference between CSR and Human Rights," n.d., [https://media.business-humanrights.org/media/documents/files/reports-and-materials/Avery-](https://media.business-humanrights.org/media/documents/files/reports-and-materials/Avery-difference-between-CSR-and-human-rights-Aug-Sep-2006.pdf)

[difference-between-CSR-and-human-rights-Aug-Sep-2006.pdf](https://media.business-humanrights.org/media/documents/files/reports-and-materials/Avery-difference-between-CSR-and-human-rights-Aug-Sep-2006.pdf).

³⁹ OHCHR, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," 2011.

⁴⁰ *Ibid*.

Guiding Principles on Business and Human Rights which outlines the expectations for business enterprises across various contexts. In this case, businesses must adhere to all relevant laws and uphold internationally recognized human rights in all operational areas, along with finding ways to uphold these principles in situations where conflicting requirements may arise. In addition, it is well mentioned that businesses must treat the risk of causing or contributing to gross human rights abuses as a legal compliance matter, regardless of their operational location.⁴¹ With that point as an example, it can be emphasized that since most country has different understandings of climate change and have different national laws that regulate it, businesses must comply with applicable law as a major point that could change how a certain company would decide on doing its daily operation or future investment.

In Indonesia, there have been a decent number of regulations and existing frameworks that are capable of protecting the rights of its citizens from the impact of Climate change. However, the main issue at this point is how companies can properly contribute to business and human rights implementation in Indonesia. As previously mentioned, the United Nations Guiding Principles on Business and Human Rights plays a decent role in giving companies and governments references on how to identify, prevent, mitigate, and address detrimental impacts related to human rights. These Guiding Principles can be broken down into three essential steps in implementing the Human Rights due diligence process:⁴²

1. Assessing Human Rights Impacts
(With the consideration for both

internal and external operations of the company)

2. Integrating Findings of Assessment with Correct Actions
3. Tracing the Effectiveness of the previous mitigation process that was done in the second part

Another baseline that helps Indonesian companies combat climate change can be seen in The National Action Plan on Business and Human Rights (NAP), which was crafted in alignment with the three pillars of the UN Guiding Principles on Business and Human Rights, which are as follows:⁴³

- 1) First Pillar: To understand the state has the complete obligation to give protection towards human rights, in this case state must act on all possible actions to create a sufficient system for the protection of human rights, which in the case of this research highlights the child rights as an even more vulnerable group, thus underlining its great importance.
- 2) Second Pillar: Companies need to start fulfilling the role that they have as an entity that respects and upholds Human rights; this can be done by completing the effort due diligence process, which will further extend their protection into prevention, creating a much safer condition for Child rights, and human rights in general.
- 3) Third Pillar: Creating a good act of remedy for those whose rights are already violated. This can be used as a clear indication in situations where company operations have already harmed the surrounding human rights. With this pillar, victims will have a better recovery from the impact, whether it be directly or indirectly.

⁴¹ *Ibid.*

⁴² KomnasHAM, "National Action Plan on Business and Human Rights," 2017, <https://www.komnasham.go.id/>

[files/20180214-national-action-plan-on-bussiness-\\$0PU500.pdf](#).

⁴³ Komnas HAM. *Op.Cit.*, p. 24.

The National Action Plan can be considered as an instrument that evaluates the existing policies that have already been implemented to support the implementation of each pillar. This analysis assesses the effectiveness of these policies and their alignment with the UN Guiding Principles.⁴⁴ In this issue, it is important to understand that the National Action Plan was first developed into an important human rights instrument; it has a basic soft law nature, thus having a weaker condition when it comes to binding companies directly. However, integrating some of the business and human rights aspects into our regulatory framework along with better enforcement can create a better environment for the protection of child rights. One example of great enforcement can be seen in countries like Australia and Finland, where, in this case, they can be a good model of great Business and Human rights implementation through well-maintained collaboration between government and civil society,⁴⁵ and company stakeholders. With the mentioned aspects fulfilled, Indonesia would be able to strengthen its national human rights system, along with raising the conditions for auditing and evaluating the national action plan in Indonesia.⁴⁶ In addition, UNICEF also sets a baseline that might help companies in Indonesia to fully implement Business and Human rights, especially in child rights; this includes⁴⁷ the commitment for companies to actively respect child rights, this is importantly crucial for companies to consider their business long-term project to avoid impacting any Child Rights, whether it be directly or indirectly; this also comes in line with

their other baseline that emphasizes on companies to make consideration of the impact of their activities on the environment with an active consideration towards child rights. In addition to the first point mentioned in the baseline, the fourth point has also emphasized the protection and mitigation of any threats towards the rights of children, thus giving a safe operation of business conduct a priority seat for the Protection and Safety of Children through safe business conduct and land use.

