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Legal Reform in Indonesia's Natural Resource Exploitation: A Study of SOE Privatization and Corporate Responsibility

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Abstract

The purpose of this study is to examine the exploitation of natural resources by State-Owned Enterprises (SOEs), particularly in forest management and mining, which do not contribute to the prosperity of the people. The scope of this research focuses on SOEs that control vital natural resources affecting the livelihoods of many people. This research employs a normative juridical method with a historical approach to privatization and an analysis of John Ruggie's principles regarding Government and Private Responsibility for Human Rights ("Protect, Respect and Remedies"), as well as collecting data as library research. The findings indicate that such exploitation is carried out by SOEs (with share-persero) as a result of the privatization in the 1980s and 1990s, leading to liberalization. The study of John Ruggie's principles highlights the obligation of both the State and SOEs to prevent the exploitation of natural resources. The study concludes that the SOE engaged in resource management operate as "persero" entities, with shares partially owned by the private sector, leading to unfair business competition. Article 33 (2) and (3) of the Constitution mandates that natural resource management should be carried out by SOEs of which ownership is 100% by the State ("perum") or through Cooperatives, as stipulated in Article 33 of the Constitution. The authors have proposed the

liberalization results in the of SOEs (Persero), enabling private management, which raises concerns over monopolistic practices, unfair competition, and rationally impacts the potential of natural resources based on privatization and liberalization factors.

Keywords
Legal Reform, Exploitation, Natural Resources, State-Owned Enterprises, Privatization.

Introduction

The state's possession, referred to as the state's right to control HMN (Hak Milik Negara), has been assigned to large-scale corporations and state-owned enterprises (BUMN) without discussion and approval from the traditional people or the term indigenous peoples (Masyarakat Hukum Adat, MHA). This delegation of land rights in the form of concession licenses granted to huge firms and state-owned enterprises have resulted in the accumulation of capital and wealth by concessionaires over rural resources. They grow more influential, while indigenous people are ostracized. As the result, they do not automatically enjoy the benefits of the concessions in the same way as large companies and SOEs.[1]

Pillars of John Ruggie's principles on corporate responsibility highlight the granting concessions to companies, including state-owned enterprises, has led to forest destruction. The dilemma lies in the fact that these companies are prioritized in obtaining concession permits for profitable agrarian resource management, while the indigenous people's involvement is limited to labor absorption by the concessionaires.[2] Forestry resources are commercially controlled by a selected community, with 579 admissions of Forest Logging Concessions (HPH) in Indonesia 25 of which are controlled by high-class entrepreneurs. Meanwhile, indigenous communities that have relied on forest resources and pursuing timber for generations can no longer do so. Prominent

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1 Iwan Erar Joesoef, "Pemberian Konsesi Kepada Investor Di Atas Tanah Adat Dan Eksistensi Hukum Adat.," *Jurnal Hukum dan Peradilan* 10, no. 3 (2021): 361–79.

2 Bambang Daru Nugroho, *Hukum adat: hak menguasai negara atas sumber daya alam kehutanan dan perlindungan terhadap masyarakat hukum adat* (Refika Aditama, 2015).

entrepreneurs and state-owned enterprises monopolize the forestry business, authorized and permitted by forestry laws and regulations that further restrict the rights of these local community to participate in forest management. Additionally, forestry regulations prevent the indigenous people from managing forest resources, as their traditional practices are deemed obstacles to infrastructure development. Activities such as forest encroachment, poaching, and shifting cultivation are considered harmful and used as justification for their exclusion.[3] The Forest Use Agreement policy, part of Consensus-based Forest Land-Use Planning (TGHK) by the Ministry of Forestry, covers approximately 133.7 million hectares of Indonesian forest land. Its primary goal is to help the government secure new funds by granting concessions, mainly for oil palm plantations and mining. However, data from The National Commission of Human Rights (Komnas HAM), The Alliance of Indigenous Peoples of the Archipelago (AMAN), and Sawit Watch,[4] indicate that this policy has led to approximately 500-800 disputes between indigenous communities and business entities, including state-owned enterprises. The heavy involvement of capital has further exacerbated conflicts over land use and rights.

Academics contend that the environmental legal norms outlined in Law Number 11 of 2020 on Labor Creation (Omnibus law) share similarities with Law Number 32 of 2009 on Environmental Protection and Management, PPLH Law. However, these experts argue that the Labor Creation Law (Indonesia: UU Cipta Kerja) diminishes the community's role compared to the legal framework established by the PPLH Law.[5] One significant amendment in the Labor Creation Law is the narrowed definition of "community," restricting it solely to the affected community and thereby limiting broader community representation.[6] In contrast, the PPLH Law recognizes the involvement of environmental observers, specifically Non-Governmental Organizations (NGOs), highlighting a more inclusive approach to

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[3] *Ibid.*

[4] Sukirno, *Politik hukum pengakuan hak ulayat* (Prenada Media, 2018).

[5] Richard T Corlett, "The Anthropocene concept in ecology and conservation," *Trends in ecology & evolution* 30, no. 1 (2015): 36–41.

[6] Upendra Baxi, "Towards a climate change justice theory?," *Journal of human rights and the environment* 7, no. 1 (2016): 7–31.

environmental governance.[7] Article 26 of the PPLH Law requires community involvement in the proponent's Environmental Impact Assessment (EIA), emphasizing transparent information dissemination and prior notification. The community, as defined, includes affected communities, environmentalists, and those impacted by decisions in the EIA process.[8] However, the Labor Creation Law changes eliminates the roles of environmental experts and those impacted by it. The establishment of the Labor Creation Law seeks to simplify and harmonize legal regulations, including the Environmental Law Cluster, aiming for greater efficiency.[9] However, its implementation presents a paradox, contradicting principles of justice and altering the positive law of the Protection Law and Environmental Management (PPLH) in a manner deemed extreme by scholars, rendering the conflict between positive law and justice intolerable, following Gustav Radbruch's perspective.[10]

A critical issue arises in the licensing domain. The Labor Creation Law no further requires environmental authorization a prerequisite for business licenses, allowing activities to proceed even without issued or pending environmental permits. In contrast, the Legis ratio of environmental permits emphasizes streamlined processes and effective supervision.[11] Furthermore, the changes to the Environmental Law in the Labor Creation Law is criticized for sidelining environmental protection. Assertions suggest that the amendments primarily facilitate investment

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7 Hidayat Rofiq, "Guru Besar FHUI: UU Cipta Kerja Sektor Lingkungan Tidak Lebih Baik Dibanding UU PPLH," hukumonline.com, October 28, 2020, https://www.hukumonline.com/berita/a/guru-besar-fhui--uu-cipta-kerja-sektor-lingkungan-tidak-lebih-baik-dibanding-uu-pplh-lt5f981318c8f7d/.

