

Prisma Application as A Measuring Instrument of Corporate Obligations to Respect Human Rights

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<p>Keywords: <i>Business and Human Rights; Due Diligent; Human Rights.</i></p> <p>DOI: <i>10.25041/fiatjustisia.v16no4.2575</i></p>	<p><i>The corporation's obligation to human rights is not a moral but a legal obligation. Although in international law, the regulation regarding this corporate obligation is at the level of the Resolution (UN Framework Protect, Respect and Remedy on Business and Human Rights/General Assembly Resolution) and not a convention which is one of the sources of law known in international law. Because many countries follow this provision, it can be categorized as a source of customary international law, which is also a source of international law. However, this paper will not discuss the UN resolution on Human Rights and Business in the sources of international law, but rather how the state implements the resolution and respects or follows the corporation.</i></p> <p><i>In September 2014, Indonesia launched the draft National Action Plan (NAP) for Business and Human Rights. Until now, the NAP has not been legalized. However, the Indonesian government has made a policy to ensure that business actors (corporations) respect human rights in running their businesses. In 2021, through the Ministry of Law and Human Rights, the Indonesian government launched an application called PRISMA (Business Risk Assessment and Human Rights). This application aims to help corporations analyze the possibility of violating human rights when they carry out their business activities. This article aims to study and analyze whether the application of PRISMA from a due diligence principal point of view can be an effective tool to measure state duty to protect and corporate compliance with human rights.</i></p>

A. Introduction

The debate of corporate responsibilities in human rights has been in existence since the early 1970s, and the first time in 1980 UN has discussed and have regulation called the norm.¹ Still, this norm cannot be applied because it does not fit with the human rights architecture with which the responsibility of human rights to its people is state obligations.² But because businesses more increasingly called to be more accountable for the rights of people who are adversely affected by their activities thus UN the resolution of the United Nations ended the discussion (which will continue for the implementation), In 2003 the UN Commission on Human Rights created the Position of Special Representative on human rights and business with the mandate, clarifies corporate responsibility standards, and elaborates on the states' role in regulating the corporation's role in the human rights system.³ John H. Ruggie has been appointed as the person in charge.⁴ By 2008, UN Protect Respect and remedy Human rights and business accepted. The representative continued their works, and in 2011 this representative regulated a guideless called UN Guidelines Principle on business and human rights.⁵

Therefore, human rights are a government obligation to all its citizens. The state is assigned to ensure the conditions needed by citizens to live their lives in dignity.⁶ However, an actor should also have such obligation because of his activities, and his economic capacity might impact nation regulation, which is called corporation or business actors.⁷

¹ Wettstein et al., "International Business and Human Rights: A Research Agenda," *Journal of World Business* 54, no. 1 (2019): 54–65, <https://doi.org/10.1016/j.jwb.2018.10.004>.

² Radu Mares, *The UN Guiding Principles on Business and Human Right* (Boston: Martinus Nijhoff Publisher, 2012), p. 86.

³ Special Representative of the Secretary-General, "Promotion And Protection Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development," *Human Right Council*, 2008, <https://media.business-humanrights.org/media/documents/files/reports-and-materials/Ruggie-1-addendum-23-April-2008.pdf>.

⁴ Daniel Augenstein, Mark Dawson, and Pierre Thielbörger, "The UNGPs in the European Union: The Open Coordination of Business and Human Rights?," *Business and Human Rights Journal* 3, no. 1 (2018): 1–22, <https://doi.org/10.1017/bhj.2017.30>.

⁵ R. Vijayarasa and M. Liu, "Fast Fashion for 2030: Using the Pattern of the Sustainable Development Goals (SDGs) to Cut a More Gender-Just Fashion Sector," *Business and Human Rights Journal* 7, no. 1 (2022): 45–66, <https://doi.org/10.1017/bhj.2021.29>.

⁶ Ifdal Kasdim, *Menjangkau Tanggung Jawab Korporasi, Eklorasi Hubungan Bisnis Dan Hak Asasi Manusia* (Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2016), p. vii.

⁷ Yitzhak Hadari, "The Choice of National Law Applicable to the Multinational Enterprise and the Nationality of Such Enterprises," *Duke Law Journal* 1974, no. 1 (1974): 1–57, <https://doi.org/10.2307/1371752>.

