

FORMULATING HUMAN RIGHTS AUDITS FOR MULTINATIONAL COMPANIES (A CRITICISM OF REGULATORY STANDARDS FOR HUMAN RIGHTS IN BUSINESS REGULATIONS IN INDONESIA)

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ABSTRACT

This article analyzes the application of human rights standards in business for multinational companies (MNCs) in Indonesian law. The primary focus is by analyzing the possibility of applying human rights audits for MNCs to ensure compliance with human rights standards in the business practices of MNCs. The application of human right standards in business in Indonesian law is by examining existing international legal regulations (guidelines), and then studying the process of transforming international law into national law. This article also criticizes normative issues in Indonesian law, which does not possess regulations regarding human rights standards in business, and thus the human rights aspect is variously interpreted in various enterprises. Further, this article will explain about the appropriate human rights audit mechanism for MNCs. This mechanism may be executed by involving the state as a regulator and auditor, as well as corporations and the people. Human rights audits are one of the ways to measure the compliance of MNCs toward applicable human rights standards. The position of human rights audits may be made equivalent to financial audits, which are an annual obligation for every corporation as well as an evaluation instrument for the people and consumers.

Keywords: Business and human rights; human rights audit; business ethic; MNCs Responsibility

INTRODUCTION

Indonesia has become one of the largest destination countries for foreign investment, in the form of FDI (Foreign Direct Investment). This model of investment is often chosen because it will have direct effects for the economic development of a country by employment of the work force, transfer of technology, profit sharing, and so on. FDI can be seen by the many foreign investors that establish companies in Indonesia in the form of multinational corporations/companies (MNCs). MNCs are arms or branches of other companies with home bases in foreign countries.

The presence of corporations, specifically foreign corporations in Indonesia, has positive and negative impacts. The positive impact is that they create employment and increase investment; in 2018, state revenues from investment amounted to 392.7 trillion rupiahs¹. On the other hand, they also cause great social and environmental impact; there are still many foreign corporations that do not follow human rights standards in running their businesses.

The National Commission on Human Rights (Komnas HAM) recorded that within 2016 there were 1,030 complaints regarding human rights violations committed by corporations in Indonesia. Of the 1,030 complaints, 344 were related to agrarian disputes or conflicts, 276 were related to labor, 69 were related to environmental pollution, and 24 were related to migrant workers or foreign labor, among others.²

To respond to this matter, the Government of Indonesia had issued the National Human Rights Action Plan (*Rencana Aksi Nasional Hak Asasi Manusia*, RAN HAM)³ for 2015-2019 through President of the Republic of Indonesia Regulation Number 33 of Year 2018 on the Amendment to Presidential Regulation Number 75 of Year 2015 on the National Human Rights Action Plan. The RANHAM contains the strategies of the government in increasing the understanding of stakeholders in connection to the issue of business and human rights.⁴

¹ *Berita Online: BKPM Akui Investasi Bikin Laju Ekonomi Jauh dari Target APBN* [Online News: BKPM Admits Investment Causes Economic Growth Rate to Be Far from National Budget Target], URL: <https://www.cnnindonesia.com/ekonomi/20190206124824-532-366809/bkpm-akui-investasi-bikin-laju-ekonomi-jauh-dari-target-apbn>. See also the 2018 BKPM report, where the 2018 FDI realization reached 29,307,901,400 USD, accessed from: https://www.bkpm.go.id/images/uploads/investasi_indonesia/file/FDI_Realization_based_on_location_Jan-Dec_2018.pdf, accessed August 6, 2019

² 2017 Annual Report of Komnas HAM, accessed from <https://www.komnasham.go.id/index.php/laporan/2017/11/01/36/laporan-tahunan-komnas-ham-tahun-2016.html>. Accessed on July 30, 2019

³ RANHAM is a document that contains targets, strategies, and priority activity focuses for the national action plan of human rights in Indonesia and are used as reference for ministries, institutions, and regional governments in instituting respect, protection, fulfillment, enforcement, and advancement of human rights in Indonesia. Article 1 Number 2 of Presidential Regulation Number 75 of Year 2015 on the 2015-2019 RANHAM.