8 Republic of Indonesia, Law Number 32 of 2009 concerning Environmental Protection and Management, (Undang-Undang Nomor 32 Tahun 2009 tentang *Perlindungan dan Pengelolaan Lingkungan Hidup*), October 3, 2009, https://peraturan.bpk.go.id/details/38771/uu-no-32-tahun-2009.

9 Republic of Indonesia, Law Number 11 of 2020 concerning Job Creation, (*Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja*), November 2, 2020, https://peraturan.bpk.go.id/Details/149750/uu-no-11-tahun-2020.

10 Frank Haldemann, "Gustav Radbruch vs. Hans Kelsen: a debate on Nazi law," *Ratio juris* 18, no. 2 (2005): 162–78.

11 Roni Sulistyanto Luhukay, "Penghapusan Izin Lingkungan Kegiatan Usaha Dalam Undang Undang Omnibus Law Cipta Kerja," *Jurnal Meta-Yuridis* 4, no. 1 (2021).

and business processes, leaving unresolved environmental concerns.[12] The central government's assumption of authority from local governments in environmental impact assessment through the EIA policy diminishes local autonomy. This shift risks central government policies neglecting regional characteristics, potentially leading to unforeseen consequences, especially in industrial development that disregards local natural conditions.[13]

The elimination of Section 38 from the Environmental Law within the Labor Creation Law raises normative concerns as it implies that EIA decisions cannot be annulled through the courts. This alteration, where EIA preparation involves only affected communities without the engagement of environmental NGOs, posing challenges in aligning with the United Nations-endorsed Guiding Principles on Business and Human Rights. One pillar of these principles emphasizes corporate responsibility in respecting human rights, which involves preparing an EIA that avoids, reduces, or prevents negative impacts from corporate operations. The omission of key stakeholders in the EIA process threatens the comprehensive implementation of human rights principles and may lead to unaddressed negative consequences associated with corporate activities.[14]

We must examine the above environmental issues in our paradigm as Anthropocene humans, recognizing humanity's profound ability to shape nature. However, it is crucial to question who holds this power to influence nature and how it is constructed. Is there an underlying power of capital at play?[15] In this context, state-owned enterprises (BUMN), as legal entities representing the government in fulfilling the mandate of Article 33, paragraphs (2) and (3) of the 1945 Constitution, have

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[12] Nila Amania, "Problematika undang-undang cipta kerja sektor lingkungan hidup," *Syariati: Jurnal Studi Al-Qur'an dan Hukum* 6, no. 02 (2020): 209–20.

[13] Ary Fatanen, "Eksistensi kewenangan daerah dalam perlindungan dan pengelolaan lingkungan hidup pasca diterbitkannya undang-undang cipta kerja," *Khazanah Hukum* 3, no. 1 (2021): 1–7.

[14] Nation U, "The UN Guidenbook," April 7, 2021, https://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf.

[15] Jeremy Baskin, "Paradigm dressed as epoch: The ideology of the Anthropocene," *Environmental values* 24, no. 1 (2015): 9–29.

significantly deviated from the spirit set out in the constitution. Instead of serving the greatest prosperity of the people, their actions increasingly reflect a deviation from this fundamental principle. Considering the numerous cases of SOEs causing harm to the state and, by extension, to the people it is evident that the constitutional spirit has yet to be fully realized. in 2020, cases involving SOEs were recorded to have resulted in significant state losses. These cases include PT GI (Persero) Tbk, PT JS Insurance (Persero), and PT ASB (Persero), all related to mismanagement of companies that harmed the state. Of the 53 recorded corruption-related cases, only four have been disclosed, while 49 remain undisclosed.[16] Several state-owned companies implicated in corruption cases have yet to be investigated. Notably, most of the SOEs companies involved in the case are mostly Persero (limited liability) entities. According to SOE law[17], private partners can control this form of Persero companies by 49% with a majority of government capital of at least 51%. However, most problems with the Persero form of SOEs must be better managed by private partners as shareholders. Many cases involve the mixing of business and public services.[18] This overlap is frequently done by directors and management assuming dual roles, deviating from the intended function of SOEs. This is a deviation from the role of SOEs, which used to have a dual role in fulfilling economic value and public services by the SOE law. However, the distinction between public services and fulfilling economic value needs to be clarified, leading to many directors and management combining public services and business.[19]

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[16] Lokadata.id, "Baru 4 Terungkap Daftar Kasus Korupsi BUMN Masih Panjang," Lokadata.id, February 11, 2021, https://lokadata.id/artikel/baru-4-terungkap-daftar-kasus-korupsi-bumn-masih-panjang.

[17] Republic of Indonesia, Law Number 19 of 2003 concerning State-Owned Enterprises, (*Undang-Undang Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara*), June 19, 2003, https://peraturan.bpk.go.id/Details/43919/uu-no-19-tahun-2003

[18] Flavia Massuga dkk., "Plastic waste and sustainability: reflections and impacts of the Covid-19 pandemic in the socio-cultural and environmental context," *Revista De Gestão Social E Ambiental* 16, no. 1 (2022): e02860–e02860.

[19] Maizal Walfajri, "Erick Thohir temukan 53 kasus korupsi di perusahaan BUMN," Kontan.co.id, July 3, 2020, https://nasional.kontan.co.id/news/erick-thohir-temukan-53-kasus-korupsi-di-perusahaan-bumn.