Moreover, the obligation of corporations on human rights is not a moral but a legal issue. Although the law follows, it does not have a convention, instead of a resolution (United Nations (UN) resolution). As international law, not recognized as a source of international law. Nevertheless, all nations implement it. Thus, it can be identified as a source of international law⁸ through Article 38 verse 2, international custom (as evidence of a general practice accepted as law), despite the discussion of whether the UN Framework on Business and Human Rights is binding. Still, many countries have regulations on how businesses must obligate human rights on their activities through a national plan on business and human rights. Moreover, international organizations such as the European Union have their own rule throughout this subject.

The UN Framework on business and human rights and its guiding principle of business and human rights (UNGPs) are two main instruments discussing its obligation to human rights. One of the rules that regulate this resolution is due diligence written in article 24 of the UN Guiding Principle on Business and Human Rights. The fourth principle in UNGPs said that stat has to create mechanize to guide corporations or business actors to comply with human rights, which can be done through a due diligence mechanism, for that the Indonesian government designed an application that can help corporations examine whether they have respected human rights when they carry out their business activities

Indonesia, in September 2014, has drafted the National Plan for Business and Human Rights. Still, until the writers wrote this article, it has not been binding into force. However, neither the Indonesian action plant is binding into force nor special regulate it. Still, the Indonesian government maintains the policy to ensure that corporations are obligated to respect human rights in their activities. In 2021 Indonesian government, through Ministry Law and Human Rights lunch Application called PRISMA (Penilaian Risiko Bisnis dan HAM/Business Risk and Human Rights Assessment). The goal of this application is an independent program that aims to help companies analyze the risk of human rights violations caused by business activities. Thus, this paper purpose to elaborate the national Action Plan draft with the news application which provided by the Ministry Law and Human Rights. With hopping that the PRISMA Applications will be the leading tools for corporation to respect human rights. Moreover, this article want to answer, does this article aim to study whether an application such as PRISMA can be a tool for a corporation to prove whether the company has obligated to human rights?

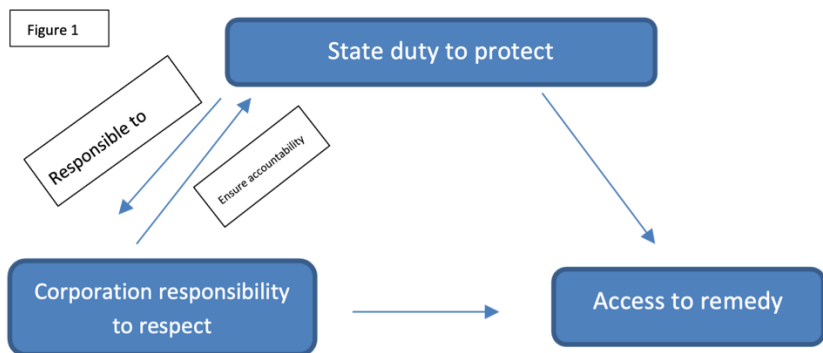
⁸ Jaemin Lee, "State Responsibility and Government-Affiliated Entities in International Economic Law: The Danger of Blurring the Chinese Wall between 'State Organ' and 'Non-State Organ' as Design," *Journal of World Trade* 49, no. 1 (2015): 117–51, <https://kluwerlawonline.com/journalarticle/Journal+of+World+Trade/49.1/TRAD2015005>.

This research method uses a doctrinal approach because I analyze the legal rule UN Protect, respect and remedy Frameworks, UN Guiding Principle on Business and Human Rights, and PRISMA Application. The application was launched by the Minister of Law and Human Rights of the Republic of Indonesia on February 23, 2021. I also use descriptive methods because it explains what this application is and its function for human rights enforcement in Indonesia.

B. Discussion

1. Key theory Aspect

UN Framework has three pillars, as shown below:



The first pillar is the state's duty to protect. Pillar two is a corporate responsibility to respect, and pillar three is access to remedy. From the figure, we can study that the state duty to protect includes protecting human rights abuses by third parties, including business enterprise through policies regulations, and providing access to remedy whether through litigation or non-litigation mechanism; the second responsibility of corporation or business actor to respect human rights, which mean that the company must act with due diligence to avoid the execution of trade on the other party and address the adverse effects which they are involved and third, the broader access to victims to an effective remedy, both judicial and non-judicial.