⁴ The revised 2015-2019 RANHAM consists of 6 strategies and 46 actions. The actions involve nearly every ministry, several provinces, and some regional (regency/city) governments. Regarding the issue of business and human rights, Action No. 14 states that the planned action is "increasing the understanding of stakeholders regarding the issue of business and human rights". Its measure of success is "the availability of guidelines regarding the issue of business and human rights" and "the dissemination of guidelines regarding the issue of business and human rights". The International NGO Forum on Indonesian Development (INFID) in its press conference stated that the RANHAM related to business and human rights HAM must be created specifically because it involves many stakeholders and requires rigid regulations. Press Conference in Response to Revisions to the 2015-2019 RANHAM, accessed from <https://www.infid.org/pernyataan-pers-infid-tentang-perubahan-ranham-2015-2019/>, August 6 2019

Meanwhile, the human rights aspect in business has long become the attention of the international community. This can be seen from the many instruments as frameworks or guidelines that were created to provide guidance to corporations to carry out human rights standards in their business activities. They include, among others, the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN 'Protect, Respect and Remedy' Framework, the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organization for Standardization's ISO 26000, the International Labor Organization's Tripartite Declaration of principles concerning multinational enterprises and social policy, and the Global Reporting Initiative. The point of all of these regulations are to maintain the operation of business without abandoning the social aspects of humanity, the environment, and sustainability.

Referring to several of these instruments, to ensure that corporations apply human rights standards, several mechanisms of evaluation, reporting, and audit are instituted in a Human Rights Audit. Although the instruments do not directly mention about Human Rights Audit, the execution mechanism of the instruments lead to the execution of a Human Rights Audit for corporations.

As an example, the second pillar of the UN Guideline Principles on Business and Human Rights (hereinafter abbreviated as UNGP on Business and HR) is the company responsibility to respect human rights. In complying with this responsibility, corporations are encouraged to avoid committing human rights violations. For this, businesspeople must understand the negative effects on human rights that may result from business activities. Businesspeople are asked to conduct risk assessment through due diligence and to communicate this to stakeholders.

In Indonesia, the creation of due diligence documents⁵ is understood in a narrow scope, which is legal audit documents. These documents are only used if companies wish to conduct mergers, acquisitions, IPOs, or any other special intents⁶. A legal audit contains administrative procedural matters. The practice up to now is that the creation of legal audit documents⁷ do not include the further element of human rights audit⁸ for the compliance to applicable legal regulations. The created legal audits have not addressed critical aspects such as how extensively the company have provided basic rights to employees. There should be the consideration of how the operations of a business will not have adverse effects on the environment and how companies interact with the people around where a business operates.

The obligation to conduct a human rights audit is not regulated in Indonesian national law. Although Law Number 40 of Year 2007 on Corporations recognizes financial audit⁹ as well as the obligation for a company to conduct CSR¹⁰, Law No 25 of Year 2005 on Investment as well as the sub-regulations in it do not mention human rights in business operations.

Although there is no obligations for corporations to conduct human rights audits, this does not mean that corporation do not have a basic obligation to fulfill human rights. The very broad aspects of human rights are regulated in several sectoral legal regulations; for example, consumer protection rights are regulated in the Law on Consumers, rights to a decent occupation and justice for employees are regulated in the Law on Labor, and similarly, rights to the environment and native peoples are regulated in different regulations.¹¹

Law Number 40 of Year 2007 on Corporations firmly state that foreign corporations (MNCs) that will run their business in Indonesia must comply with the legal regulations present in Indonesia, which must be of the legal entity of *Perseroan Terbatas* (PT). In other words, the stipulations of rights and obligations of corporations in the law on corporations as well as other legal regulations are binding for all corporations, both domestic and MNCs.

Based on the aforementioned line of reasoning, a form of human rights audit that is in harmony with Indonesian law needs to be formulated. This is because international legal instruments are "soft laws" that are only binding to the extent of the interests of different parties, and as such need to be transformed into Indonesian law.

⁵ Due diligence is a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances; not measured by any absolute standard but depends on the relative facts of the special case." In other words, to a potential acquirer, due diligence means "making sure you get what you think you are paying for. Accessed from <http://charlesmillsconsulting.com/due-diligence-definition.htm>, 2019.

⁶ Legal audit is an examination and/or evaluation of legal issues that regard or are related to a company. Accessed from <http://www.hukumonline.com/klinik/detail/cl2861/legal-audit>, August 6, 2019

⁷ Legal audit documents include company statutes; documents on company assets; agreements that were made and signed by companies with third parties; documents of permits and approvals; documents on employees; documents on insurance and taxes; and documents related to whether or not a company is linked to lawsuits and/or conflicts both inside and outside the courts. Accessed from <https://www.hukumonline.com/klinik/detail/ulasan/cl2861/legal-audit/>, August 6, 2019.