Based on those points mentioned previously, companies in Indonesia should be able to properly implement business and human rights while also fulfilling their corporate social responsibilities. Proper implementation of Business and Human rights principles will most likely be able to directly address the issue of climate change's impact on child rights, along with preserving the environment from future harm; this is very important to consider in the process, which will be further discussed on the next point.

b. Legal Frameworks and Alternatives in Combating Climate Change Based on Business and Human Rights Aspects

To properly address the issue surrounding the implementation of business and human rights in Indonesia, proper action should be taken as well for those who neglect their responsibility. Related to the matters of possible actions, the government holds the key to handling companies that violate the principles of business and human rights. Several approaches can be done by the governments, this includes:

⁴⁴ *Ibid.*

⁴⁵ Majda El Muhtaj, "A Critical Analysis of the Indonesian Human Rights Action Plan 1998-2020," *Jurnal HAM* 13, no. 3 (December 22, 2022): 519, <https://doi.org/10.30641/ham.2022.13.519-538>.

⁴⁶ *Ibid.*

⁴⁷ Unicef, "Children's Rights and Business Principles," 2012, https://www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-06/CSR_SUMMARY_REPORT.pdf.

c. Alternative legal action and recommendations

In addition to the previously mentioned legal action, other existing alternative approaches have been regulated in Indonesia which require more spotlight for a more proper implementation. The main argumentation of the following action is to create a deterrent effect, and a warning sign for businesses to comply with the existing regulation, along with a binding power to increase and complement the existing regulation's effectiveness.

1) Export-Import prohibition

Companies are built around giving services or selling products. Companies that sell products or are well-related to industrial activities like item production are very close to the system of export/import. An aspect of an example of why this can be a good action to take can be taken from the USA, which has regulated the issue of export and import prohibitions for any products that were mined, produced, or manufactured entirely or in part by forced labor and child labor. This regulation itself is mentioned in the Tariff Act of 1930 and shows the aspect of Business and Human Rights principles in regulations. With export and import prohibitions for companies who are involved in harming the environment and human rights conditions, the operations of those companies would be hindered, thus creating a stop to their activities. One of the things to consider upon this point is to also include this regulation inside

article 82C of Law of the Republic of Indonesia No. 11 of 2020 on Job creation to also have a more deterrent effect for businesses that do comply with the existing regulation.

2) Revocation of Permits and Licenses:

An impactful action that governments can take against companies that do not adhere to business and human rights principles is permit and license revocation. This sort of action has actually been done in Indonesia. Back in 2022, there was a massive revocation for companies in the forestry, palm oil, and mining industries, which resulted in a great step in going towards a net carbon sink target by 2030⁴⁸. By revoking companies that are not doing their part in Business and human rights, especially against impactful climate action, companies will rethink their action before creating an impactful condition towards the environment.

3) Administrative fines

One of the most impactful actions that governments can give to companies is giving a financial penalty for the climate impact/accidents that the company has done. An example from a recent case can be seen from PT Kumai Sentosa, which has been asked to compensate for 3000 ha of oil palm plantations that they have burned; in this case, they are required to compensate around 175 billion rupiah⁴⁹.

⁴⁸ "Minister Details Dataset of Indonesia's Revoked Palm Oil, Forestry Permits," foresthints, accessed January 19, 2024, <https://foresthints.news/minister-details-dataset->

[of-indonesia-revoked-palm-oil-forestry-permits/index.html](https://foresthints.news/minister-details-dataset-of-indonesia-revoked-palm-oil-forestry-permits/index.html).

