

COMPATIBILITY OF THE WORLD BANK'S EASE OF DOING BUSINESS INDEX WITH UNGPs ON BUSINESS AND HUMAN RIGHTS

Rully Sandra, Padjadjaran University
Huala Adolf, Padjadjaran University
Agus Mulya Karsona, Padjadjaran University
R. Achmad Gusman Catur Siswandi, Padjadjaran University

ABSTRACT

This article aims to analyse and refute one concern from the Government of Indonesia (GoI) that implementation of UNGPs on Business and Human Rights (BHR) might hamper the goal for Indonesia to be in the top 40 of Ease of Doing Business (EDB) rank. In particular, the article will analyse whether there are indications that BHR will create another barrier for EDB. The rebuttal is built from qualitative research which led to an exploratory study with data from interview, various secondary references related to BHR interpretation and implementation, human rights instruments, as well as the World Bank reports on EDB and Indonesia. We argue that, a growing global trend on BHR that cannot be ignored by EDB Index. Especially since EDB indicators have direct and indirect correlations with human rights. Furthermore, countries in the top 40 EDB ranks take BHR seriously and do not consider it as an obstacle. Thus, the authors would like to attest whether or not GoI concern is warranted. This article is relevant for further study the field of human rights, in particular on issues related to human rights responsibility of non-state actors, including International Finance Institutions. Although the study is specifically about Indonesia but the analysis might contribute to public policy discussion in other WB borrower countries that face the same dilemma. At the time of the writing, no similar efforts of finding linkages between UNGPs and EDB Index have been found.

Keywords: Business and Human Rights, the World Bank, Ease of Doing Business Index, UNGPs.

INTRODUCTION

Nearly one decade since the UN Human Rights Council unanimously endorsed the United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (Office of the United Nations High Commissioner for Human Rights, 2011) and the world has seen growing interest and commitment from various state actors and non-state actors to adopt it. UNGPs elaborate the State obligation to protect human rights, responsibility of business enterprises to respect human rights, and the necessity to ensure access to judicial and non-judicial remedies for those who face adverse human rights impact from business operation.

UNGPs consist of thirty-one principles divided into three pillars. The main message is to ensure that any business enterprise, regardless of its size, type, structure, location, and ownership should avoid infringing human rights and should undertake prevention and mitigation measures as well as measures to address adverse human rights impact caused by its presence or operation or in short, applying due diligence. UNGPs recommend any business enterprises to respect human rights, at the minimum as stipulated in the international Bill of Rights and ILO core conventions. As a whole, UNGPs aim is to enhance BHR standards and practices to improve peoples' living condition affected by business activities, and eventually will contribute to sustainable development.

This article uses national action plan (NAP) as a benchmark to measure government commitment in BHR, since NAPs are policy document that often used to indicate commitment, strategies, priorities, and actions to support implementation of certain internationally recognised obligations (Methven, 2015). UNGPs do not require States to formulate a new legislative product specifically on BHR. Rather, it recommends States to adopt NAP as a roadmap for the State actor and business enterprise as well as other actors to realize a better human rights protection. As an instrument to implement the UNGPs, NAPs must be based on international human rights standards and principles that highlight the complementary nature of State human rights obligations and business enterprise' human rights responsibilities to identify, prevent, mitigate and provide remedy in the case where it causes or contributes to negative impacts to human rights (Office of the United Nations High Commissioner for Human Rights, 2016).

Indonesia is the first country in Southeast Asia that has launched its NHRI-initiative's NAP on BHR in 2017, however, the Government only consider this as a white paper and not representing the government's official stance (Taletting, 2019). The idea of NAP has been transformed several times, from a stand-alone action plan, to become part of the already existing human rights action plan, to a presidential regulation or ministerial regulation. A joint collaboration between the government and CSOs is still ongoing to explore the most suitable approach for NAP on BHR in Indonesia (Ahsinin et al., 2020). Yet, Indonesia still has not progressed far on this matter because the government does not have a coherent stance on BHR and because corporations, that should have played an important role in BHR, have not been properly embraced in BHR-related endeavours (Asia Review, 2020).