⁸ Human rights audit regarding conformity to human rights standards and their implementation while running a business may also be called a Compliance Audit. Sukrisno Agoes, *Auditing: Petunjuk Praktis Pemeriksaan Akuntan dan Akuntan Publik* [A Practical Guide to the Examination of Accountants and Public Accountants], Salambe Empat: Yogyakarta, 2012, hl. 4

⁹ The Concise Oxford Dictionary defines accounting as the process or art of keeping and verifying account. Aidan Berry, *Financial Accounting, an Introduction*, Second Edition, London: International Thomson Publishing, 1999, p. 3

¹⁰ CSR is no longer voluntary but mandatory because it has become a legal obligation for corporations; the execution of CSR also improves the image of companies among people. Refer to Hikmatul Ula, *The Model of Corporate Social Responsibility Application by Multinational Corporations in the Regulation of International Finance Corporation (IFC) and Multilateral Investment*, *Jurnal Arena Hukum*, Vol. 7 Number 1, 2014.

¹¹ In the tradition of civil law, Law (Code/Act) is the most important source of law, so countries that have a tradition of civil law have very many and varied laws. Peter De Cruz, *Comparative Law in a Changing World*, London-Sydney: Cavendish Publishing Limited, 1999, hl.66

HUMAN RIGHTS AND BUSINESS ON MNC IN INTERNATIONAL INSTRUMENTS OVERVIEW

The human rights aspect in business, specifically international business, is nothing new. Many international instruments or what are known as the international framework of Human Rights and Business (HRnB) have been created, including the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN ‘Protect, Respect and Remedy’ Framework, the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, the International Organization for Standardization’s ISO 26000, the International Labor Organization’s Tripartite Declaration of principles concerning multinational enterprises and social policy, and the Global Reporting Initiative. The point of all of these regulations are to maintain the operation of business without abandoning the social aspects of humanity, the environment, and sustainability.

Table 1: International HR and Business Instruments

International Instruments	Aim and Scope	HR Principles	Implementation Procedure
United Nations (UN) Global Compact	United Nations Global Compact is a call to companies around the world to align their strategies and operations with ten universal principles in the areas of human rights, labor, environment, and anti-corruption, and to take action in support of broader UN goals. With more than 8,000 signatories and stakeholders in more than 135 countries, it is the world’s largest voluntary corporate responsibility initiative.	Businesses should support and respect the protection of internationally proclaimed human rights; and make sure that they are not complicit in human rights abuses.	<ul style="list-style-type: none"> - Consider the full scope of your business activities and functions - Establish procedures for identifying your human rights-related risks and opportunities - Establish control systems for managing human rights in your business - Learn from sector-wide business initiatives - Expect the unexpected – how to react when procedures are not enough
Guiding Principles on Business and Human Rights implementing the UN ‘Protect, Respect and Remedy’	These Guiding Principles are grounded in recognition of: (a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms; (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached. These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.	<ul style="list-style-type: none"> (a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms; (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached. 	<ul style="list-style-type: none"> - State Responsibility to protect: General State Regulatory and Policy Function; the State-business Nexus; Supporting Business Respect for Human Rights in Conflict Affected Areas; and Ensuring Policy Coherence. - Corporate Responsibility to Respect Human Rights: Policy Commitment; Human Rights Due Diligence; Remediation; Issues of context. - Access to Remedy: State-based Judicial Mechanism; State-Based non-Judicial Grievance Mechanisms; Non-State-Based Grievance Mechanisms; and Effectiveness Criteria for Non-Judicial Grievance Mechanisms
Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises	The Guidelines aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made	Enterprises should Respect the internationally recognized human rights of those affected by their activities.	<ul style="list-style-type: none"> - National Contact Point - Investment committee - Review of the Decision

	by multinational enterprises.		
International Organization for Standardization's ISO 26000	ISO 26000 provides guidance on how businesses and organizations can operate in a socially responsible way. This means acting in an ethical and transparent way that contributes to the health and welfare of society.	Social Responsibility: 7 core subjects Organizational Governance Human Rights Labor Practices The Environment Fair Operating Practices Consumer Issues Community Involvement and Development	ISO 26000 Certificate
International Labor Organization's Tripartite Declaration of principles concerning multinational enterprises and social policy	The aim of this Declaration is to encourage the positive contribution which multinational enterprises can make to economic and social progress and the realization of decent work for all; and to minimize and resolve the difficulties to which their various operations may give rise.	All member states should respect the Universal Declaration of Human Rights (1948) and the corresponding International Covenants (1966) adopted by the General Assembly of the United Nations as well as the Constitution of the International Labor Organization and its principles according to which freedom of expression and association are essential to sustained progress.	- Promotion - Company-union Dialogue - Procedure for the examination of disputes concerning the application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy by means of interpretation of its provisions (interpretation procedure)
Global Reporting Initiative	Sustainable reporting is a practice of transparent organizational reporting on economic, environmental, and/or social effects, and as such includes contributions – positive or negative – for the aim of sustainable development.	All companies must report all actions as well as economic, environmental, and/or social effects, and as such includes contributions – positive or negative – for the aim of sustainable development.	Reports are aimed to be given to the people so that they can find out whether business policies or operations are already in line with GSI standards.