⁴⁹"InfoPublik - KLHK Apresiasi Putusan MA Hukum PT KS Bayar Ganti Rugi Kebakaran Lahan Rp175 Miliar,"

Law of the Republic of Indonesia No. 11 of 2020 on Job Creation has contained a general regulation on revocation of permits and licenses along with administrative fines about environmental issues, but are only related to the general issue of environment and not climate change in specifics which can be found in Article 82C⁵⁰. The main improvement that can be made for this section is to include a more detailed explanation of the type of climate change violation/matters to complement pre-existing environmental regulations in Article 69. With this action taken into consideration companies in Indonesia will rethink their action, thus lowering the chance of high-risk environmental action that might impact the climate in Indonesia.

4) Climate Change Litigation Against Corporation

In this type of case, it can be seen that corporations are being targeted as responsible actors in the events of climate change conditions. The first action to take in this case is to gather information on the evidence of the companies at fault; this became possible due to the existence of reports issued by the IPCC⁵¹, giving well-updated data on the local extent. One important consideration to give in this case is that, in practice, not all climate

change lawsuits against corporations can be done perfectly as they have many challenges, such as uncertain procedural law and the section on imposing legal action. Despite all the challenges, Indonesia can still uphold the litigation process by bringing the argument of holding companies that are contributing to climate change and promoting the reduction of greenhouse gas emissions.⁵² In this case, Indonesia must hold a human rights-based approach that upholds the point of keeping the environment safe, thus pushing the court to interpret the already existing human rights principles that come in lies between the connection of environmental protection that is well connected to the relation of human rights.⁵³, especially child rights conditions and climate change.

C. CONCLUSION

Climate change poses a serious risk and has a grave impact on human rights, particularly those of children; this is incredibly important to consider because Children and the younger generation of Indonesia are the future, and the most important aspect that will need to be protected from the impact of climate change. One of the major considerations related to this issue is well related to the fact that children are medically proven to have naturally weaker bodies in comparison to adults, thus requiring extra attention to save their well-being from the condition of climate change. With various

accessed January 19, 2024, <https://www.infopublik.id/kategori/nasional-sosial-budaya/770933/klhk-apresiasi-putusan-ma-hukum-pt-ks-bayar-ganti-rugi-kebakaran-lahan-rp175-miliar>.

⁵⁰ "UU No. 11 Tahun 2020," Database Peraturan | JDIH BPK, accessed January 19, 2024, <http://peraturan.bpk.go.id/Details/149750/uu-no-11-tahun-2020>.

⁵¹ Iswanto et al., "Permits for the Transfer of Agricultural Land Functions to Non-Agriculture in the Land Purchasing and Sale Process:" (International

Conference on Environmental and Energy Policy (ICEEP 2021), Surakarta, Central Java, Indonesia, 2021), <https://doi.org/10.2991/assehr.k.211014.046>.

⁵² Jordan Gunawan and Mohammad Hazyar Arumbinang, "The Climate Change Litigation Based Human Rights Approach in Corporations: Prospects and Challenges," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (June 15, 2023): 288–307, <https://doi.org/10.53955/jhcls.v3i2.116>.

⁵³ *Ibid.*

impacts occurring, the right to health and wellbeing of Indonesian children are put into a major concern. This is proven by research that pointed to a decrease in crop production such as rice and maize, ranging from 4-8%, Extremely high-water level stress with an 80% rate, and various other complications. With a consideration based on the Child Rights Convention, a state holds the obligation to ensure the protection of human rights, especially child rights.

From a legal perspective, Indonesia lacks a perspective on business and human rights in its current legal system and regulations. Various research points out that business activities become one of the possible major contributors to climate change. With this condition at hand, it is important to understand that collaborative efforts between governments, industry, communities, and international organizations are essential to mitigating the future impact of climate change on Indonesia's environment, resources, and especially children. With the consideration of Business and Human Rights principles for companies in Indonesia and the available national regulations and hard laws, it can be highlighted that Indonesia needs an improved legal framework that explicitly considers the intersection of climate change; this is an incredibly important issue due to the examples that have been given in other European country that has done a better job in combatting climate change by implementing a focused and detailed national regulation on climate change issue, thus giving a good example for Indonesia. However, with the current condition, it can be considered that the current National Law of Indonesia has done a great job and just needs a more touch on climate change and business and human rights aspects along with greater regulation enforcement to prevent the future impact and implications of climate change conditions on Indonesian children's rights protection.