As the picture shows, we study that corporations have an obligation to respect human rights. These obligations are broken down into 11 principles, and one obligation business actor on human rights is doing due diligence. The Office of the High Commissioner for Human Rights (OHCHR) sought to define the term of Human Rights Due Diligence as follows.⁹

“This measure of prudence, activity, or assiduity is expected adequately from, and is ordinarily exercised by, a reasonable and prudent [person or

⁹ United Nations Human Rights and Office of the High Commissioner, “The Corporate Responsibility to Respect Human Rights: An Interpretive Guide” (New York, 2012). 350

enterprise] under the particular circumstances; not measured by any absolute standard but depending on the relative facts of the particular case.”

Meanwhile, Hajerati defines Human rights due diligence as a mechanism for companies to see human rights policies, assess the impact of company activities on human rights, track and report performance, and there is a complaint mechanism for alleged human rights violations committed by companies, either directly or indirectly.¹⁰

In the Guiding Principles, human rights due diligence comprises an ongoing management process that a reasonable and prudent company must undertake in light of its circumstances (including sector, operating context, size, and similar factors) to meet its responsibility to respect human rights.¹¹ “Human rights due diligence (HRDD) is a crucial concept of Un Guiding Principles on Business and Human Rights (UNGPs). Because to discharge the [Corporate] responsibility to respect [human rights] requires due diligence... [which] describe the steps that a company must take to become aware, prevent, and address adverse impacts on human rights. However, limited information about how companies conduct HRDD is consistent with their responsibility to respect human rights under the UNGPs.¹²

“The risk-based due diligence process includes a series of complementary actions.

- a. Assessing actual and potential human rights impacts.
- b. Integrating and acting on the findings.
- c. Tracking responses.
- d. Communicating how impacts are addressed.”

The process should continue because human rights risks are dynamic and can change as the operations and operating context of the business enterprise evolve (GP 17). The due diligence process can be incorporated into environmental or social impact assessments. It should involve meaningful consultation with potentially affected groups and other relevant stakeholders, taking into account the nature and context of the operation (GP 18). Therefore, assessing contextual human rights issues and stakeholder needs is crucial.

Beginning in the 1980s, a series of ideology and policy shifts swept through the Anglo-American variant of capitalism. The changes included weakening regulations, social safety nets, and unions, Outsourcing government functions to private contractors, Offshoring government function to private contractors;

¹⁰ Hajerati, “Upaya Kemenkumham Sebagai National Focal Point Bisnis Dan HAM Dalam Rangka Pemenuhan Pilar 1 UNGPs,” in *National Conference on Business and Human Rights* (Surabaya: University of Airlangga, 2021).

¹¹ Judith Schönsteiner, “Inter-American Elements for a Systemic Approach to State-Owned Enterprises’ Human Rights Obligations,” *Business and Human Rights Journal*, 2022, 1–21, <https://doi.org/10.1017/bhj.2021.57>.

¹² Robert McCorquodale et al., “Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises,” *Business and Hman Rigts Journal* 2, no. 2 (2017): 195–224, <https://doi.org/10.1017/bhj.2017.2>.

offshoring production, Encouraging the ascendance of finance and finalization of the real economy and stipulating that maximizing shareholder value was the primary if the not sole purpose of the listed corporation.¹³ This is a significant distinction when HRDD is proactive and not only reactive: If effective, HRDD prevents or reduces adverse impacts. Communication in the spirit of the UNGPs is not just a matter of exposing reporting but also part of an HRDD process that connects the firm with its stakeholders, in particular (potential) victims, to prevent harm. HRDD has been named a game-changer for companies: from ‘naming and shaming’ to ‘knowing and showing.’¹⁴

As stated above, the UNGPs was endorsed by the Special Representative by the Human Rights Council and included in the Guide Principles annexed in the final report to the Human Rights Council (A/HRC/17/31). The General Assembly adopted it in Resolution number 17/4 of June 16, 2011. The UNGPs contain three main parts (from the UN Respect, Protect and Remedy Framework on Business and Human Rights as the main principle on the duty of state and corporation in human rights). The state’s commitment to protecting human rights, the corporate responsibility to respect human rights, and access to remedy. All three parts are divided into 31 Principles.¹⁵

