

# THE RESPONSIBILITY OF INDONESIA TOWARD HUMAN RIGHTS VIOLATIONS CARRIED OUT BY CORPORATION<sup>1</sup>

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**ABSTRACT:** *Indonesia as a welfare State is obliged to provide protection to every individual in fulfilling their human rights. For the fulfillment of human rights, the State carries out international relations with countries, especially ASEAN. Transnational corporations have a large role and bargaining power, especially in strategic fields in the economy and technology that can influence the policies of countries in the Era of the ASEAN Economic Community. One of the big challenges facing Indonesia today is the ASEAN Community which is supported by three pillars, namely the ASEAN Political-Security Community, the ASEAN Economic Community, and the ASEAN Socio-Cultural Community. The problem that will arise here is how the State is responsible for human rights violations carried out by corporations and how the law is enforced so that corporations' actions can be responsible either in national or international levels. The methodology used in this paper is the study of literature with qualitative analysis. The purpose of this paper is to find out Indonesia's responsibility for human rights violations carried out by corporations. Based on the discussion above, it can be concluded that Indonesia's responsibility in the human rights system is as a duty bearer so that it must respect, protect, fulfill, promote human rights to its people and punish a corporation that violates human rights. Corporate actions that violate human rights can be punished if first formulated in national law and international law as a crime according to the principle of legality.*

**Keywords:** Responsibility of Indonesia, human rights violations, corporate crime.

## I. INTRODUCTION

Indonesia as a welfare State has the obligation to fulfill the needs of its people to increase their prosperity by means of developing the country and this will release the fund for that to realize the achievement Indonesia should manage the economic sector, especially from the taxes income and other public service sectors [1]. If the funds needed are insufficient, Indonesia should cooperate with the other countries, especially with the member countries of the Association of Southeast Asian Nations (ASEAN). One of the big challenges facing Indonesia today is the ASEAN Community (ASEAN Community). ASEAN Community is supported by three pillars, namely the ASEAN Political-Security Community, ASEAN Economic Community, and the ASEAN Socio-Cultural Community. Since the enactment of the ASEAN Economic Community (MEA) in 2015 the relations of ASEAN member countries, especially in the economic field, have become the main pillars and fostered a single market, thus encouraging corporations such as multinational corporations to collaborate with the Indonesian government on the reason of helping Indonesia through the investment sector. Corporations which are entities that do business in several countries mainly in developing countries have strong economic bargaining power which will easily make an agreement with Indonesia that is very profitable for the corporation and if the government is not careful the corporation will be very easy to suppress Indonesian policies and even in certain cases can lead to human rights violations [2]. The problem of how Indonesia's responsibility in the case of human rights violations against civilians carried out by corporations is a study that will be discussed in this paper using the normative juridical method and analyzed qualitatively so that a description can be obtained to provide an explanation of the regulation and the responsibility of Indonesia State particularly in resolving the enforcement of human rights.

## II. DISCUSSION

### 1. Definition of Human Rights (HAM)

The definition of Human rights according to Law Number 39 of 1999 concerning Human Rights is a set of rights that are inherent to the human being as a creature of God Almighty and are His gifts that must be respected and protected by the State, Law, and Government, and every person to honor and protect human dignity [3].

Article 1 of the United Nations Declaration on Human Rights 1948 emphasizes that: Every human being is born free and equal in his honor and rights. They are given logic and awareness and must treat each of them in a spirit of brotherhood [4]. Based on article 1, the human being has freedom from fear, freedom from torture, freedom from slavery, for the continuation of the rights to life and in the field of the economy can demand equality. However, in the context of human rights, there are rights that can be limited by natural rights such as civil and political rights as stipulated in the International Covenant on Civil and Political Rights 1966 and also in the Social and Cultural Economy as stipulated in the International Covenant on Economic Rights, Social and Cultural conditions of 1966 and the limitation or reduction of these rights are usually in the form of requirements given to obtain such rights, for example, the right to elect and be elected as a State official or a member of the parliament and to be accepted as new students must pass tests provided by the government.

### 2. Human Rights Principles

Principles of basic principles in human rights that must be respected refer to human rights theories including four meanings, according to Manfred Nowak, namely: Universality, indivisibility, independence, interrelated, while Rhona KM Smith added other principles such as equality and non-discrimination, the principle that is equally important are the human dignity and Indonesia emphasizes on one other principle, that is State responsibility [5].

The universal principle is that all people, in all parts of the world, no matter what religion, nationality, language, or ethnicity, regardless of their political and anthropological identity, and regardless of their disability, have the same rights as a human. The affirmation of this principle is

carried out through Article 5 of the Vienna Declaration on the Program of Action which reads: All human rights are universal, undivided, interdependent, interrelated (all human rights are universal, indivisible, interdependent, and interrelated). Here it can be ascertained that human being throughout the world has the same rights as the human entity itself. Anyone and anywhere and until whenever human rights must be fulfilled.

The indivisibility principle means all human rights are equally important and the family is not allowed to issue certain rights or certain categories of rights from their parts. The Principle of Interdependence means that the fulfillment of a certain category of rights will always depend on fulfilling other rights. For example, the right to work will depend on the fulfillment of the right to education, and also the right to choose and exercise a belief will depend on the right to express an opinion in public.

The interrelated principle can be understood that overall human rights are an inseparable part of the other. All categories of human rights are one package, one unit. A person will be able to choose the legislative candidates well if the education is also good. With the fulfillment of the right to education, a person is able to read ballots and visions of legislative candidates and political parties that carry them well [6].