As a result of this combining of public service and business, many SOEs directors and management members have been implicated in cases related to corruption offences, monopolistic practices, and unfair business competition, leading to significant state losses. In addition to monopolistic practices and unfair business competition, SOEs have also been involved in government procurement cases that misuse the state budget public funds intended for the nation's welfare. This has further contributed to the high number of directors and management figures implicated in corruption cases. One notable example is the corruption case involving an investment in the Basker Manta Gummy Block, Australia, which resulted in a state loss of IDR 568.066 billion.[20]

Several previous studies have explored the relationship between state-owned enterprises (SOEs), privatization, natural resource management, and environmental governance in Indonesia. These studies provide valuable insights into the challenges of corporate responsibility, legal gaps, and the impact of concession policies on indigenous communities. This research builds upon these findings by integrating the John Ruggie Principles (Protection, Respect, and Restoration) into Indonesia's legal framework for environmental law enforcement and corporate accountability. The following are five key studies relevant to the research of Colchester (2013).[21] This comprehensive report investigates the expansion of the oil palm industry in Southeast Asia, focusing on its impact on indigenous communities and the environment. The authors document numerous cases where large-scale land acquisitions for oil palm plantations have led to conflicts, displacement of local populations, and significant biodiversity loss. The study underscores the lack of Free, Prior, and Informed Consent (FPIC) in land deals, resulting in the marginalization of indigenous peoples. It calls for the adoption of more robust legal frameworks that recognize and protect the rights of these communities, aligning with the Protection and

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[20] Nasional Tempo, "Kecewa Putusan Hakim Karen Agustiawan Ucapkan Takbir," Tempo.co, November 12, 2021, https://nasional.tempo.co/read/1213441/kecewa-putusan-hakim-karen-agustiawan-ucapkan-takbir/full&view=ok.

[21] Colchester, Marcus, and Sophie Chao, eds. *Conflict or consent?: The oil palm sector at a crossroads*. The Forest Peoples Programme, 2013.

Respect pillars of the John Ruggie Principles. Santoso (2020)[22]. In this paper, Santoso examines the complexities surrounding land ownership rights within joint partnerships in Indonesia. The study highlights how privatization and joint ventures often lead to ambiguous land rights, which can be exploited by corporations to the detriment of local communities. The legal ambiguities facilitate practices that may bypass environmental regulations and community consent, exacerbating social inequalities. Santoso advocates for legal reforms to clarify land ownership rights and ensure that privatization efforts do not undermine the constitutional mandate that natural resources should serve the public good. According to the research of Jannah (2021)[23], this study explores an ongoing agrarian conflict between the Batin Baringin Sakai indigenous community and a corporate entity in Riau Province. The conflict arises from overlapping land claims, where state-issued concessions to corporations encroach upon customary lands. The authors detail the socio-legal challenges faced by the indigenous community, including inadequate legal recognition of their land rights and limited access to justice. The study recommends integrating international human rights standards, such as the John Ruggie Principles, into national laws to protect indigenous land rights and promote equitable resource management. According to the research of Dhiaulhaq (2021)[24], this report presents an extensive analysis of conflicts arising from palm oil expansion in Indonesia. The authors evaluate various conflict resolution mechanisms employed to address disputes between local communities and palm oil companies. The findings indicate that existing mechanisms often lack effectiveness due to power imbalances, insufficient legal support for community claims, and

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[22] Santoso, Catharina Mulyani. "Ownership of land right for joint partnership in Indonesia." In *International Conference on Law, Economics and Health (ICLEH 2020)*, pp. 429-431. Atlantis Press, 2020.

[23] Jannah, Raundoh Tul, Endro Legowo, Achmed Sukendro, and Rizky Budi P. Sulton. "Agrarian Conflict Resolution in the Strategic Perspective of National Defense: The Case of Batin Baringin Sakai Customary Community." *BHUMI: Jurnal Agraria dan Pertanahan* 8, no. 2 (2022): 245-265.

[24] Berenschot, Ward, Ahmad Dhiaulhaq, and O. Hospes. "Palm oil expansion and conflict in Indonesia: An evaluation of the effectiveness of conflict resolution mechanisms." (2021).

corporate dominance. The study suggests that incorporating the Remedy pillar of the John Ruggie Principles into Indonesia's legal framework could enhance the effectiveness of conflict resolution by ensuring access to justice and remediation for affected communities. According to Lucas (2013)[25], this article examines the interplay between land laws, state policies, and local communities in Indonesia. The authors argue that legal frameworks governing land and natural resources often prioritize corporate interests and state-led development over the rights and welfare of local populations. This misalignment leads to environmental degradation and social injustices. The study advocates for legal reforms that integrate international human rights principles, such as the John Ruggie Principles, to ensure that natural resource exploitation aligns with environmental sustainability and social equity.

These five studies highlight critical issues in natural resource management, corporate accountability, and legal enforcement in Indonesia. They collectively demonstrate how privatization, weak regulatory frameworks, and conflicts of interest have led to environmental and social injustices. However, none of these studies have explicitly examined how the John Ruggie Principles can be integrated into Indonesia's legal system to improve environmental governance.

The problems that will be studied in this research focus on discussing how the concept of exploitation from the John Ruggie principles in the privatization of State-Owned Enterprises (BUMN) and how legal reform efforts against regulations on the exploitation of natural resources in Indonesia. The research endeavors to demonstrate that globally recognized principles are inherently a part of positive law, even if not explicitly outlined.[26] The novelty of this research lies in its effort to integrate the three-pillar guidelines of Protection, Respect, and Restoration into Indonesia's legal framework, particularly in the prosecution of environmental violations. While previous studies have examined corporate social responsibility (CSR) and environmental law enforcement, they have not systematically explored how internationally

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[25] Lucas, Anton, and Carol Warren. "The land, the law, and the people." *Land for the people: The state and Agrarian conflict in Indonesia*, pp. 1-39. Ohio University Press/Swallow Press, 2013.

[26] Wirjono Prodjodikoro, "Perbuatan Melawan Hukum," *Jakarta: Sumur Bandung*, 1984.

accepted principles can be translated into domestic legal mechanisms. This research will fill that gap by providing a legal model that enables stronger enforcement of environmental regulations, particularly against SOEs that fail to uphold environmental standards. The significance of this study extends beyond legal theory as it has practical implications for policy reform, governance, and environmental justice. By demonstrating how the John Ruggie Principles can be enforced within Indonesia's existing legal framework, this research contributes to strengthening corporate accountability, protecting indigenous land rights, and promoting environmental sustainability. Ultimately, these findings will serve as a reference for policymakers, legal practitioners, and human rights advocates seeking to create a more just and responsible regulatory system for natural resource management.