The above table shows that human rights in business have received serious attention from the international community and have been regulated as such in various instrument or framework models. Yet, international legal instruments are “soft laws”¹² that are only binding to the extent of the interests and abilities of each country. As such, the stipulations in the guidelines need to be transformed into national law into national law that is binding for corporations.

NATIONAL REGULATION OF HUMAN RIGHTS STANDARDS IN BUSINESS ACTIVITIES

There are not yet any specific laws that regulate HRnB. The very broad aspects of human rights are regulated in different legal regulations regarding different issues. For example, environmental human rights are regulated in laws on the environment, labor human rights are regulated in laws on labor, and so forth. Many of these regulations concern the obligations of the state, corporations, and the people in general, but have not yet provided a measure of human rights compliance for corporations. In other words, the laws have already regulated the obligations to human rights, but there is not yet a way of instituting control toward the carrying out of obligations to human rights.

This variation on human rights regulation in practice is interpreted differently by each industrial sector; for example, the mining industry sector interpreted human rights standardization in the process of obtaining permits and the existence of a

¹² Article 38 (1) of the ICJ Statute: The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. International Convention, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. International Custom, as evidence of a general practice accepted as law;
- c. The General Principles of law recognized by civilized nations;
- d. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Guidelines are not included as sources of international law. Hans Kelsen stated that International Law in fact depends on the interests of countries. Hans Kelsen, Principle of International Law, Law Book Exchange, LTD, Clark New Jersey, 2003, p. 401

Clear and Clean certificate¹³. After the elimination of the Clear and Clean certificate as a requirement to apply for a permit in the mining industry, the mining sector practically has no instrument to measure human rights compliance¹⁴. This is in contrast to the policy in the fishery sector, which instead prioritizes human rights compliance in issuing fishery permits in the form of a human rights system and certification for fishery industries. The human rights system and certification are regulated in Regulation of the Ministry of Fishery and Maritime Affairs of Indonesia Number 35/Permen-Kp/2015 on the System and Certification of Human Rights in the Fishery Industry.

The ministry regulation establishes that every person or company that wishes to apply for a fishing industry permit must possess a human rights certificate. The human rights certificate will be issued by the minister if the person or company has applied a human rights system. The human rights system consists of human rights policy application, due diligence, and recovery.¹⁵

The ministry regulation also establishes the supervision of human rights standards by a supervisory agency to ensure the compliance of fishery businesses toward human rights instruments. The results of the supervision are given to the minister for evaluation of whether the permit will be renewed or revoked. The supervision may also be carried out through the mechanism of human rights audits in the company.

To be able to institute human rights audits, the government must be able to perform a transformation by including the important elements in the International Guidelines into national law, whether in legal form or in a more technical set of contained regulations.¹⁶

To be able to apply human rights audits in Indonesia, three aspects must be considered. The first is the aspect of regulatory substance, the second is the aspect of the institutional structure for regulatory execution, and the third is the aspect of preparedness of the people toward the enactment of the regulation¹⁷.

For the first aspect of regulatory substance, in this case, the government must be able to internalize or transform international stipulations into the form of appropriate legal regulations. As guidelines are very technical in nature, the perfect form of transformation for those guidelines is a Minister Regulation¹⁸. The Minister Regulation will the technical requirements of Human Rights Audits, including aspects that must be audited as well as the audit executor.

However, the Minister Regulation cannot stand alone. The minister regulation can only exist if there is a higher-level regulation that allows for the regulations.¹⁹ The level of regulation above Ministry Regulations is Government Regulations, and above that are Laws. As long there are no Laws or Government Regulations that regulate Human Rights Audits, technical regulations cannot be created. Thus, what is needed to be done first is to include Human Rights Audits in the Law on Corporations²⁰, as is the case for the CSR obligation.

