

Implementation of Business and Human Rights Principles (UNGPs) in the Protection given to Indonesian Laborers: Gender Perspective*

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Abstract

This research aims to analyze to what extent business and human rights principles have been implemented to protect workers and laborers in Indonesia according to the gender perspective. This research employed a normative method by analyzing the norms set forth in international law synchronized with the provisions in the statute (statutory approach) in Indonesia descriptively and conceptually. The research concludes that Ruggie initiated business and human rights principles as a new concept regarding corporate responsibility to meet the development of human rights. The protection of human rights for workers, especially women, has not been sufficiently given. The management of the dimension of human rights in employment-related matters requires business relations and human rights with the concept of three pillars. First, the state is responsible for preventing violations of human rights. Second, corporations are responsible for respecting human rights. Third, this pillar manages access to the recovery of victims of human rights violations. Furthermore, the protection of workers and laborers is governed by an employment law that needs to be elaborated further by normalizing business and human rights principles in the employment sector.

Keywords: Women Workers/Laborer; Corporation; Employment; Business and Human Right(UNGPs); Human Right

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**Penerapan Prinsip Bisnis dan Hak Asasi Manusia (UNGPs)
Dalam Perlindungan Pekerja Buruh Indonesia: Perspektif Gender**

Abstrak

Penelitian ini bertujuan untuk menganalisis sejauh mana prinsip bisnis dan HAM telah diterapkan untuk melindungi pekerja/buruh di Indonesia menurut perspektif gender. Penelitian ini menggunakan metode normatif dengan menganalisis norma-norma yang diatur dalam hukum internasional yang disinkronkan dengan ketentuan dalam undang-undang (*statutory approach*) di Indonesia dalam bentuk deskriptif dan pendekatan konseptual. Hasil penelitian menyimpulkan bahwa prinsip bisnis dan HAM digagas oleh Ruggie sebagai konsep baru mengenai tanggung jawab perusahaan untuk memenuhi perkembangan HAM. Perlindungan hak asasi manusia bagi pekerja/buruh, khususnya perempuan, belum cukup diberikan. Pengelolaan dimensi HAM dalam hal ketenagakerjaan membutuhkan relasi bisnis dan HAM dengan konsep tiga pilar. Pertama, negara bertanggung jawab untuk mencegah pelanggaran hak asasi manusia. Kedua, korporasi bertanggung jawab untuk menghormati hak asasi manusia. Ketiga, pilar ini mengelola akses pemulihan korban pelanggaran HAM. Selanjutnya, perlindungan pekerja/buruh diatur dalam UU Ketenagakerjaan yang perlu dielaborasi lebih lanjut dengan menormalkan prinsip-prinsip bisnis dan hak asasi manusia di bidang ketenagakerjaan.

Kata Kunci: Pekerja/Buruh Perempuan; Perusahaan; Ketenagakerjaan; Bisnis dan HAM (UNGPs); Hak Asasi Manusia

**Осуществление принципов предпринимательства и прав человека
в области защиты трудящихся в Индонезии: гендерная перспектива**

Абстрактное

Цель этого исследования заключается в том, чтобы проанализировать степень осуществления принципов предпринимательства и прав человека в целях защиты трудящихся и работников в Индонезии с учетом гендерной точки зрения. В этом исследовании использовался нормативный метод, анализируя нормы, изложенные в международном праве, синхронно с положениями устава (законного подхода) в Индонезии в описательном и концептуальном порядке. Исследование приходит к выводу, что бизнес и принципы прав человека были иницированы Ruggie как новая концепция, касающаяся корпоративной ответственности для удовлетворения развития прав человека. Защита прав человека трудящихся, особенно женщин, недостаточно обеспечена. Управление измерением прав человека в вопросах, связанных с трудоустройством, требует деловых отношений и прав человека с концепцией трех столпов. Во-первых, государство несет ответственность за предотвращение нарушений прав человека. Во-вторых, корпорации несут ответственность за соблюдение прав человека. В-третьих, этот столп направлен на обеспечение доступа к средствам восстановления для жертв нарушений прав человека. Кроме того, защита трудящихся регулируется трудовым законодательством, которое требует дальнейшей разработки путем нормализации принципов предпринимательства и прав человека в секторе занятости.

Ключевые слова: Женщины-работницы; Корпорация; Занятость; Бизнес и права человека; Права человека

A. INTRODUCTION

Business acts as a generator to help grow the economy and create job opportunities. However, business can pose some risks to human rights and harm people and the business per se ([Ruggie, 2007](#)). The main issue in establishing UNGPs is centered on business and human rights issues. The obligation to protect human rights is the state's responsibility. Still, non-state actors are deemed to be subject to the commitment to comply with and respect the rules of law and other existing norms, including human rights ([Pally, 2013](#)).