Method

This research employs a juridical normative method, incorporating a historical approach to privatization in Indonesia and an examination of the John Ruggie Principles, which emphasize public and private responsibilities for human rights under the framework of "Protect, Respect, and Remedy". The study systematically collects research data from relevant journals, legal regulations, and official news sources, including verified social media reports, while also utilizing theoretical analysis drawn from previous academic studies and scholarly articles to establish a comprehensive understanding of the legal and economic aspects of privatization.[27] Using a qualitative legal approach, the study integrates normative legal analysis with Economic Analysis of Law (EAL), evaluating legal regulations based on economic principles while ensuring that justice, utility, and efficiency remain central to policy outcomes. The historical approach traces the evolution of privatization policies in Indonesia, examining their effects on legal and economic structures, while the John Ruggie Principles provide a contemporary legal framework for assessing corporate responsibilities in human rights

[27] Nadezhda Belova dkk., "Opportunities of green lending to finance environmental projects to achieve the principles of sustainable development," *Journal of Law and Sustainable Development* 11, no. 1 (2023): e0268–e0268, https://doi.org/https://doi.org/10.37497/sdgs.v11i1.268.

and environmental protection, particularly regarding State-Owned Enterprises (SOEs) and large-scale privatization initiatives. The study applies Posner's Economic Analysis of Law, which asserts that law should be created and applied to maximize overall social utility rather than merely serving economic interests, ensuring that privatization laws align with economic efficiency and social justice. However, despite its comprehensive approach, the research faces several limitations, including restricted access to confidential government reports, the complexity of integrating international human rights standards into Indonesian domestic law, and the challenges of applying economic models to legal frameworks, particularly in evaluating social justice impacts. By incorporating legal, historical, and economic perspectives, the study contributes to legal scholarship and policymaking, advocating for a more just and accountable regulatory approach to corporate governance, state oversight, and natural resource management. Through the application of the John Ruggie Principles[28] and Economic Analysis of Law[29], this research seeks to bridge the gap between international human rights standards and national privatization policies, ensuring that economic progress does not come at the expense of legal integrity and environmental sustainability.

Result and Discussion

A. The Concept of Exploitation in John Ruggie's Principles and the Privatization of State-Owned Enterprises (SOEs)

The United Nations has approved guiding principles for the company's activities, emphasizing the importance of not violating human rights, including those pertaining to environmental law. These principles are outlined in the publication "The Guiding Principles on

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[28] Global Compact Network Netherlands, Lembaga Studi, dan Advokasi Masyarakat, "Bagaimana Menjalankan Bisnis Dengan Menghormati Hak Asasi Manusia Sebuah Alat Panduan Bagi Perusahaan," *Edited by Wahyu Wagiman dan Widiyanto. Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM)*, 2014.

[29] Fajar Sugianto, "Economic Analysis of Law: Seri Analisis Ke-Ekonomian tentang Hukum," *Jakarta: Prenada Media Group*, 2013.

Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework." They are grounded in recognition of:[30]

(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.*

John Ruggie asserts that the United Nations is not the command offices for its member nations, stating, "The United Nations is not a centralized command and control system that can impose its will on the world, indeed it has no "will" apart from that with which member States endow it."[31]

To effectively implement the Guiding Principles for Business and Human Rights, business actors must undertake human rights due diligence.[32] In the Indonesian context, effective implementation of these principles necessitates a robust commitment from the government to integrate the John Ruggie Principles in national law, political legislation, and regional regulations on Business and Human Rights. President Joko Widodo signed Presidential Regulation Number 75 in 2015, outlining The National Action Plan on Human Rights 2015-2019 (RAN HAM), on June 22nd. The objectives of RAN HAM are geared towards enhancing human rights are respected, protected, accomplished, enforces, and promoted at all levels of Indonesian society. The includes the examination of religious belief, morals, customs, security, public order and national interest. Such holistic efforts are crucial for nurturing

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30 Rights U. N., "Guiding Principles on Business and Human Right," April 7, 2021, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

31 John Ruggie, "Protect, respect and remedy: A framework for business and human rights," *Innovations: Technology| Governance| Globalization* 3, no. 2 (2008): 189.

32 Wahyu Wagiman, "Prinsip-prinsip Panduan untuk Bisnis dan Hak Asasi Manusia: Kerangka Perserikatan Bangsa-Bangsa "Perlindungan," *Penghormatan, dan Pemulihan,(ELSAM, Jakarta, 2014)*, 2014.

a society where human rights are esteemed, safeguarded, and upheld across all dimensions of business and governance.

Moreover, the National Commission on Human Rights (Komnas HAM) established a National Action Plan for Human Rights in 2017 (RAN HAM), which currently operates within moral and social frameworks rather than within the legal framework. Within this plan, the Indonesian government has acknowledged and embraced the United Nations Guiding Principles, demonstrating a commitment to incorporating these principles into the broader human rights agenda. In the RAN HAM, the Indonesian government has endorsed the United Nations Guiding Principles for Business and Human Rights, which articulate:[33] *""Each corporation bears the responsibility to uphold human rights by: (1) Formulating policies or strategies that integrate human rights; (2) Conducting due diligence to assess the impact of the company's activities on human rights; (3) Establishing mechanisms for redress for individuals and communities affected by the corporation's activities".*

Importantly, RAN HAM argues that appropriate for victims of abuses of human rights can be provided through judicial and non-judicial procedures. State responsibility, as part of the John Ruggie principles, constitutes the initial aspect of the principle—the state obligation. The government is obligated to establish a framework to offer guidance to domestic companies, aiding them in integrating the John Ruggie principles into their business activities. This entails providing guidance to ensure compliance with human rights standards in their operations. By doing so, the government plays a pivotal role in fostering an environment where businesses prioritize and uphold human rights. Additionally, it underscores the importance of accountability and transparency in business practices. Through collaboration between the government and domestic companies, the aim is to create a culture of respect for human rights that permeates all aspects of business conduct.[34] In this case, nevertheless the state still has the obligation of ensuring that

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[33] Institution N. C., "National action plan on Busines and Human Rights," April 8, 2021, https://www.komnasham.go.id/files/20180214-national-action-plan-on-bussiness-$0PU5O0.pdf.