For the second aspect of the prepared structure or regulatory execution institution, the government must prepare a necessary system for the execution of regulations. The system includes the hard system and soft system. Hard system is related to institutional infrastructure, such as audit agencies. These human rights audit agencies may be from the government or formed by

¹³ The Clear and Clean certificate is a certificate issued by the Director-General to holders of Mining Permits who have fulfilled administrative, regional, technical, environmental, and financial requirements. Regulation of the Ministry of Energy and Mineral Resources of Indonesia Number 43 of Year 2015 on the Procedure of Evaluation of Issuance of Mining Permits for Coal and Minerals.

¹⁴ In May 2018, the Ministry of Energy and Mineral Resources of Indonesia issued a policy to simplify permits by removing several regulations, one of them being the Clear and Clean certificate, which no longer becomes a requirement for evaluation of Mining Permits. The reason for eliminating the Clear and Clean certificate is to ease investment in the mining sector. Accessed from <https://www.esdm.go.id/assets/media/content/content-pencabutan-penyederhanaan-regulasi-dan-perizinan-sektor-esdm-.pdf>, August 6, 2019

¹⁵ Human rights policy is a statement containing the commitment of the fishery enterprise to respect the human rights of parties related to the fishery enterprise, including marine labor and the surrounding people.

Human rights due diligence is a process conducted by the fishery enterprise to identify, evaluate, prevent, conduct mitigation, and overcome the effects of human rights violations that arise from the activities, operations, and business relationships of the fishery enterprise.

Human rights recovery is a process with the aim of managing the impact of human rights violations caused by or as a cause of the fishery enterprise through an effective complaint mechanism, both judicial and non-judicial.

¹⁶ Article 9 (2) of Law Number 24 of Year 2000 on International Agreements stated that the legalization of international agreements as expressed in Paragraph (1) is conducted through laws or presidential decrees. The selection of laws or presidential decrees is determined according to the contents of the international agreement.

¹⁷ Soerjono Soekanto stated that there are five factors that determine the effectiveness of the application of laws in society: the factor of the law itself; the factor of law enforcement, the parties that form and apply laws; the factor of supporting infrastructure or facilities; the factor of the people; and the factor of culture. For this article, this is simplified into three factors: the law, legal structure, and culture of the people. Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum* [Factors that Affect Law Enforcement] (Jakarta: PT. Raja Grafindo Persada, 2008), p. 8.

¹⁸ A Minister Regulation is a regulation created by a minister in the authority scope.

¹⁹ Article 8 Paragraphs 1 and 2 of Law 12 of Year 2011 on the Formation of Legal Regulations state that the presence of Minister Regulations are acknowledged and possess legal binding power as long as they are commanded to by a higher-level regulation or are formed based on its authority.

²⁰ International agreement laws in the field of human rights are ratified in the form of laws; although guidelines do not need to be ratified into specific laws, they must be substantially contained in laws. Regarding the binding power, laws also have the legal power to impose sanctions, while other regulations cannot.

the government, or may also be from independent agencies outside of the government, such as private auditors, NGOs, and so on. Soft system is related to the preparedness of human resources. The government must prepare human resources who understand and comprehend the application of human rights instruments in business. As such, human resources must be experienced and trained.

For the third, which concerns the preparedness of the people toward the application of human rights audits, these are fundamentally conducted to ensure that the rights of the people are not violated by business activities around them. However, what often happens is that the people do not understand the way to maintain their rights if those rights are violated. They do not understand the human rights mechanisms found in business activities. As such, the conducted human rights audits must involve the people in the environment of business activities. The people are made the primary actors or key respondents to find out how far businesses comply with human rights standards.

In line with the created 2015-2019 RANHAM, the government must take strategic steps by creating a special working group on Human Rights and Business that is composed of the related ministries of Foreign Affairs, Law and Human Rights, State-Owned Enterprises, Energy and Human Resources, Industry, Maritime Affairs and Fishery, Environment and Forestry, Agriculture, Agrarian Affairs and Spatial Planning, and Labor and Transmigration, as well as related Provincial and Regent/City Governments. This special Working Group will later discuss guidelines for Human Rights and Business as well as create the terms of reference for application.