At the domestic level, many human rights activists are of the opinion that the government (re-elected for its 2nd term for 2019-2024) has been paying less attention to human rights and more on economies and infrastructure development. In order to achieve this target, the administration is eager to introduce deregulation policies to stimulate business and investment – this is where EDB becoming significant –and might see BHR as an unpopular move (Nandyatama & Rum, 2020). This is evidenced by the rise of intolerance and prosecution against minority groups, deliberation of state policies with significant human rights effects without proper public consultation, as well as less democratic space for civil society that appear to act with impunity or at worse just being reprimanded with a slap on the wrist.

BHR is seen as a new development that requires a cautious approach. Nevertheless, on October 2017, the GoI has appointed the Assistant on Forestry Governance – now known as the Assistant on Agriculture, Pharmaceutical, and Tourism - to the Coordinating Minister for Economic Affairs as the government focal point to formulate NAP BHR and it is commendable that the focal point is open to engaging with any stakeholders (Wibowo, 2018).

In international fora, Indonesia has repeatedly shown its commitment and endorsement to this new soft law. For example, at the third cycle of Universal Periodic Review (UPR) in May 2017 (Office of the United Nations High Commissioner for Human Rights, 2017), Indonesia accepted many of the recommendations. Four of the recommendations are related to BHR, i.e. prevention of child labour as submitted by Panama, Tunisia, and Kenya and the need for Indonesia to strengthen its commitment on human rights dimension in business activities as submitted by Myanmar. However, several parties from the GoI are concerned that the UNGPs will reduce the level of competitiveness of Indonesia, running contrary to the goals of the current administration (Wibowo, 2018).

Although EDB and BHR are about different matters, the former focuses on business-related indicators, while the latter focuses on human rights impact of business presence and activities, but one can affect the other. And, since this is an argument used by Indonesia as one of its primary concerns against the implementation of UNGPs, a comparison is deemed necessary.

LITERATURE REVIEW

International human rights treaties generally aimed at protecting individual rights and fundamental freedoms against potential abuse of power by states, and do not focus on private entities (Office of the United Nations High Commissioner for Human Rights, 2012). International human rights treaties do not compel business enterprises with direct obligations even though human rights and business dilemma can be traced back to the 16th century (Bernaz, 2017). Despite the fact that more recent interpretations have started to clarify this matter, but BHR is still considered as a relatively new discourse in international human rights law. This discourse started the discussion whether only states that have human rights obligations or other actors also have similar obligations. Bailliet (2012) stated that while business actors have been enjoying many human rights, yet the current human rights system has failed to address corporate responsibility for human rights violations. One reference to clarify this is stipulated in the preamble of the Universal Declaration of Human Rights 1948 (UDHR) which stated that it contains a set of standard behaviours applicable not only for states, but also for every individual and every organ of society. Bernaz (2017) argues that it is safe to interpret that the UDHR set limits to the behaviour of business actor. Discussion on human rights obligations of business actor is getting heated since the 1970s when the world realizes that multinational companies can be as powerful, if not more powerful, than states.

In the 90s, awareness about how business operation can cause human rights impacts is growing (Ruggie, 2013) and demand human rights perspective to adapt from state-centred into accepting the fact that non-state actors are equally influential (Buhmann et al., 2018). Andreassen (2006) argued that we need to reconsider the relationship between different actors within the human rights regime. Furthermore, Bård A. Andreassen and Võ Khánh Vinh (2018) argued that globalization, the internet, and the process of diffusing moral and legal norms have led us to extrapolate the nature of human rights duties of commercial actors.

Fast forward to twenty-one year later, the world witnesses one of the most important milestones in BHR when the UN Human Rights Council adopt the UNGPs in 2011 with unanimous endorsement (Office of the United Nations High Commissioner for Human Rights, 2011). UNGPs receive mixed response from the stakeholders, the business actors are generally receptive, while legal scholars are more varied. Surya Deva, for example, is concerned that

treating human rights as a business case instead of norms will downgrade it from an ideal into a means to reach other objectives (Deva, 2016). Yet, Radu Mares believes that, despite all criticism, one has to acknowledge that clever formulation of ‘responsibility to respect’ for business enterprise in UNGPs actually makes it level with the requirements of state human rights obligation as recognized in human rights law (Mares, 2014).