In terms of pushing companies to comply more with the Business and Human Rights principles that are considered as a soft law, it provides weak binding power for companies in Indonesia. The issue of weak

binding power, however, would no longer be an issue if Indonesia could create a more comprehensive and robust hard law. This step can be done by integrating the available international framework and business and human rights principles into our national regulations, as the European country has done. With this action, it can be concluded that Indonesia will not only prevent violations but also hold companies accountable for their impact on human rights and the environment. To effectively handle future challenges, it is important to truly act on legal amendments and changes based on the already existing business and human rights principles. The integration with standards enhances the due diligence process and establishes enforceable consequences to create a condition where companies can be punishable for any Business and Human Rights violations. It would ensure a comprehensive legal framework that safeguards both the environment and the rights of Indonesian Children.

REFERENCES

Books

- Bappenas. *Buku Saku Sistem Perlindungan Anak*, 2023. https://perpustakaan.bappenas.go.id/e-library/file_upload/koleksi/migrasi-data-publikasi/file/Policy_Paper/Buku%20Saku%20SPA%202023.pdf.
- Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility*. 1st ed. Nomos Verlagsgesellschaft mbH, 2013. <https://www.jstor.org/stable/j.ctv941w8s>.
- Edi Sedyawai. *Sejarah Kota Jakarta 1950-1980*. Departemen Pendidikan dan Kebudayaan, 1987.
- Lagoutte, Stéphanie, Thomas Gammeltoft-Hansen, and John Cerone, eds. "The UN Guiding Principles on Business and Human Rights." In *Tracing the Roles of Soft Law in Human Rights*, 235–54. Oxford University Press, 2016. <https://doi.org/10.1093/acprof:oso/9780198791409.003.0012>.

World Bank Group and Asian Development Bank. *Climate Risk Country Profile: Indonesia*. World Bank, 2021. <https://doi.org/10.1596/36379>.

Journal

El Muhtaj, Majda. "A Critical Analysis of the Indonesian Human Rights Action Plan 1998-2020." *Jurnal HAM* 13, no. 3 (December 22, 2022): 519. <https://doi.org/10.30641/ham.2022.13.519-538>.

Gunawan, Yordan, and Mohammad Hazyar Arumbinang. "The Climate Change Litigation Based Human Rights Approach in Corporations: Prospects and Challenges." *Journal of Human Rights, Culture and Legal System* 3, no. 2 (June 15, 2023): 288–307. <https://doi.org/10.53955/jhcls.v3i2.116>.

Ramasastriy, Anita. "Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability." *Journal of Human Rights* 14, no. 2 (April 3, 2015): 237–59. <https://doi.org/10.1080/14754835.2015.1037953>.

Romsan, Achmad, Farida Ali, Akhmad Idris, Adrian Nugraha, Nurhidayatulloh Nurhidayatulloh, and Suzanna Mohamed Isa. "CLIMATE CHANGE AND COMMUNITY ENVIRONMENTAL CONFLICTS: ARE THEY CORRELATED?" *Sriwijaya Law Review* 1, no. 1 (January 30, 2017): 067. <https://doi.org/10.28946/slrev.Vol1.Iss1.9.pp067-079>.

Sukarja, Detania, and Barran Hamzah Nasution. "Revisiting Legal and Ethical Challenges in Fulfilling Human Right to Clean Air in Indonesia." *Jurnal HAM* 13, no. 3 (December 22, 2022): 557. <https://doi.org/10.30641/ham.2022.13.557-580>.

Legal Documents

Database Peraturan | JDIH BPK. "PERPRES No. 60 Tahun 2023." Accessed January 22, 2024.

<http://peraturan.bpk.go.id/Details/265411/perpres-no-60-tahun-2023>.

Database Peraturan | JDIH BPK. "UU No. 11 Tahun 2020." Accessed January 19, 2024.

<http://peraturan.bpk.go.id/Details/149750/uu-no-11-tahun-2020>.

Database Peraturan | JDIH BPK. "UU No. 32 Tahun 2009." Accessed January 19, 2024.

<http://peraturan.bpk.go.id/Details/38771/uu-no-32-tahun-2009>.

Database Peraturan | JDIH BPK. "UU No. 35 Tahun 2014." Accessed January 19, 2024.

<http://peraturan.bpk.go.id/Details/38723/uu-no-35-tahun-2014>.