REFORMULATING HUMAN RIGHTS AUDIT FOR MNCS

Audit is knowledge that is used to conduct an evaluation of internal control, which has the aim to provide protection and safety to be able to detect occurrences of irregularities and irrationalities that a company may incur.²¹

According to Mulyadi, audit is a systematic process to obtain and evaluate evidence objectively regarding statements about economic activities and events, with the aim to determine the level of correspondence between those statements with the established criteria, and to deliver the results to the parties with concern.²²

Audit can be done internally by employees or heads of a particular department and externally by an outside firm or an independent auditor. The idea is to check and verify the accounts by an independent authority to ensure that all books of accounts are done in a fair manner and there is no misrepresentation or fraud that is being conducted.²³

In general, audits are conducted within the scope of finances. However, audits may also be conducted in other scopes according to the purposes of audits, including human rights audits. Human rights audits may be included in the category of compliance auditing. These audits are conducted to find out whether a company has complied with applicable regulations and policies, whether established by the internal party of the company (management, board of commissioners) or external parties (the government, Bapepam LK, Bank Indonesia, Directorate-General of Taxation, and others) including compliance to the aspect of human rights.²⁴

Human rights audit itself is based on several specific criteria as explained in the UNGP on Business and the UN Global Compact. A company should develop quantifiable performance indicators to monitor and measure elements in its operations that have an impact on human rights. Performance indicators should measure both the direct result of the company's operations and the efficiency of management processes that influence performance – such as training and the allocation of resources.

The indicators should be relevant to the company's sphere of influence, activities, and industry sector, and should drive continuous improvement. They should relate to the organizational goals of the business and be consistent with the risks and opportunities that the company has identified. Measurements should be made regularly and be communicated to employees and other interested parties. Since a company's sphere of influence may change over time, performance indicators should be reviewed on a regular basis.

Human rights-based audit programs should be part of a company's governance procedures. Audits establish whether management systems are working as planned; they focus on the causes of problems and the necessary corrective measures. Human rights-based audits by qualified personnel, preferably verified by external human rights experts, should be carried out regularly and made available publicly. Auditing is also a tool for the Board and Executive Committee of a business to ensure that the strategies, policies, procedures, and processes outlined in this Guide have been properly implemented across the company.²⁵

Referring to the existing human rights instruments, three technical matters may be formulated regarding the technical matters of executing human rights audits: the party conducting the audits, the scope of the audits, and the methods or procedures conducting audits.

a. Executors of Audit

Human rights audits may be conducted by companies periodically/annually. They may also be conducted by request of the government or certain parties if a company is suspected to have committed human rights violations or conducted business not in accordance with human rights standards. Human rights audits are conducted by involving auditors composed of an expert (in the

²¹ Sukrisno Agoes, *Auditing: Petunjuk Praktis Pemeriksaan Akuntan dan Akuntan Publik* [A Practical Guide to the Examination of Accountants and Public Accountants], Salambe Empat: Yogyakarta, 2012, p. 4

²² Mulyadi, *Auditing*, Salembe Empat, Yogyakarta, 2014, p. 9

²³ <https://economictimes.indiatimes.com/definition/audit>

²⁴ Sukrisno Agoes, *op. cit.*, p. 11-13

²⁵ Business Leaders Initiative on Human Rights, *A Guide for Integrating Human Rights into Business Management*, The UN Global Compact, file:///F:/HR%20and%20Mining/GuideHRBusinessen.pdf

field of human rights), a government element (which may be from the ministry of law and human rights)²⁶, and or parties from NGOs.

b. Scope of Audit

Items that need to be audited or the scope of the audit is adjusted according to the line of business of a company. Each line of business has different human rights characteristics. In comparing mining and fishery/marine enterprises, each of them has their own human rights qualification standards.