Regarding the protection of human rights within the business purview, the United Nations validated UNGPs as a global standard intended to prevent and show the risks of the impacts of human rights related to business. UNGPs consist of three pillars ([Pally, 2013](#)). The first pillar asserts that the state has the task and responsibility to give protection from third parties, including corporations ([Fuad, 2020](#)), ([Ncube et al., 2021](#)). The second pillar refers to corporate responsibility to respect, as outlined in UNGPs, that involves human rights due diligence ([Augenstein, 2022](#)). The third principle relates to the principles of guidance to identify that corporates have caused the loss, and, thus, they are responsible for facilitating effective recovery ([Fuad, 2020](#)).

Violations of human rights allegedly done by business sectors of national and international scopes urge countries to agree to establish business and human rights relations at a regional and national level. At a global level, the United Nations Guiding Principles on Business and Human Rights were formulated ([Schrempf-Stirling et al., 2022](#)). Still, business and human rights relations in Indonesia are being designed according to the national action plan and not rigidly governed by related laws.

The protection of Indonesian workers/laborers is governed in Law Number 13 of 2003 concerning Employment, fundamentally highlighting the principles, objectives, and employment planning, information, rights, and responsibilities of workers/laborers or employers, job placement, restriction, administrative and criminal sanctions, and so forth ([Hidayah, et al., 2021](#)). Studying Law Number 13 of 2003 concerning Employment highlighting the rights and responsibilities of workers/laborers or corporates in the mechanism of production processes, this research suggests that the protection of workers/laborers should guarantee equal and non-discriminating opportunities.

Considering that women are regarded as vulnerable, women-related matters are specifically governed by the regulatory provision concerning the guarantee of protection of human rights ([Flambonita, 2017](#)), ([Andriani &](#)

[Phahlevy, 2022](#)). Women are essential in developing society and upholding human rights ([Larasati & Ayu, 2020](#)). Women have been the market segments in several particular industries, such as beauty products and fashion industries.

Article 5 of Law Number 13 of 2003 concerning Employment asserts that workers have equal and non-discriminating opportunities to build their careers. Explicitly, laws give equal rights to everyone to get their official positions congruent with their competence.

However, the competence of workers/laborers in Indonesia is not enough to lift them too high official positions. Female workers/laborers sometimes have to consider their physical appearance and beauty ([Doorley & Sierminska, 2012](#)), representing discrimination against female workers/laborers.

B. METHODS

This research employed a normative method ([Christiani, 2016](#)) to give answers to the implementation of the principles of UNGPs as in Employment Law and statutory and conceptual approaches. Law Number 13 of 2003 concerning Employment was referred to in the statutory approach, while the conceptual approach involved perspectives and doctrines growing in legal science ([Andik Prasteoyo, 2020](#)), ([Utari & Cahyaningtyas, 2022](#)). This research also takes into account the gender concept and the research data were obtained by conducting library research as the secondary data. These data consisted of primary legal materials ([Ari Atu Dewi, 2018](#)) from Law Number 13 of 2003 concerning Employment and secondary ones obtained from (journal articles and related books). All the data were further analyzed qualitatively and presented in a descriptive form before critical details were given.

C. RESULTS AND DISCUSSION

1. The State's Obligation to Protect in the Protection of Workers/Labourers from a Gender Perspective

The first pillar regarding the state's duty to protect is more focused on giving protection against violations of human rights by third parties, including corporations ([El Muhtaj, 2015](#)). This principle asserts that a state must protect the parties concerned from any human rights violations by businesses within the territory and/or jurisdiction by taking appropriate measures to prevent, investigate, punish, and recover the violations through policies.

Based on the state's regulations regarding employment in Indonesia as intended in Article 6 of Law Number 13 of 2003 concerning Employment, "every worker/laborer has the right to be treated equally without any discrimination from employers". However, this article still implies some discrimination from employers against their workers/laborers, especially women.

The paradigm of contemporary human rights, business, and human rights as the transformation of the law concerning international human rights serves as the answer to the challenge that highlights the responsibility for business activities that are linked to the life sustainability of human beings and ecological impacts ([Dharmawan, et. al. 2018](#)). With the presence of business principles and human rights regarding employment, the gender perspective has not been assertively involved. Indirectly, issues on women in this context have not been fully addressed.