Moving on to the economic side of the discussion. Surya Deva believes that respecting human rights will give business a competitive advantage and should be seen as part of the company risk-management strategies. However, arguments to contrast human rights concerns and economic interest is an old tale. Especially when discussing International Financial Institutions, such as the World Bank Group. Debate on the role, influence, and obligations of international finance institutions over internationally recognized human rights have been ongoing since back in the 90s. The debate mostly focuses on whether the mandate of IFI can be interpreted to include human rights obligations or not. Cristina Lafont (2012) said the debate occurred due to a serious structural incoherence in current human rights practice, where the International Finance Institutions have the capacity but did not seem to have human rights obligation. Rita Mota (2018) adds another variable to the debate that IFIs have been at the receiving-end of growing pressure from NGOs and CSOs to integrate human rights principles into their activities. Clapham (2006) provides a clear summary of the debate, by showing the two opposing views about it. One side argued that IFIs has an important and legitimate role to encourage the borrowers to respect international human rights standards. The other side argued that such approach would violate the very mandate on IFI, such as the World Bank, and might be considered as a form of political interference against a sovereign state-which they are specifically prohibited. However, Clapham (2006) argued that the latter argument does not have primacy over human rights obligations because human rights is already a matter of legitimate international concern. Moreover, the World Bank mission to alleviate poverty through economic growth and the promotion of shared prosperity and social equity has a strong human rights dimension. The recent developments in international law have seen how IFIs embraced more human rights in its process, and at the same time, BHR is getting wider acceptance from business actors (Mares, 2019).

The authors concur with Clapham (2006) and Mares (2019) that IFIs’ human rights obligations should be seen through the approach of due diligence or they must exercise control on activities which can affect other subjects of international law. This is particularly relevant if we compare it with a more recent development in human rights discourse in BHR, that recognize roles and influence of non-state actor vis-à-vis business to ensure human rights standards are respected. It is part of the idea supported by numerous human rights scholars that various non-state actors need to be involved within the ambit of human rights obligations to ensure that the realisation of human rights will not be undermined in a free market economy (Deva, 2013). Though, this opinion mostly used to highlight how business actors, in particular transnational corporations, affect human rights; yet the plural phrase “*various non-state actors*” here can also apply to global financial organizations, e.g. the World Bank.

Against this backdrop, the World Bank can and should exercise human rights due diligence by ensuring that EDB, as one of their most popular products, to take into account UNGPs in measuring country’s performance. The approach of appraisal and rank any policy only based on reduction of time or cost of doing business are no longer enough. Relevant values need to be considered.

METHODOLOGY

The rationale behind this idea is to provide a rebuttal against the argument that business & human rights can slow down Indonesia's ambition to have better rank in the EDB Index. The rebuttal is built from qualitative descriptive research which led to an exploratory study. The authors realise that many human rights researches are often normative and might overlooked the impact beyond legal constructs (McInerney-Lankford, 2018). Which is why this research tries to look at human rights impacts from a more practical and multidisciplinary angle, albeit rudimentary.

The basic premise of this article is that the contemporary interpretation of human rights obligations that is relevant for both state and non-state actors leads to closer ties between the human rights interest as represented by UNGPs and economic interest as represented by EDB Index. Upon this basic premise, the article tries to show a simplified causality analysis between the explanatory variables and dependent variable (Anderson, 2018). The authors believe that with UNGPs, we can fuse some explanatory variables for BHR and EDB.

Data collection in this study mainly used human rights references from books and journals, international human rights instruments, the UN reports, the World Bank reports, newspaper articles, as well as government regulations and other related data from various official websites. Interview with relevant stakeholders from the government and the world bank as well as observation regarding civil society position on BHR between 2018-2019 has also been used to gather information.

The rebuttal is developed by showing that, first, there is a growing global trend to acknowledge that business has human rights responsibility as stated in the UNGPs and it cannot be ignored by any assessment related to governance and business environment. EDB is one of the tools with global recognition that can reflect the strong association between pillar 1 and pillar 2 of UNGPs of the duties of state to protect human rights and the responsibilities of business enterprise to respect human rights. Second, that EDB indicators have direct and indirect correlations with human rights. Within the ambit of human rights obligation for non-state actors, the ten EDB indicators found themselves to be more connected to human rights norms. And, third, that countries listed in the top 40 EDB ranks take human rights seriously and do not consider BHR as an obstacle. Lastly, the rebuttal proposed another Index to be considered by GoI as an alternative.