Table 2: Human Rights Standards in the Marine and Fishery Industry²⁷

Human Rights Aspect	Issues	Affected Human Rights
Work Health and Safety	<ul style="list-style-type: none"> - Does the company have SOPs for health for crewmates? - Has the company identified the possibilities of dangers that threaten worker safety and provided a mechanism for their management? - Has the company provided proper accommodations and appropriate training for workers? - Others 	<ul style="list-style-type: none"> - Rights to protection of work health and safety.
Recruitment System for Crewmates and Labor	<ul style="list-style-type: none"> - Does the company have SOPs on the recruitment of crewmates and labor? - Has the fishery enterprise established requirements for crewmates and fishery laborers? - Has the company prepared working contracts that are proper and fair for crewmates and fishery laborers? - Others 	<ul style="list-style-type: none"> - Right to a decent and fair occupation
Labor System	<ul style="list-style-type: none"> - Has the company established written rules on the work relationship in the working agreement with the union of workers? - Has the company created a working agreement along with the union of workers? - Others 	<ul style="list-style-type: none"> - Right to freedom of opinion and union - Right to social security - Right to a decent and fair occupation
The Responsibility of Sustainable Development of Society	<ul style="list-style-type: none"> - Has the company planned a program for economic development of the surrounding people? - Does the company have SOPs regarding the process of company land use according to 	<ul style="list-style-type: none"> - Right to a decent and fair occupation - Right to welfare
Security Workers	<ul style="list-style-type: none"> - Does the company ensure that the employed security workers do not commit violations of human rights? 	<ul style="list-style-type: none"> - Right to safety - Right to personal freedom
Environment	<ul style="list-style-type: none"> - Does the company have SOPs regarding hazardous waste processing? - Has the company applied steps to prevent damage to the environment? 	<ul style="list-style-type: none"> - Right to obtain a healthy and proper environment - Right to welfare
Land Takeover	<ul style="list-style-type: none"> - Does the company have SOPs to verify land ownership? - Does the company have procedures for land use that concerns the land of the people? - Has the company ensured that the land being used does not take away or remove the rights of surrounding people? 	<ul style="list-style-type: none"> - Right to live - Right to obtaining welfare

²⁶ This may also be conducted in reference to the financial audit that involves the government or private auditors. The government may also issue certificates of qualification for human rights auditors in the same way that the certificates are issued to mediators.

²⁷ Based on the stipulations of Minister of Maritime Affairs and Fishery of Indonesia Regulation Number 35/Permen-Kp/2015 on the System and Certification of Human Rights in Fishing Enterprises.

Table 3: Human Rights Standards in the Mining Industry²⁸

Scope of Audit	Issues	Affected Human Rights
Environment	<ul style="list-style-type: none"> - Has the company applied standards of security and safety for the surrounding environment? - Has the company fulfilled the requisite standards for management of waste products? - Has the company anticipated the effects of environmental pollution? - Others 	<ul style="list-style-type: none"> - Right to obtain a healthy and environment - Right to live comfortably without threats
Indigenous People	<ul style="list-style-type: none"> - Do the activities of the company bother the lives of indigenous people? - Does the mining location take away the rights of indigenous people? - Has the company prepared anticipative measures if violations occur toward the rights of indigenous people? - Does the company perform routine communication with the indigenous people around the mining location? - Others 	<ul style="list-style-type: none"> - Right to live and be recognized as part of society - Right to not be discriminated
Labor	<ul style="list-style-type: none"> - Has the company applied standards of safety and security for workers? - Does the company provide normative rights to workers? - Does the company provide the freedom of union and opinion? - Does the company consider the input of workers in the making of important decisions by the company? - Does the company provide health and welfare insurance for workers? - Others 	<ul style="list-style-type: none"> - Right to obtain a decent living - Right to be treated fairly in industrial relationships - Right to union, gather, and provide opinion

c. Audit Mechanism

The audit may be conducted through the following stages:

Stage 1. Reporting

In this stage, the company creates a report regarding the aspect of human rights in business, including: the human rights risks that are being or will be faced by the company; steps to perform mitigation or to resolve problems; and the compliance of the company in applying human rights standards according to regulations. This report is composed each year and given to the government and the people. This report may be created by the company itself (as an annual report) and may be created any time (incidental) according to the will of stakeholders or the government if a special report may be needed to be created or if there are indications of violations of human rights incurred by the company.

Stage 2. Examination

The results of the created report are then examined by the auditor team. The auditor performs an examination of every document and compares them to the facts on the field in this stage.

Stage 3. Research and Investigation

After comparing the documents with the field, the auditor team conducts research and investigation on the results of the findings. From the results, identification is performed as to whether the findings are considered human rights violations or procedural mistakes.

Stage 4. Conclusion and Verdict

After conducting in-depth investigation of the findings, the auditor team then makes a conclusion regarding the processes of examination and research/investigation, and then gives a verdict on the audit results, regarding whether the company is considered compliant or non-compliant with human rights standards²⁹. This verdict acts as a recommendation that is then to be followed up by instituting the necessary changes.

²⁸ There are no references to these standards, but these were summarized from general standards and matters that are often affected by the mining industry.