[34] Muhamad Ramdan Andri Gunawan Wibisana, *Penegakan hukum lingkungan melalui pertanggungjawaban perdata*, First edition (Jakarta: Badan Penerbit FH UI, 2018), https://lib.ui.ac.id/detail?id=20512154&lokasi=lokal.

the private sector is more human rights compliant- minded and friendly.[35]

Ensuring fair and equitable welfare is central to Erwiningsih's perspective,[36] emphasizing the absolute state control of natural resources. Article 33 of the 1945 Constitution reinforces this principle, stating that crucial branches of production influencing many lives must be under state control. It mandates state control over natural resources, including land and water, for the ultimate prosperity of the people. Economic democracy is also specified, guided by principles of togetherness, efficiency, fairness, sustainability, environmental perspective, independence, and maintaining a balance between progress and national economic unity. In circumstances where private entities handle natural resource concessions for public interest, beyond the government's capacity, Adisapoetra deems such concessions essential.[37] Stringent fulfillment of requirements for these concessions is emphasized by Efendi.[38]

In Latin American nations like Colombia, Panama, Venezuela, and Mexico, concessions are treated as Public Contracts and subject to legal regulation.[39] Legal frameworks often include the "economic equilibrium" doctrine, allowing agreements to reshape contractual balance.[40] Concessions are tools to introduce competition in infrastructure industries, breaking away from monopoly markets. Notably, state-owned enterprises (BUMN) can also receive concessions

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35 Allan Kanner, "The public trust doctrine, parens patriae, and the attorney general as the guardian of the state's natural resources," *Duke Envtl. L. & Pol'y F.* 16 (2005): 57.

36 Winahyu Erwiningsih, *Hak menguasai negara atas tanah* (Universitas Islam Indonesia, 2009).

37 R. Kosim Adisapoetra, *Pengantar Ilmu Hukum Administrasi Negara*, Cet. 6 (Jakarta: PT. Pradnya Paramita, 1987).

38 Lutfi Effendi, *Pokok Pokok Hukum Administrasi* (Bayumedia Pub., 2004).

39 Quirico G Serina, "An overview of the legal aspects of concession agreements in Latin America," *ILSA J. Int'l & Comp. L.* 5 (1998): 371.

40 Klaus Peter Berger, "Renegotiation and adaption of international investment contracts: The role of contract drafters and arbitrators," *Vand. J. Transnat'l L.* 36 (2003): 1347.

if deemed viable by the government, positioning concessions as a governmental policy tool.[41,42]

Historically, the government carries out the planning, construction, operation, and maintenance of economic infrastructure. This understanding is based on the concept that economic infrastructure is a (*public good*)[43], meaning that one party's consumption does not reduce others' consumption, and all people have equal access and rights to use the infrastructure without having to pay. With such characteristics, infrastructure delivery is naturally monopolized by the public sector (*natural monopoly*).[44]

The notion of privatization did not emerge in the political landscape until the late 1970s and early 1980s. It took on two meanings following the ascent of conservative governments in the UK and the US: (a) any transfer of activities or functions from the state to the private sector; (b) more specifically, any shift from public to private provision of goods and services.[45] The process of privatization is distinct from the process of increased competition. Privatization and liberalization, as interconnected processes, must be carefully distinguished. Liberalization entails reducing government control and opening industries to competition forces. As related processes, privatization and liberalization must be carefully distinguished. Liberalization means the reduction of government control. It refers to opening an industry to the forces of competition. Deregulating a public monopoly means a form of privatization and a liberalization process. On the whole, it is possible to undertake the process of privatization without the process of liberalization; however, it is also possible to liberalize without privatization. This means introducing competition in the public sector

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41 Michel Kerf, *Concessions for infrastructure: A guide to their design and award*, vol. 23 (World Bank Publications, 1998).

42 P. Craig, *Administrative Law* (London: Sweet & Maxwell, 2008).

43 Emanuel S Savas, "Privatization: The key to better government," *Chatham House*, 1987.

44 *Loc.Cit., Kerf.*

45 Sheila B.. Kamerman dan Alfred J.. Kahn, *Privatization and the welfare state* (Princeton University Press, 1989).

without transferring ownership. It is possible to have a nationalization process and a liberalization process simultaneously.[46]

Many aspects of the meaning of privatization remain unclear. It is a complex meaning of the sale of public enterprises to private parties. Various alternative forms of privatization can be identified. The form of privatization to be used depends on the activities of the privatization process and the particular circumstances of individual cases.[47] In Indonesia in 1987, the government tried to allow private investors to participate in the management of toll road infrastructure at a time when the effects of privatization were sweeping the world. In Indonesia, the winning private party establishes a *joint venture* with a state-owned company specializing in toll road infrastructure, PT Jasa Marga Persero (Persero) Tbk. and the government grants a concession to the joint venture.[48]

B. Legal Reform Efforts Against Regulation on Natural Resources Exploitation in Indonesia

Exploitation of natural resources (SDA) is a very strategic sector, which contributes greatly to the economy but it does not cause environmental, social and human rights impacts in practice. State efforts in the case of the government that has the authority to issue regulations as an effort to reform the law regarding exploitation activities are an urgent need to create a balance in growing the economy and ecological and social sustainability for communities affected by the use of natural resources.

The existence of regulations regarding MPR Decree No. IX/MPR/2001 provides normative guidelines for natural resource law, emphasizing the importance of adhering to principles when implementing agrarian reform and managing natural resources. The decree underscores the significance of

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[46] Hasbuddin Khalid, "The Nature of the Tender Implementation for the Construction of the Di Irrigation Network. Gilireng Kiri, Wajo Regency in View from the Aspect of Contract Law," Revista De Gest o Social E Ambiental 17, no. 6 (2023): 1–12.

[47] Dhiratayakinant Kraiyudht, "Privatization: An Analysis of the Concept and its Implementation in Thailand," *Bangkok, Thailand Development Research Institute*, 1989.

[48] Iwan Erar Joesoef, *Jaminan pemerintah (negara) atas kewajiban hutang investor dalam proyek infrastruktur: studi kasus proyek jalan tol* (Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005).

recognizing, honoring, and protecting indigenous peoples and the nation's cultural uniqueness in terms of natural resources. Here, natural resources serve a dual role, addressing both environmental and human rights concerns. The decree aligns with Principle 1 of the 1972 Stockholm Declaration, asserting the maintenance of a healthy and pleasing environment as a fundamental human right. These principles are incorporated into the 2009 Environmental Law and the 1999 Human Rights Law, forming foundational rules of environmental law and recognized elements of fundamental human rights to a good and healthy environment. This alignment with constitutional principles is evident in Article 28 H paragraph (1) of the 1945 Constitution, affirming everyone's right to live in physical and spiritual prosperity, possess suitable living arrangements, enjoy a good and healthy living environment, and be entitled to obtain health services. Consequently, the decree establishes a comprehensive framework that harmonizes environmental protection with human rights within the legal landscape.