As a preliminary effort, the authors realise that it has just touched the surface and have not covered the technical aspects of EDB Index. Moreover, the indirect nature of EDB correlation with BHR might raise another question on how human rights norms and principles ought to be utilised to rethinking about human right obligation of IFIs.

RESULTS

When the then UN High Commissioner for Human Rights, H.E. Zeid Ra'ad Al Hussein, came to Jakarta in February 2018 for Jakarta International Conversation on Human Rights: Regional update after 70th year of UN Declaration on Human Rights and 25th year of Vienna Declaration and Program of Action, he highlighted the important contribution that development can bring to improve peoples' welfare and their access to essential goods and services. However, this can only be achieved provided that people can participate in decision-making and free to

express their concerns. Furthermore, he also said that UNGPs provides us with a step-by-step instruction applicable for states and business enterprises to ensure that any kind of business activities would not cause harm to people's rights. In reality, Indonesia, as part of the Southeast Asia region, experience rapid economic growth and new economic opportunities that is attained by unsustainable business practice and cause significant human rights impacts (MacDonald, 2020).

Indonesia already has the majority of the necessary human rights legislation. Indonesia has enacted the main human rights conventions and core labour standards in the form of acts and presidential decree. However, there are few aspects that are yet to be developed by Indonesia: exercise of adequate oversight in order for business enterprises and business activities to meet their international human rights responsibilities, promoting respect for human rights in business contract, public procurement and other commercial transactions, and to ensure policy coherence pertaining to business and human rights. When fulfilled, the aforementioned tasks are actually aligned with Indonesia's vision to have better performance in Ease of Doing Business, even though it might require the GoI to introduce or to rephrase certain requirements, yet it does not mean that the State imposes an additional obstacle for business actors.

However, a recent development from Indonesia is that the government has enacted a controversial Omnibus Law in the second semester of 2020 in support of their plan to level up Indonesia's EDB ranking (Suriadinata, 2019). The infamous law has been criticized by many legal experts, NGOs, and trade unions, since the draft contains many problematic provisions while ignoring concerns related to environmental situation, human rights and labour issues, see for example, a brief yet strong criticism against the draft law by Hosen et al. (2020). Even the World Bank while supportive of Indonesia's efforts to improve its EDB rank, also acknowledges that the bill could be detrimental towards the right to health, safety, clean environment and labour rights (World Bank, 2020).

The most substantial question posed by concerned parties is whether by implementing UNGPs will reduce Indonesia's competitiveness? The answer is No. Because, as mentioned above, BHR is logical and important for the people, then mandating it for a business actor does not qualify as an unnecessary obstacle. Further, it can be seen as an insurance measure that could prevent business actor from causing adverse human rights impacts. However, it is interesting to observe the contrast between the aforementioned statements from the UN Human Rights High Commissioner with the narrative of the GoI that shows strong interest in increasing the level of competitiveness of Indonesia.

One of the indicators often referred to by the GoI is the EDB Index published by the World Bank. At present, Indonesia ranks 73 out of 190 countries with the average score of 67.96. Indonesia is eager to increase its rank to the top 40 in EDB (Noor, 2017). To do so, Indonesia has to increase its score for at least 7.65 point. To increase Indonesia's ranking, one has to be aware that EDB Index focuses more on the red tapes and bottleneck in obtaining business permits as well as the duration for the issuance of relevant permits needed for business activities. Although the index does not have indicators that explicitly relate to human rights, some of the indicators have direct and indirect correlations with human rights.

EDB has ten indicators from (1) starting a business, (2) dealing with construction permits, (3) getting electricity, (4) registering property, (5) getting credit, (6) protecting minority investors, (7) paying taxes, (8) trading across borders, (9) enforcing contracts, (10) resolving insolvency (World Bank, 2008). Indicator no. 11 on labour market regulation received strong

criticism as the Index is seen too much in favour of lenient labour protection. Thus, has not been used anymore.