Other Sources

"BPS Provinsi DKI Jakarta." Accessed January 19, 2024. <https://jakarta.bps.go.id/indicator/12/1270/1/jumlah-penduduk-menurut-kabupaten-kota-di-provinsi-dki-jakarta-.html>.

Calvin, Katherine, Dipak Dasgupta, Gerhard Krinner, Aditi Mukherji, Peter W. Thorne, Christopher Trisos, José Romero, et al. "IPCC, 2023: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (Eds.)]. IPCC, Geneva, Switzerland." First. Intergovernmental Panel on Climate Change (IPCC), July 25, 2023. <https://doi.org/10.59327/IPCC/AR6-9789291691647>.

Chris Avery. "The Difference between CSR and Human Rights," n.d. <https://media.business-humanrights.org/media/documents/files/reports-and-materials/Avery->

- difference-between-CSR-and-human-rights-Aug-Sep-2006.pdf.
- Danfoss Impact. "Danfoss Nordborg Factory Site, towards Zero Emission Factories," 2022.
<https://cdn.sanity.io/files/5zabm86v/production/b3d8c5677e5b52992943c81a070923816300b9bd.pdf>.
- Federation of American Scientists. "Indonesia: GHG Emissions and Climate Change Policy," January 6, 2023.
<https://sgp.fas.org/crs/row/IF12300.pdf>.
- foresthins. "Minister Details Dataset of Indonesia's Revoked Palm Oil, Forestry Permits." Accessed January 19, 2024.
<https://foresthins.news/minister-details-dataset-of-indonesia-revoked-palm-oil-forestry-permits/index.html>.
- "Indonesia: Total Population Forecast 2040 | Statista." Accessed January 19, 2024.
<https://www.statista.com/statistics/713018/indonesia-forecast-total-population/>.
- "InfoPublik - KLHK Apresiasi Putusan MA Hukum PT KS Bayar Ganti Rugi Kebakaran Lahan Rp175 Miliar." Accessed January 19, 2024.
<https://www.infopublik.id/kategori/nasional-sosial-budaya/770933/klhk-apresiasi-putusan-ma-hukum-pt-ks-bayar-ganti-rugi-kebakaran-lahan-rp175-miliar>.
- Iswantoro, Abdul Kadir Jaelani, Resti Dian Luthviati, and Muhammad Jihadul Hayat. "Permits for the Transfer of Agricultural Land Functions to Non-Agriculture in the Land Purchasing and Sale Process:" Surakarta, Central Java, Indonesia, 2021.
<https://doi.org/10.2991/assehr.k.211014.046>.
- KomnasHAM. "National Action Plan on Business and Human Rights," 2017.
[https://www.komnasham.go.id/files/20180214-national-action-plan-on-business-\\$OPU500.pdf](https://www.komnasham.go.id/files/20180214-national-action-plan-on-business-$OPU500.pdf).
- NOVA BHRE. "Human Rights and Environmental Due Diligence," 2021.
<https://www.imvf.org/wp-content/uploads/2021/06/legal-brief-human-rights-and-environmental-due-diligence-of.pdf>.
- OHCHR. "A/HRC/35/13: Analytical Study on the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child - Report of the Office of the United Nations High Commissioner for Human Rights." Accessed January 19, 2024.
<https://www.ohchr.org/en/documents/reports/ahrc3513-analytical-study-relationship-between-climate-change-and-full-and>.
- OHCHR. "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," 2011.
- OHCHR. "OHCHR and Business and Human Rights." Accessed January 19, 2024.
<https://www.ohchr.org/en/business-and-human-rights>.
- Public Health Institute. "Extreme Heat, Climate Change and Health," n.d.
https://www.cdc.gov/climateandhealth/pubs/extreme-heat-final_508.pdf.
- Unicef. "Children's Rights and Business Principles," 2012.
https://www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-06/CSR_SUMMARY_REPORT.pdf.
- United Nations. "What Is Climate Change," n.d.
https://unfccc.int/files/press/backgrounders/application/pdf/press_factsh_science.pdf.
- "Urgensi Pemindahan Ibu Kota Negara." Accessed January 19, 2024.
<https://www.djkn.kemenkeu.go.id/kanwil-kalbar/baca-artikel/14671/Urgensi-Pemindahan-Ibu-Kota-Negara.html>.