The notion that even environmental issues may be overlooked for the sake of human wellbeing stems from the conflict between economic and environmental objectives. However, increasing awareness of the human lifespan challenges this assumption. Kuehn emphasizes that environmental justice encompasses social justice, given the unique interaction between people and the environment. Hence, if the environment in which people reside is disturbed or harmed, achieving social justice becomes challenging.[49]

However, in implementing the exploitation of natural resources in the field, legal problems cause losses for both the government and the community, society and country. These legal problems include:

a. In practice, the state's control over natural resources is often entrusted to large-scale corporations and state-owned entities without discussion or obtaining the permission of local inhabitants or indigenous communities (MHA). As a result, concessionaires accumulate funds and wealth over natural resources is expanding, leaving MHA marginalized. Concessionaires are given priority in the profitable management of natural resources, while MHA's involvement is limited to labor absorption by the concessionaires.
b. Forestry resources, governed by 579 Forest Tenure Rights (HPH) concessions in Indonesia, are controlled by a limited group of

[49] Leo Jimmi Agustinus, F X Adji Samekto, dan Budi Ispriyarso, "Towards a fairer future: examining environmental permits in Indonesia and Sweden through the lens of sustainable development and equity," *Journal of Law and Sustainable Development* 11, no. 2 (2023): e284–e284.

individuals—25 high-end entrepreneurs. Meanwhile, indigenous peoples, whose livelihoods depend on forest resources and have engaged in timber business for generations, find themselves unable to continue due to the monopolization of the forestry business by prominent entrepreneurs and state-owned enterprises. This monopoly is authorized by forestry laws and regulations, which freeze MHA's rights to manage forests. Under forestry regulations, MHA cannot participate in forest resource management due to traditional characteristics deemed hindrances to development, such as forest encroachment, poaching, and shifting cultivation, considered negatively.

c. Customary land disputes arise from government policies, like the Ministry of Forestry's Forest Use Plan (TGHK), designating around 133.7 million hectares of Indonesian land as forest areas. This classification as State Forest enables the government to secure funds through concession permits for oil palm plantations and mining. Consequently, numerous conflicts between the MHA and private enterprises, especially state-owned enterprises, have ensued. Data from Komnas HAM, the Alliance of Indigenous Peoples of the Archipelago (AMAN), and Sawit Watch suggest there are around 500-800 cases. These conflicts underscore the challenges faced by indigenous communities in protecting their customary land rights amidst government policies that prioritize economic interests, leading to ongoing tensions and legal battles.[50]
d. In Indonesia, disputes over the exploration of indigenous forests have emerged with various underlying issues. First, there are concerns regarding land utilization policies, namely government policies, land grabs, forest expansion, and conservation regions.[51] Second, disputes are associated with MHA's efforts to reclaim green land from the government and business sectors caused by forest decrease and deforestation, resulting in increased emissions in Central Kalimantan.[52] Third, the marginalization of Indigenous Peoples in accessing and controlling customary forests has led to disputes

[50] Sukirno, *Politik hukum pengakuan hak ulayat* (Prenada Media, 2018).

[51] Ernan Rustiadi dkk., "Land use and spatial policy conflicts in a rich-biodiversity rain forest region: The case of Jambi Province, Indonesia," *Exploring Sustainable Land Use in Monsoon Asia*, 2018, 277–96.

[52] Rini Astuti dan Andrew McGregor, "Indigenous land claims or green grabs? Inclusions and exclusions within forest carbon politics in Indonesia," *The Journal of Peasant Studies* 44, no. 2 (2017): 445–66.

between large-scale forest establishing industries in Sumatra.[53] Lastly, disputes are linked to unfair government policies for MHA in Jambi Province regarding private participation in oil palm plantation development, resulting in their marginalization and legal uncertainty over land ownership.[54]

Some of the factors contributing to the detrimental impacts of natural resource exploitation on society and the state in this study include:

a. Privatization and liberalization of state-owned enterprises

Looking at its historical development, in 1969, the Government regulated the forms and models of SOEs through Law Number 9 of 1969 on the Stipulation of Government Regulations in lieu of Law Number 1 of 1969 on the Forms of State Enterprises into Law. This law categorized SOEs into three distinct models: Departmental Enterprise (Perusahaan Jawatan), Public Company (Perum), and Limited Liability Company (Persero). By the 1980s, the performance of SOEs in Indonesia had deteriorated, prompting the government to implement policies aimed at improving the SOEs efficiency. In 1988, Presidential Instruction No. 5 of 1988 was issued, followed by Decrees of the Minister of Finance No. 740 and No. 741 of 1989 for the purpose of improving the performance of SOEs by making privatization policy guidelines.[55] Finally, under Article 9 of Law No. 19/2003 on State-Owned Enterprises (SOE Law), SOEs were formally categorized into the form of Perum and Persero.

In 1997, the pressure for privatization of state-owned enterprises intensified through a negotiated agreement between the Indonesian government, the International Monetary Fund (IMF), and the World Bank. As a result, 12 SOEs were privatized to increase the national budget as part of Indonesia's commitment to the IMF agreement. The SOEs privatization had already gained momentum in 1994 when the government introduced a foreign direct investment policy under Government Regulation No. 20 on Foreign Direct

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[53] Ahmad Dhiaulhaq dan John F McCarthy, "Indigenous rights and agrarian justice framings in forest land conflicts in Indonesia," *The Asia Pacific Journal of Anthropology* 21, no. 1 (2020): 34–54.

[54] Dewi Nilakrisna dkk., "Social Conflicts Between Oil-Palm Plantation Company and Indigenous People in Jambi Province," *Journal of Tropical Life Science* 6, no. 2 (2016): 113–17.

[55] Safri Nugraha, "Privatisation of state enterprises in the 20th century, a step forwards or backwards?," 2002.

Investment. However, the SOE privatization process reached its peak in 1998 with the establishment of the Ministry of SOEs. Following this, the Government Regulation No. 50 of 1998 facilitated the transfer of the management government transferred of 159 out of 164 government-owned companies to the Ministry of SOEs, paving the way for further issuance of several SOE privatization policies. This privatization policy also extended to the public offering of SOEs including, among others: PT Persero Semen Gresik, with 35% of shares offered in 1991; PT Persero Indosat, with 35% of shares offered in 1994, and PT. Persero Telekomunikasi, with 20% or shares offered in 1995.