Let's take a simplified hypothetical situation where these indicators come into play and affect human rights: an investor would like to start a business in Indonesia and will require massive construction of its business premise and it will need electricity sourced from the nearest dam. The investor will have to assess the cost and benefit before starting this new business and might use EDB as a reference. However, their assessment might overlook the fact the presence of this project may cause several negative impacts on people's livelihoods and various rights (Mares, 2019). To continue the hypothetical situation, once the business is operational, it might need to obtain more capital by getting credit and new shareholders and it has to pay taxes. The last part relates to indicator no. 7 and also has direct correlation with human rights, as the need to have more effective taxation systems is not only necessary to create a conducive business climate, but also important to ensure availability of resources necessary for human rights realization (Darcy, 2017).

Indonesia's score in 2019 range from the lowest 47.23 on enforcing contract, to 86.38 on getting electricity (World Bank, 2019). The remaining indicators range around 60-80 and the total average put Indonesia in rank 73. At the minimum, indicators 1, 2, 3, 7 and 8 have direct correlation with human rights, while indicators 4, 5, 6, 9, 10 have indirect correlations with human rights. In particular, these indicators can affect economic rights, labour rights, right to self-development, right to ownership, equality before the law, right to social security, right related to the enjoyment of economic, social, scientific and technology as well as cultural progress, non-discrimination, and rights specifically related to migrant workers. These are rights recognised in the international bill of human rights and ILO Declaration, which is the basis for UNGPs. Since EDB indicators are seen as an important index for business and economic development, the government and the creator should not ignore its implications and linkages to BHR.

As can be seen from the ten indicators above, there are direct and indirect links to human rights. However, one could hope that better performance in each of the ten indicators will help foreign and domestic investors to start a new business and, if performed ethically, eventually will help to increase people's welfare through job opportunity, infrastructure development, etc.

DISCUSSION

For Indonesia

The World Bank's main concern to advance economic development will have to be viewed in conjunction with good governance and accountability (Shihata, 1992). These economic concerns cannot be separated from how human rights systemically affect the international financial system (Dowell-Jones & Kinley, 2011). Therefore, we need to have better understanding on the correlation between BHR and economic indicators, such as EDB. In this matter, EDB Index actually has similar prerequisites and expectations in common with UNGPs for high standards of legislation and good legal infrastructure (similar to the requirement found in the Pillar I of UNGPs). Moreover, better performance reflected in EDB Index is claimed to have implications such as lower levels of unemployment and poverty (World Bank, 2018).

The EDB Index claimed that high rank does not mean that the country applies a weak standard. Rather, the ranking implies that a country can develop and manage appropriate legislation that facilitates market interaction without unnecessary obstacles for potential investors and the private sector at large (World Bank, 2018) as the EDB Index assesses when a country implements a risk-based approach as a way to address social and environmental impacts. Ideally, business with higher risks should comply to a more rigorous legislation than business with lower risks. Such legislation can be seen as a safeguard that could be used as risk (liability) mitigation for a company.

The World Bank admits that their EDB Index only covers several aspects from each indicator. The Index is not meant to provide a comprehensive picture of the business environment of a country. The World Bank recognizes that business regulation reform should not only focus on the indicators that they are using but also on other equally or even more important matters (World Bank, 2018), such as prevention, mitigation and addressing adverse human rights. This acknowledgement is echoing some criticisms against EDB that it only measures the level of resources businesses need to spend but does not cover the impact of regulations nor negative externalities from businesses and their growth.

While, the World Bank is indeed an international financial institution and EDB is an economic survey. But, the EDB creator should be mindful that there is a growing recognition that any decision-making can no longer be based on pure economic considerations or just to pursue pure economic interests. Moreover, the Bank is seen to have a strategic role as a global norms trend-setter (Dann & Reigner, 2019). Refusal to adapt might be seen as if EDB is keeping an outdated approach of no directionality of growth.