Employment law governs the connection between workers/laborers and employers. It governs individual interest ([Suhartoyo 2019](#)), ([A. 2018](#)). Work relations take into account the rights and responsibilities of all parties. The protection is deemed important, as it refers to the Greek tradition introduced by Immanuel Kant, where he positioned himself as a legal-radical person. He viewed the protection of people as something imperative (*kategorishe Imperatif*) ([Flambonita, 2017](#)).

Improvement of the supervisory system for employment is being maintained to allow for effective implementation of legislation by business people and corporations. With this effort, the supervision of employment serves as a system responsible for the mission and function of enforcing Employment Law ([Flambonita, 2017](#)). The state becomes a determinant factor in implementing human rights protection against operational impacts brought by corporations. The first pillar indicates that Indonesia plays a primary role.

The measures taken by the state to protect human rights through reform should be manifested with efforts intended for harmonising the law ([Rachminawati & Mokhtar, 2019](#)). This harmonization implies that national law and administrative regulations regarding business and human rights issues are fully according to the instruments of international human rights law ratified. Measures taken for the harmonization of policies, either horizontally or vertically, are also asserted in the commentary of the guiding principles, implying that the state needs to take an extensive approach to governing business and agenda of human rights ([Komnas HAM & Elsam, 2017](#)) to assure horizontally and vertically coherent policies.

Although normatively equal rights are established between female and male workers/laborers, what is experienced by female workers/laborers is far from what is expected in terms of quality or quantity. Gender inequality in employment is presented in the Participation Level of Labor Force between men and women. The rights of workers/laborers are categorized into four ([McLaren, 2019](#)), ([Susiana, 2017](#)): (1) Female workers' rights in reproduction; (2) female workers' rights in occupational and health safety; (3) female workers' rights in respect for women; (4) female workers' rights in wages. The rights of female workers/laborers can be put in the categories as follows

The rights of female workers/laborers	The rights of female workers/laborers in details	Related articles
The rights of female workers/laborers in reproduction	Menstrual leave	Article 81 Paragraph (1) of Law No.13/2003.
	Maternity and miscarriage leave.	Article 82 Paragraph (1) and (2) of Law No.13/2003.
	Right to breastfeed	Article 83 of Law No.13/2003
The rights of female workers/laborers in occupational and health safety	Prevention of work accident	Article 86 Paragraph (2) of Law No.13/2003
	Time setting according to regulations	Article 77 Paragraph (2) of Law No.13/2003 in Conj. with Law No.11/2020
	Sufficient break time	Article 79 Paragraph (2) of Law No.13/2003 in conj. with Law No.11/2020
The rights of female workers/laborers in wages	Equal wages to men's for similar tasks.	Article 88A Paragraph (2) Law No.11/2020.
	Paid leave for menstrual and maternity leave including breastfeeding period	Article 93 Paragraph (2) letter a and b of Law No.13/2003.

Protecting workers as governed in the legislation is deemed too slow ([Djakaria, 2018](#)), ([Mulugeta, Mandefro, and Alemie, 2020](#)). Moreover, gender discrimination has led to wage gaps for the same tasks, rights to get a job, official positions, and work requirements. The guiding principles as outlined in the UNGPs voice the expectation of the state that all businesses operating within their territory and/or jurisdiction must respect human rights in their territory ([Komnas HAM & Elsam, 2017](#)). The ministry/institution responsible for protecting social interests should provide a framework for responsible business operations.

The above table highlights the rights of female workers/laborers along with the details given. Within the legal frameworks in Indonesia, juridically at international and national levels, the legal instruments and legislation in Indonesia recognize the equality principle between women and men. However, within the implementation of state governance, discrimination and injustice against women are still apparent. Women are often marginalized and left behind in the economy, education, health, occupation, and politics. This situation is due to the existing patriarchal culture ([Ahsinin, et.al., 2020](#)). Employers often violate menstrual leave, contrary to Article 81 Paragraph (1) of Law concerning Employment, requiring menstrual leave to be further regulated in work contracts, company rules, or collective labor agreements.

Most companies do not provide breastfeeding chambers for their female workers. Employment Law, as amended by Job Creation Law, gave more room for human rights violations, considering that the “no work, no pay” principle was implemented. Respect paid to workers is the responsibility of every company regarding, for example, the availability of janitors of both sexes and separate toilets for both sexes. On the contrary, most companies are still found only to provide male janitors, and the bathrooms are not separated for both sexes. Departing from this observation, the state needs to set clear regulations to respect the human rights of female workers.

To ensure that the state protects every individual from any likelihood of human rights violations by third parties, including businesses, the state could: 1) draft policies governing corporations to allow for respect for human rights according to the guiding principles in business and human rights; 2) set standards of human rights regarding corporate activities through the instruments of due diligence and human rights certification; and 3) encourage law enforcement for corporations whose operational activities leave negative impacts on human rights.