This combined capital structure in the history of privatization of SOEs in Indonesia is said to have entered liberalization. The liberalization of SOEs in the form of Persero can be seen in the case of Indonesia in 1987, when the government opened opportunities for private investors to participate in toll roads management. At that time, a wave of privatization was sweeping the world.[56] In Indonesia, privatization can be observed in the process of privatization of toll road infrastructure development in the pattern of (public-private partnership).[57] However, in the natural resources sector, the privatization pattern differs. For instance, oil and gas resources are managed under a "Production Sharing Contract," while mining operates under a "Mining Rights" system. Regulations that facilitate private sector involvement in managing natural resources include Law of the Republic of Indonesia No. 22 of 2001 on Oil and Gas, Law of the Republic of Indonesia No. 19 of 2003 on State-Owned Enterprises, Law of the Republic of Indonesia No. 7 of 2004 on Water Resources and Law of the Republic of Indonesia No. 30 of 2009 on Electricity.

There are many cases where SOEs (BUMN Persero) combine business activities with public services. This is carried out by the management of Persero SOEs, who play a dual role in fulfilling both economic value and public services in accordance with BUMN laws.[58] In practice, it turns out that the distinction between public

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[56] Loc.Cit., Savas, "Privatization: The key to better government."

[57] Op.Cit., Joesoef, Jaminan pemerintah (negara) atas kewajiban hutang investor dalam proyek infrastruktur: studi kasus proyek jalan tol.

[58] Agus Riyanto dan Iwan Erar Joesoef, "Penugasan Badan Usaha Milik Negara Dalam Pengusahaan Jalan Tol: Studi Penugasan PT. Hutama Karya (Persero)

services and fulfilling economic value is often unclear. As a result, many SOEs directors and management team muddle up public services responsibilities and business operations, leading to cases involving both corruption offenses, monopolistic practices, and unfair business competition (anti-trust violation), ultimately causing state losses.[59]

From the cases of Persero SOEs, which have a composition of both government-owned and private shares, demonstrate a merge of business affairs and public services. This is carried out by the management of BUMN Persero, which assumes a dual role in fulfilling both economic value and public services in accordance with the BUMN Law. However, this management approach in Persero SOEs clearly violates Article 10, paragraph (1) the Good Governance Law or AUPB Law as it contravenes the general principles of *good governance*. These principles include: (a) the principle of legal certainty; (b) the principle of expediency; (c) the principle of impartiality; (d) the principle of accuracy; (e) the principle of not abusing authority; (f) the principle of openness; (g) the principle of public interest; and (h) the principle of good service.

b. Interpretation of state finance and state losses

According to Article 1, number 1 of the State Finance Law[60], State Finance encompasses all rights and obligations of the state that can be valued in money or goods, which may be utilized as state property. Additionally, a State Company is defined as a business entity whose entire or partial capital is owned by the Central Government. As per the State Finance Law, State Finance is described as the wealth managed by a state or region itself or by other parties. This wealth can manifest in the form of money and assets that are distinguishable from state assets and can be transferred into state or regional companies. Meanwhile, Article 1, point 1 of the Law on SOEs, characterizes SOEs as business entities of which capital is predominantly or entirely owned by the state through direct

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Dalam Pengusahaan Jalan Tol Di Sumatera," dalam *National Conference on Law Studies (NCOLS)*, vol. 2, 2020, 344–79.

[59] Op.Cit., Maizal Walfajri, "Erick Thohir temukan 53 kasus korupsi di perusahaan BUMN."

[60] Republic of Indonesia, Law Number 19 of 2003 concerning State-Owned Enterprises, (*Undang-Undang Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara*), June 19, 2003, https://peraturan.bpk.go.id/Details/43919/uu-no-19-tahun-2003

investment from separated state assets. This definition has sparked divergent opinions. Professor Erman Radjagukguk[61] argues that neither the wealth of BUMN (Persero) nor BUMN (Perum), as legal entities, constitutes part of the state's wealth. This contention arises from the assertion that the "separated state assets" in SOEs solely consist of shares, meaning that the wealth of SOEs does not equate to state assets.

In contrast, another opinion aligns with the Constitutional Court Decision, which asserts that the state assets separated in state or regional companies, as assets of SOEs, remain part of state assets based on Article 2 of the State Finance Law. This interpretation emphasizes the interconnectedness between state wealth and SOE assets, as established by legal precedent.

Most of the issues in Persero SOEs stem from mismanagement by private partners as shareholders of some Persero SOE shares. Many cases involve Persero SOEs combining business affairs and public services. This practice is carried out by the Board of Directors and management of BUMN Persero, who assume dual roles in running the company. Such actions deviate from the intended role of SOEs, which previously performed a dual role to fulfil economic value as well as public services following the SOE law. In practice, the distinction between public service and fulfilling economic value become blurred, leading many SOE directors and management to merge public service and business improperly.[62]

As a result of this combining of public service and business, many directors and management of SOEs have been implicated in cases both related to corruption offences but also related to monopolistic practices and unfair business competition that result in state losses. Apart from monopolistic practices and unfair business competition, SOEs are also involved in cases of public procurement of goods and services, which involve the state budget (APBN) as public finance. This has resulted in many directors and management of SOEs being implicated in corruption cases. One significant case of the state financial losses involving BUMN (Persero) in the oil and gas energy sector is the corruption case of PT PM (Persero). The Jakarta

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[61] Loc.Cit., Riyanto dan Joesoef, "Penugasan Badan Usaha Milik Negara Dalam Pengusahaan Jalan Tol: Studi Penugasan PT. Hutama Karya (Persero) Dalam Pengusahaan Jalan Tol Di Sumatera."

[62] Op.Cit., Maizal Walfajri, "Erick Thohir temukan 53 kasus korupsi di perusahaan BUMN."

Corruption Court ruled on this case on Monday, June 10, 2019, concerning the company's investment in the Basker Manta Gummy Block, Australia which resulted in a state loss of IDR 568.066 billion.[63]

c. The Unclear Interpretation of Article 51 of the Law on Prohibition of Monopoly and Unfair Business Competition

Several studies have been conducted on SOEs that have violated the prohibition of monopolistic practices and unfair business competition. These violations stem from the management of BUMN Persero, which involves private investors participation. One example is the case of an airline company under the auspices of a BUMN, which was proven to have violated Article 5 of the Monopoly Law concerning price-fixing agreements. Another case involves the default of PT JS Insurance (Persero), a BUMN, due to irregularities in insurance management, specifically the mismanagement of customer funds through a Saving Plan scheme.[64] Additionally, there is also a case of violation of Article 17 of the Monopoly Law by PT GN, leading to sanctions imposed by the KPPU.[65]

These cases arose from the privatization policy undertaken by government due to the declining performance of SOEs, as researched by Safri Nugraha. Finally, in 1999, the Government issued a Monopoly Law that applies to all companies as business actors with the exception of SOEs. All companies as business actors with the exception of SOEs which apply to all companies as Business Actors with the exception of SOEs (State-Owned Enterprises). However, Article 51 of the Monopoly Law does not specify which types of SOEs are excluded—whether it applies to Perum (public corporations) or Persero (limited liability companies).

d. Inconsistency law of Environmental Protection Law (PPLH)

Paradoxically, globalized societies have increasingly focused on environmental aspects with the correct approach. Human rights

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[63] Loc.Cit., Nasional Tempo, "Kecewa Putusan Hakim Karen Agustiawan Ucapkan Takbir."