The state’s duty to protect human rights has 10 points. The fundamental principle States that States must protect against human rights abuse within their territory and jurisdiction by third parties, including business enterprises. State duty to protect requires taking appropriate steps to prevent, investigate, and redress such abuse through effective policies, legislation, regulations, and adjudication under due diligent state obligation. The state obligation on due diligence is written in parts three (commentary), four, and 7 (at the commentary). The third principle said that the guide for business enterprises on respecting human rights should indicate expected outcomes and help share best practices. The state should advise on appropriate methods, including human rights due diligence, and how to consider issues of gender effectively, vulnerability, and marginalization. Also, recognizing the specific challenges that indigenous peoples may face, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families. The fourth principle said that states should take additional steps to protect against human rights abuses by business enterprises. These are owned or controlled by the state or receive substantial

¹³ Ruggie JG, Rees C, and Davis R, “Ten Years After: From UN Guiding Principles to Multi-Fiduciary Obligations,” 2021, p. 4.

¹⁴ Karin Buhmann, “Neglecting the Proactive Aspect of Human Rights Due Diligence? A Critical Appraisal of the EU’s Non-Financial Reporting Directive as a Pillar One Avenue for Promoting Pillar Two Action,” *Business and Human Rights Journal* 3, no. 1 (2018): 23–45, <https://doi.org/10.1017/bhj.2017.24>.

¹⁵ V. Mani et al., “Social Sustainability in the Supply Chain: Construct Development and Measurement Validation,” *Ecological Indicators* 71 (2016): 270–79, <https://doi.org/10.1016/j.ecolind.2016.07>.

support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence. Furthermore, the seventh principal commentary said that States should warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas. They should review whether their policies, legislation, regulations, and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by a business.

The corporate duty to respect human rights, especially due diligence, was declared on human rights, especially due diligence, and the state at principle 15th, 17th, 20th and. In principle, which said To meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including

- a. a policy commitment to meet their obligation to respect human rights;
- b. a human rights due diligence process to identify, prevent, mitigate, and account for how they address their impacts on human rights;
- c. Processes to enable the remediation of any adverse human rights impacts they cause or contribute.

In the 17th, business enterprises should exercise due diligence on human rights to identify, prevent, mitigate, and account for how they address their adverse human rights impacts. The process should include:

- a. Evaluating actual and potential human rights impacts.
- b. Integrating and acting on findings.
- c. Tracking responses.
- d. Communicating how impacts are addressed.

Human rights due diligence: (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its activities, or which may be directly linked to its operations, products, or services by its business relationships; (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations; (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve. In the 18th commentary, the initial step in conducting human rights due diligence is to identify and assess the nature of the actual and potential adverse human rights impacts a business enterprise may be involved. The purpose is to understand the specific impacts on specific people, given a particular context of operations. Typically, this includes assessing the human rights context before a proposed business activity. Where possible; identifying who may be affected; cataloging relevant human rights standards and issues, and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified. In part 20 of the commentary, operational-level grievance mechanisms can also provide critical feedback on the effectiveness

of the business enterprise's human rights due diligence from those directly affected.

The state and corporation duty in remediation talks about due diligence in several parts, which are 12, 22, and 29. Part 12 said that where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes, where a business enterprise identifies such a situation, whether, through its human rights due diligence process or other means, its responsibility to respect human rights requires active participation in remediation, by itself or in cooperation with other actors. Operational-level grievance mechanisms for those potentially impacted by business enterprise activities can be an effective means of facilitating remediation when they meet specific core criteria, as set out in Principle 31. Twenty-nine said that to make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely affected, and in the commentary said that state and corporation support the identification of adverse human rights impacts as part of an enterprise's ongoing human rights due diligence. They do so by providing a channel for those directly impacted by the enterprise's operations to raise concerns when they believe they are being or will be adversely affected. By analyzing trends and patterns in complaints, business enterprises can also identify systemic problems and adapt their practices accordingly.

2. Corporate obligations towards Human Rights; Implementation of Due Diligence Obligation by the Corporation through the PRISMA Application

As mentioned above, Prisma is an independent application program designed to help companies analyze the risk of human rights violations caused by business activities. PRISMA is initiated, organized, and developed by the Directorate General of Human Rights in collaboration with civil society and consultation with companies. This application aims to facilitate all companies in all business sectors, large and small, to evaluate themselves (self-assessment) by mapping the actual conditions of potential impacts or risks, establishing follow-up plans from the assessment results, tracking the implementation of these follow-up actions, and communicating this network to the public.