2. The Second Pillar of the Principles of Business and Human Rights in the Protection of Workers/Labores according to Gender Perspective

In the industrial era, women are participating in business along with the increasing economic needs, self-actualization, or functional aspects in the industrial sector that urge women to work. Statistics Center of Indonesia once reported that in 2018, there were 68.42 million people, with the number of women of productive age accounting for 37.63 million persons (55%) ([Ahsinin, et.al., 2020](#)). Female workers/laborers are prone to discrimination from companies where they work. Implementing a gender perspective is considered

insufficient due to the apparent patriarchal tendency in Indonesia. Women are often deemed weaker than men, while they are just different within reproduction scope, where pregnancy only belongs to women. In terms of the protection of the rights of the laborers in Indonesia, two laws are taken into consideration within the industrial regime: Employment Law in conjunction with Job Creation Law. These two laws represent an improvement in the protection of the rights of laborers. From a labor perspective, despite some restrictions, these laws give better protection for the rights of laborers than the previous law ([Latipulhayat, et al. 2016](#)).

The protection of female workers/laborers is governed in Article 76, 81, 82, 83, 93 Paragraph 2 letter b, and Article 153 of Law Number 13 of 2003 concerning Employment. These articles are intended to protect female workers/laborers within their working environment. Surprisingly, some companies overlook these matters. Even worse, some have unfairly dismissed female workers/laborers simply because the companies are not willing to pay women for their maternity, breastfeeding, or menstrual leave, and some companies are still found to let their female workers work long night shifts.

The second pillar explains the responsibilities of a company to respect human rights. The details quoted from the guiding principles of the UN imply that business must avoid any likelihood of violations of human rights and should provide solutions to the problems caused during the business operation ([Prihandono & Religi, 2015](#)). The UNGPs provide guidance regarding how companies should avoid any violations of human rights with knowing and showing mechanisms. Companies must run their business without having to harm the rights of employees, members of the public, consumers, and others.

As set forth in Articles 82 and 83 of Employment Law, some corporate policies should be added to support the fulfillment of the rights of women to assure a supportive environment with health security and welfare for pregnant women, and these facilities should cover the conditions regarding the safety of unborn babies, insurance, maternity care, breastfeeding chambers, and daycare service ([Collins, 2014](#)). Health care covering the pregnancy period to the time of labor could contribute to the optimization of the growth of unborn babies and could maintain the productivity of pregnant workers/laborers considering that they feel calm when they are supported this way during their pregnancy. Moreover, the guarantee to gain access to proper maternity care affects the condition of the babies and helps reduce the mortality rate among babies, and it also affects the development of the babies. The availability of breastfeeding chambers for female workers/laborers also maximizes exclusive breastfeeding

from 0-6 months after birth. This phase is considered vital in maintaining the nutrition taken by the babies for their development ([Collins, 2014](#)). Departing from this point, the state has set the responsibilities that every company has to abide by in providing facilities for female workers/laborers to support child care.

The corporate responsibility to respect human rights also means that companies fully understand all the standards and norms of international human rights, as set forth in the instruments of international human rights and the protection of workers' rights published by ILO. As a consequence, corporates must be able to establish a full understanding and show that they respect human rights by ([Prihandono & Religi, 2015](#)): 1) setting policy commitment that supports the responsibility to respect human rights; 2) running human rights due diligence consecutively to identify, prevent, mitigate, and calculate the impacts of human rights; 3) performing the processes that allow for remediation for the impacts that reduce human rights and the activities and contribution of the business. Specifically, Article 35 Paragraph (3) of Law concerning Employment mentions corporate responsibility to provide protection to guarantee the welfare, safety, and physical and mental health of employees.

The vital element in the second pillar, the due diligence of human rights, is related to the efforts made to manage the risks of violations of human rights. Due diligence, according to the guiding principles, consists of four steps implementing the processes of due diligence ([Rivera, 2019](#)): 1) assessing the impacts of human rights, either actually or potentially; 2) integrating the findings of the assessment into the function and processes that are more relevant and taking appropriate action; 3) tracing the effectiveness of responses given by companies; 4) externally communicating the action taken by companies to tackle the impacts arising.

Human rights due diligence serves as concrete proof of corporate responsibilities in respecting human rights. Therefore, in terms of the protection of female workers/laborers as in Employment Law, due diligent needs to be taken into account, considering that this approach tells companies how to take appropriate measures and refer to a relevant function to tackle the impacts of the violations of human rights in the companies concerned. Before human rights due diligence, companies must demonstrate a commitment to respecting human rights. This initial step is followed by an assessment to see whether the measures taken are relevant ([Collins, 2014](#)).