[64] Redhina Elfahra, "Tanggung Jawab Negara (Pemerintah) Atas Gagal Bayar Pt. Asuransi Jiwasraya (Persero): Studi Perlindungan Hukum Nasabah," *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora* 8, no. 2 (2021): 304–12.

[65] Helmi Nuky Nugroho, "Kegiatan Monopoli Badan Usaha Milik Negara Sebagai Persaingan Usaha Tidak Sehat (Studi Putusan KPPU Nomor 9/KPPU-L/2016 dan Nomor 10/KPPU-I/2016)," *Jurnal Idea Hukum* 6, no. 1 (2020).

gained prominence with the unanimous establishment of the Guiding Principles for Business and Human Rights by the UN Commission on Human Rights (UNHRC), led by John Ruggie, the special representative: the UN SPECIAL REPRESENTATIVE "Protection, Respect, and Remedy". These principles, known as the John Ruggie Principles, comprise three distinct yet interconnected pillars.[66]

i) The obligation for the state to protect human rights, where the state is obliged to protect individual privacy from human rights disregards by other individuals, including business entities;
ii) The business entities' responsibilities to uphold human rights, meaning that companies must not violate human rights that have been recognized. Internationally, by taking actions to avoid, reduce, or prevent the negative impacts of the company's activities;
iii) The need for a process for improving for victims' access to effective solutions, both through judicial and non-judicial procedures.

As a business entity committed to sustainable development in the environment, it is crucial for the company to conduct an analysis of potential human rights impacts arising from its operational activities.[67] The company's responsibility extends to robust recovery mechanisms, aiming to uphold a positive image within the community. These principles, providing practical guidance for business enterprises, underscore the importance of addressing issues that pose threats to society, particularly human rights.[68] The contemporary business landscape no longer permits passive observation of human rights protection. It is widely recognized that human rights, akin to environmental concerns, are integral aspects of

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[66] Muhamad Ramdan Andri Gunawan Wibisana, *Penegakan hukum lingkungan melalui pertanggungjawaban perdata*, First edition (Jakarta: Badan Penerbit FH UI, 2018), https://lib.ui.ac.id/detail?id=20512154&lokasi=lokal.

[67] A. N. Amanar, *United Nations Human Rights Office of the High Commissioner, Tanggung Jawab Perusahaan untuk Menghormati Hak Asasi Manusia* (Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2014).

[68] Nadezhda Belova dkk., "Opportunities of green lending to finance environmental projects to achieve the principles of sustainable development," *Journal of Law and Sustainable Development* 11, no. 1 (2023): e0268–e0268, https://doi.org/https://doi.org/10.37497/sdgs.v11i1.268.

business activities, dispelling the notion of the "privatization of human rights".[69, 70]

While the government, in accordance with the John Ruggie principles, has established a National Action Plan (RAN HAM), it requires reinforcement through legislation within Indonesia's positive law. This encompasses the obligation to protect individuals from human rights violations by third parties, including business actors. Companies are responsible to respect human rights by mitigating negative impacts from their activities and ensuring victims have access to effective remedies, encompassing both judicial and non-judicial procedures. However, the implementation of legal norms pertaining to the environment, particularly the Labor Creation Law, is deemed by academics to be inferior to the Environmental Protection and Management Law (PPLH Law). The environmental legal norms outlined in the Labor Creation Law diminish the community's role in comparison to the PPLH Law, as reflected in the amended definition of the community, which is limited to the affected community. In contrast, the PPLH Law recognizes the role of environmental observers as NGOs. Notable changes in environmental law norms include the removal of Section 38 of the PPLH Law, rendering EIA documents non-cancelable through courts. Additionally, criminal provisions related to business actors operating without environmental permits, causing damage or harm, have been eliminated. Furthermore, Article 22 of the Labor Creation Law revokes local governments of authority in assessing and determining the EIA of companies, thereby making environmental permits no longer a prerequisite for issuing business licenses. Despite its implications in development, financial aspects, and regulatory control, this move is highlighted as a concerning development in environmental governance.[71]

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[69] John Gerard Ruggie, *Just business: Multinational corporations and human rights (Norton global ethics series)* (WW Norton & Company, 2013).

[70] Wahyu Wagiman, "Prinsip-prinsip Panduan untuk Bisnis dan Hak Asasi Manusia: Kerangka Perserikatan Bangsa-Bangsa "Perlindungan," *Penghormatan, dan Pemulihan,(ELSAM, Jakarta, 2014)*, 2014.

[71] Roni Sulistyanto Luhukay, "Penghapusan Izin Lingkungan Kegiatan Usaha Dalam Undang Undang Omnibus Law Cipta Kerja," *Jurnal Meta-Yuridis* 4, no. 1 (2021).

Conclusion

SOEs in the form of Persero are often involved in violations of the prohibition of monopolistic practices and unfair business competition. Examining the history of SOE privatization in Indonesia reveals that SOE privatization in Indonesia has contributed to liberalization. The liberalization has resulted in SOEs (Persero) being managed by private management, which leads to the potential to prohibit monopolistic practices and unfair competition, while also rationally impacts the exploitation of natural resources due to privatization and liberalization factors. Another concerning factor is the data that shows the significant number of cases involving SOEs, including land disputes and corruption, which have negatively impacted both the community and the state. To address this, it is necessary to revise Article 51 of the Monopoly Law to explicitly state that the exemptions for SOEs apply only to those in the form of public companies (Perum) and not to SOEs structured as limited liability companies (Persero). Such a revision would align the Monopoly Law with the State Finance Law and SOE Law while ensuring compliance with Article 33 of the 1945 Constitution. The Perum SOE model will reinforce the Government's responsibility for managing natural resources in accordance with the *John Ruggie Principles* and good governance principles (AUPB).

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