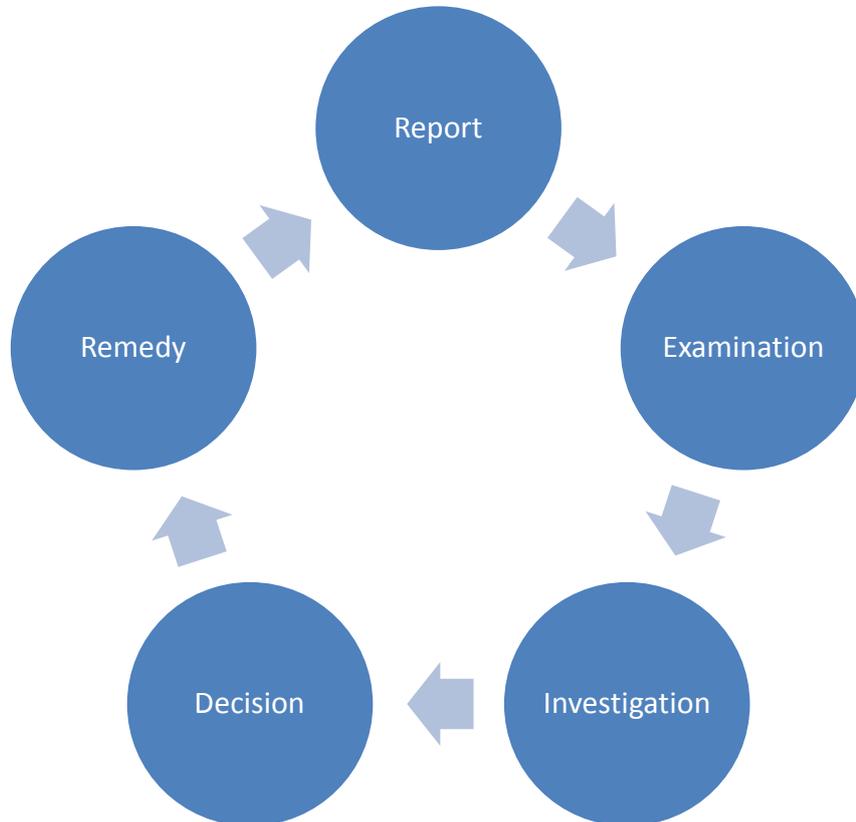
²⁹ Considering financial audits, audit results determine the opinion toward the financial report, which is composed of several levels of qualification:

- a. Unqualified Opinion (*Wajar Tanpa Pengecualian*), which means that the financial report is presented according to applicable accounting standards.
- b. Qualified Opinion (*Wajar Dengan Pengecualian*), which means that the financial report is reliable, but there are still some excepted issues or problems to avoid mistakes in decision-making.
- c. Adverse Opinion (*Tidak Wajar*), which means that the financial report is not presented according to accounting standards, or there is a material flaw in the financial report.

Stage 5. Execution of Verdict and Remedial

After a verdict has been issued on the results of the human rights audit for the company, the company must follow up the verdict performing steps of recovery according to the recommendations in the verdict by the auditor team. If necessary, the company may conduct remedial or recovery actions on the conditions affected by human rights. The execution of this verdict also involves existing mechanisms, as state-based mechanisms such as the typical court system or non-state-based mechanisms, or alternatives of dispute resolution outside of court³⁰.

Picture 1: Flow Chart of the Human Rights Audit Procedure



The results from this human rights audit may be harmonized with the goals in the Global Reporting Initiative and become a part of the annual report of the company. As such, the people will be able to judge whether the company has applied human rights standards, and if not, strategic steps may be taken to manage the resulting effects and to perform recovery.

CONCLUSION

The respect of human rights is an obligation that must be carried out by every company as regulated in various international legal instruments. One of the ways to ensure the execution of human rights obligations is by conducting human rights audits toward company. Human rights audits may be carried out in Indonesia by transforming international legal instruments into the national body of laws. These laws will then regulate the obligations of companies in complying with human rights as well as the mechanisms for conducting human rights audits. Human rights audits must also be made equal to other kinds of audits so that they may be included in company annual reports as well as an instrument of evaluation for the people on the human rights performance of a company.

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d. Disclaimer Opinion (*Tidak Memberikan Pendapat*), which means that the financial report is materially flawed and the management limited the scope of examination, thus auditors did not find sufficient evidence.

³⁰ Mechanisms of legal resolutions outside of the courts are regulated in Law Number 30 of Year 1999 on Arbitration and Alternatives to Conflict Resolution. In addition to this law, there are several sectoral laws that also provide dispute resolution mechanisms outside of court, including Law Number 32 of Year 2009 on the Environment; Law Number 8 of Year 1999 on Consumer Protection; Law Number 5 of Year 1999 on Business Competition; and Law Number 2 of Year 2004 on Disputes of Industrial Relationships.

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