3. The Third Pillar of the Principles of Business and Human Rights in the Protection of Workers/Laborers according to Gender Perspective

The third pillar of the guiding principles of the UN mentions access to recovery. This point highlights the state and companies' role in fulfilling the victims' rights in the recovery ([Čertanec, 2019](#)). If a company, for example, identifies that it has harmed some parties, effective recovery should be made available ([Prihandono & Religi, 2015](#)). The recovery should also be given in the right amount that is relevant to the loss caused. The enforcement of human rights requires the mechanism within two purviews: international and national mechanisms. With these two mechanisms, the legal frameworks of the UN regarding business and human rights highlight three differences of grievances over the right to recovery ([Čertanec, 2019](#)): a). Judicial mechanism; b). State-based non-judicial agency; c). Non-state based mechanism

The forms of violence against the human rights embedded in female workers/laborers are narrowed down into a single core: the necessity of precise regulation for the market of each industrial sector, ranging from upstream to downstream ([Collins, 2014](#)). The existence of business and human rights must be reinforced to help concretely interpret state policies. The gender perspective is an aspect mandated by the representative of Secretary-General of the UN, John Ruggie, during the business and human rights drafting (UNPS). This situation has made the discussion on women as a subject that has an agency within business marginalized. However, according to Bonita Meyersfield, the term gender as an analysis unit could “reveal the reality and changes of intangible losses within a particular context ([Collins, 2014](#)).

Indonesia does not profoundly implement the protection of women with a gender-based approach in a business ecosystem. Although gender represents an extensive context, this project is more focused on how the intersection between business and human rights affects women. Economic and business activities overlook vulnerable people for the sake of corporates to gain more profits. The violations of human rights affecting workers/laborers are not often revealed because there has been a tendency that both the companies and employees/laborers hide this issue. Through the prevention lens, the state has the access to adopting the guiding principles of human rights published by the UN for corporate practices in a more comprehensive way ([Citrawan, 2021](#)), ([Tibaka & Rosdian, 2017](#)).

Article 136 of Law concerning Employment implies that the settlement of industrial relations must be performed by the companies and employees/labor union that may involve deliberation. If no agreement is achieved,

workers/laborers and employers should settle the disputes according to the procedures outlined in Law Number 2 of 2004 concerning Industrial Relations Dispute Resolution. Every victim of human rights violations has his/her right to recovery through the judicial mechanism, mediation, arbitration, and non-judicial mechanism. However, these aspects are deemed less effective. The key is how to raise the awareness of each party, and the recovery is not limited to the above aspects mentioned, but it may also take into account apology, restitution, rehabilitation, financial or non-financial redress, and sanctions.

The business concept that holds social responsibility, such as the respect paid to human rights in the business scheme, has not taken the spotlight of most business actors ([Pally, 2013](#)). According to Employment Law, the recovery for female workers/laborers as the victims of human rights violations is only emphasized on criminal provisions where corporations commit the offences. To date, this recovery is not often given in companies, recalling that the existing conditions of the law have not set any measures regarding how the recovery for the victims should be provided. The third pillar of remedy serves as a vital element in business relations and human rights (UNGPs). The UNGPs explain that the government guarantees the availability of effective recovery, and corporates should facilitate this recovery. The recovery mechanisms in companies for the victims directly affected by corporate activities should be taken into account.

D. CONCLUSIONS

Workers/laborers are prone to human rights violations, especially women. The rights of workers/laborers are governed in the provisions of Law Number 13 of 2003 concerning Employment, revised into law Number 11 of 2020 concerning Job Creation, but these provisions do not accommodate the principles of business and human rights (UNGPs). The business and human rights principles (UNGPs) outline three pillars, but the Employment Law does not implement any of these pillars. Specifically, the first pillar highlights the protection that a state has to give, especially in the Employment Law regarding female workers/laborers. The government's supervision of the protection of female workers/laborers is considered weak. The state could take some measures to reinforce the function of handling grievances and conflict resolution by submitting a request to the related Minister or Labor Organization concerning corporate activities that negatively affect human rights. The company's second pillar requires due diligence on human rights violations, especially affecting female workers/laborers within a corporate scope. The third

pillar highlights the mechanism of recovery of the victims of human rights violations, especially affecting female workers/laborers, and this pillar embraces three mechanisms: judicial, non-judicial, state-based, and non-judicial mechanisms.

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