There are 13 questions that companies must answer, namely: company profile, the impact of human rights on companies, human rights policy, complaint mechanism, supply chain, workers, working conditions, labor union, discrimination categories, privacy, environments, agrarian and indigenous peoples, and corporate social responsibility.

The obligations of the state and corporations towards human rights in the BHR do not stand alone but are interrelated. In the BHR regime, there is one principle, namely due diligence. Interfere with human rights.

Under Pillar One, the UNGPs set out a State's Duty to Protect against human rights abuses by third parties, including a business organization.¹⁶ Principe 3 of UNGPs requires the state to ensure that regulation related to human rights is respected by the corporation or business actor and guides how corporate or business actors can comply with human rights. The vital role of national human rights institutions established in accordance with the Paris Principles concerning business and human rights and encourages national human rights institutions to develop further their capacity to fulfill that role effectively, including with the support of the Office of the High Commissioner and in addressing all relevant actors; Under pillar two, the UNGPs set out corporation responsibility to respect human rights, which was written in principle 15 of UNGPs, that one way to show corporation obligation to respect is troughing the due diligence principle.

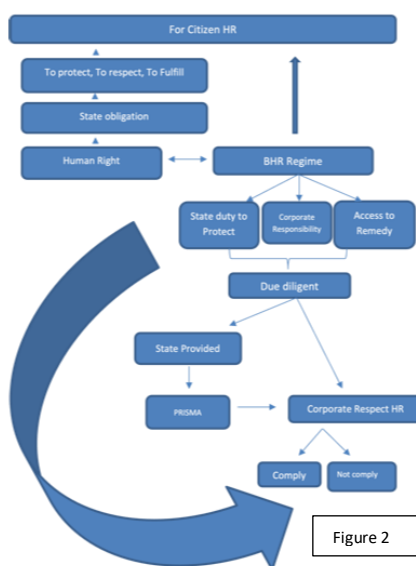


Figure two shows that Human rights duty beerier is stated to respect, protect and fulfill human rights. Still, in Human Rights and business (BHR) regime, the human rights duty barrier is not only sated but also other actors called business actors or corporations. Although the duty is different, at its seen, state duty is to protect corporate responsibility meanwhile is to respect.

¹⁶ Buhmann, "Neglecting the Proactive Aspect of Human Rights Due Diligence? A Critical Appraisal of the EU's Non-Financial Reporting Directive as a Pillar One Avenue for Promoting Pillar Two Action."

From the picture we learn that picture we can see that in human rights law, the state has the responsibility for the fulfillment of human rights, both by state officials and by third parties through 3 (three) forms of protection, namely, to protect, to respect and to fulfill. To respect means Obligation respect is intended to require states to enforce the ICCPR and ICESCR, either directly or indirectly, against the rights set out in the convention. The obligation to protect means that the state is to protect the human rights of citizens by preventing violations by various parties, both intentional and unintentional, by the state apparatus or by third parties. While the obligation to fulfill requires states to take various measures legislatively, administratively, budget, legally, and other measures for the implementation of human rights stipulated in the convention.

In the picture on the right, we see a new regime in which the state and corporations bear human rights obligations. However, the forms of obligations are different. The state has a duty to protect its relation to its responsibilities on the left side, namely, to protect, respect, and fulfill human rights and corporate obligations to respect. The obligation to respect referred to here is the obligation of the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws, and respect human rights. So, corporations have an obligation to apply the provisions of human rights law in their business activities. It is hoped that the rule of law in national law and human rights provisions exist in international treaties in human rights.

There is an obligation due to diligence both to the state and corporations in the picture. The state has an obligation to probe instruments to assess how corporations carry out their activities. So, Indonesia made an application called PRISMA. PRISMA is an application made by the state (Indonesia), where corporations are asked to answer 13 questions contained in this application, including uploading proof of implementation. Then the state, through this application, can see how a corporation is running its business whether they can be said to have been copied or not. Comply with existing human rights as a corporate responsibility to respect human rights.

C. Conclusion

This paper aims to knowledge and examine the application of PRISMA whether this application can be a tool for the state to ensure corporate compliance with human rights, especially in due diligence. The study shows that these applications can indicate whether the corporation complies with human rights. Still, the purpose is only for preventive purposes and learning media. Moreover, the obligation is a non-mandatory obligation. The Indonesian government has not regulated a penalty for the corporation if they have proven to or will harm people's human rights in their activity.

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