The principle of equality is considered a very fundamental human rights principle. Equality is interpreted as equal treatment, where in the same situation it must be treated equally, and wherein in different situations, little differences are treated differently. Equality is also regarded as an absolute prerequisite in a democratic State while equality before the law, equality of opportunity, equality of access to education, equality in accessing fair justice, equality of belief and worship in accordance with his beliefs, and others are important in fulfilling human rights. The principle of nondiscrimination occurs when everyone is treated or has unequal opportunities such as inequality before the law, inequality of treatment, education opportunity, and others.

Human dignity aims to ensure that everyone can live in dignity. All people must be respected, treated well, and valued. Therefore if someone has rights, that means he can live a life with dignity. If someone's rights are revoked, then they are not treated with dignity.

The principle of State Responsibility explains that fulfilling, protecting, and respecting human rights is the responsibility of the State. So the main actor burdened with the responsibility to fulfill, protect and respect human rights is the State through its government apparatus. This principle is written in all international human rights and domestic covenants and conventions.

### 3. Corporation

Countries in the context of international law in the international community are the first and foremost subjects besides other subjects such as the Holy See or the Vatican State, the International Committee of the Red Cross, International Organizations, Belligerency or the rebels, and Individuals. Legal subjects are supporters of rights and obligations in the sense that they have certain capacities such as being able to make agreements with other parties, can have assets in the form of movable or immovable objects, and can claim through the court if their interests are disturbed or harmed by parties or other legal subjects.

But on the other hand, the legal subjects such as the State are also burdened with responsibility in terms of making mistakes in the form of actions that harm other parties in international relations. Mochtar Kusumaatmadja ever stated that international law is the whole rule that regulates relations or issues across borders between States, States with other nonentity States, and non States entities with each other [7].

The corporation is already recognized as an entity that can be interpreted as the same as a non State entity, but this has not been formulated and regulated in national law or in international law as the subject of law in which its corporate action can be regarded as a crime that can be categorized as a violation of human rights. Article 5 of the Rome Statute 1998 only regulates 4 (four) types of crimes in the form of crimes of genocide, crimes against humanity, war crimes, and crimes of aggression, while corporate crimes have not been included in the formulation of the article. Therefore, in order that corporate crime to be held accountable, especially its management, at the national, regional, and international levels, the corporate crime must be formulated as a crime covered by national law, regional and international law so that corporation can be punished [8].

### 4. Responsibility of the State of Indonesia

The terminology of State responsibility is to indicate the scope of responsibility of the State in the court. Responsibility is often used in the cases of human rights violations such as fulfilling, protecting, and respecting human rights belonging to the responsibility of the State. The main actor burdened with the responsibility to fulfill, protect and respect human rights is the State through its apparatus. This principle is written throughout the covenants and conventions of internal human rights as well as domestic or national regulations of a State. In Indonesia, the obligation of this State is explicitly recognized in Article 8 of Law Number 39 of 1999 concerning Human Rights stating that: The protection, promotion, enforcement, and fulfillment of human rights are primarily the responsibility of the government [9].

The same thing is reaffirmed in Article 71 of Law Number 39 of 1999 concerning Human Rights which states that the Government is obliged and responsible to respect, protect, enforce and promote human rights as stipulated in this law, other legislation, and international law on human rights accepted by the Republic of Indonesia. This principle can also be found in the consideration of the Universal Declaration of Human Rights 1948 which reads: Member States pledge to achieve progress in the promotion and general respect for human rights and fundamental freedoms, through cooperation with the United Nations [10].

The State of Indonesia on the one hand and citizens or the people of Indonesia on the other hand in the context of a modern legal regime facilitated in full by the mechanism of international law which is technically carried out by the United Nations. Human Rights categorizes actors into two, namely first, the State as a duty bearer. Then the individuals or groups both citizens are the rights holder. The State as a duty bearer has at least 5 (five) obligations of the State namely: 1. The state has an obligation to respect people's rights (obligation to respect), 2. The state has obligation to protect people's rights (obligation to protect), 3. The state has obligation to fulfill people's rights

(obligation to fulfill), 4. The state has obligation to promote human rights to the people (obligation to promote human rights), and 5. The state has obligation to punish people or groups of people or legal entities such as corporations (obligation to punish) in order to fulfill a sense of justice for the people. On the contrary, the people have human rights that must be respected, protected, fulfilled, given promotion/socialization on human rights, and given a sense of justice by the State [11].

### III. CONCLUSION

Based on the discussion above, it can be concluded that human rights have been regulated at the international level such as in United Nations Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, and in national-level regulated in Republic of Indonesia Law Number 39 the year 1999 concerning on Human Rights. Indonesian State Responsibility in the human rights system is as a duty bearer so that Indonesia must respect, protect, fulfill or facilitate, promote human rights to its people and punish a corporation that violates human rights. Whereas individuals or groups of the individual is as the rights holder who must be respected, protected, fulfilled, or facilitated and given information on human rights and given a sense of justice if their human rights are violated.

Human rights violations carried out by corporations can be responsible in the modern human rights law regime if they have been formulated as legal subjects whose action can be categorized as a crime of human rights violation, either at the national level or international level therefore corporation action which can raise human rights violation can be given the sanction.

Based on the conclusions above, suggestions can be given as follows.

1. Indonesia as a sovereign State and has jurisdiction over its territory should immediately formulate in its national law that corporate actions that raise human rights violations must be formulated as corporate crimes so that corporations can be punished.
2. Indonesia as an ASEAN Member State as well as a member of the United Nations should dare to propose this formulation included in ASEAN Charter as well as in article 5 of the Rome Statute 1998 so that corporate crime is also formulated in international law.
3. Indonesia as a State with its Human Rights Law and a Human Rights Court should seriously enforce the law against those who carried out acts of human rights violations for the years to come.

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