Another angle is that EDB does not cover micro enterprises, state-owned enterprises or illegal, corrupt, informal, and out-of-court transactions and processes, among others while the Indonesian business environment is distinguished by those factors (World Bank, 2008). For example, 99.99% of business actors in Indonesia are micro, small and medium size business enterprises (LPPI and Bank Indonesia, 2015). Second, Indonesia has 114 state-owned enterprises with total asset up of approximately USD 586 billion (Ministry of State-Owned Enterprises, 2019). Third, Indonesia is still facing an enormous challenge related to corruption. In 2017, Indonesia was at rank 96 out of 180 countries in the globally referred ranking system based on stakeholders' perception regarding corruption (CPI) (Transparency International, 2018). The figures shown in this paragraph aim to highlight the fact that EDB Index does not capture certain context of significant relevance for Indonesia.

The GoI should be aware that any index has its weakness and serves the interest of the designer. The World Bank's EDB Index has been criticized by many for its support for deregulation while ignoring many other underlying factors. Measuring Indonesia's business environment based on one index is too superficial and not advisable. Yet, unsurprising, since the current administration main interest is on the economic and infrastructure development. That said, the GoI decision is quite understandable since the EDB report is influential, particularly in countries that receive significant loans from the WBG and IMF. Both organizations have been using the index as performance benchmarks to measure the lender's progress, and Indonesia's lending commitment as per 2019 from the World Bank Group amounted to 1,951 million dollars (World Bank, 2020).

However, since Indonesia is aiming to be in the Top 40 Ranks in EDB Index (Jingga, 2020), let us examine the profile of the top 40 countries in the EDB Index in relation to UNGPs.

As stated above, this article uses NAP on BHR as a measure to link EDB and BHR. In fact, 16 countries already have stronger BHR commitment through their NAP on BHR. Six other countries have no NAP on BHR, but are members of OECD, thus required to comply with OECD Guidelines for Multinational Enterprises which was revised to have similar content with UNGPs. The other seven countries are in the process of formulating its NAP on BHR.

Based on this examination, it is obvious that an overwhelming number of the top 40 countries take business responsibilities to respect human rights seriously. Most countries that rank high in EDB Index do not see their country's commitment towards UNGPs to be counterproductive for their competitiveness.

The GoI should also remember that EDB is not the only index to measure a country's competitiveness. The EDB Index puts emphasis more on the duration required to obtain basic permits and facilities to do business. Conversely, the World Economic Forum (WEF) has its own index, that shows Indonesia Ranked 41 out of 138 countries in 2018, which is lower than its Rank in the previous year (Ranked 37) but with the same total score (4.52)_(World Economy Forum, 2016). This index measured the market size of a country, macroeconomic condition, as well as health and basic education, women participation in workforce, environmental vulnerability, etc. The authors believe that the indicators used by the WEF are more linked to human rights and could be seen as an alternative or a complementary for the GoI.

If the GoI is adamant to benchmark its business environment improvement by EDB Index, it does not have to look far for example. Thailand is one of the top 10 improvers in EDB 2017 and has repeatedly reiterated their commitment on BHR and initially expected to announce their NAP by the fourth quarter of 2018 (Prihandono & Sandra, 2018), but had a delay and it is finally published on December 16, 2019 (Thailand, 2019).

For the Maker of EDB

The World Bank is an international organization driven by aspiration of its members (Schmitt, 2017) based on the principle of collective autonomy (Dann & Reigner, 2019). Interestingly, it has started to impose higher standard to prevent and mitigate economic and social impacts for projects that they financed—though responded with certain level of apprehension because it has not met the ideal human rights compatibility expected by many civil society organizations, see for example, the compilation of CSO responses by The Bretton Woods Project. The Environmental and Social Management Framework (ESF), Feedback and Grievances Redress Mechanism (FGRM), as well as Indigenous Peoples Plans (IPP) are now important preconditions for any World Bank projects funded by either loan or grant (World Bank, 2017). Even though the term, human rights, is rarely – if not never- used in the Bank's operational documents for fear of being seen too political and perhaps also due to economic interest (Clapham, 2006). But their safeguard policies have started to reflect human rights recommendations that can also be found in the UNGPs. This new development shows how human rights and economic goals are getting merged (Mares, 2019).

Since the World Bank Group (and therefore all their programs) has a philosophical duty to contribute to the fulfilment and advancement of human rights (Clapham, 2006) it will be better if they refer to the same standards in analysing countries performance for their EDB Index and really incorporate human rights consideration in its operation. It becomes more urgent since this globalized world requires a new dynamic and integrated approach that will accommodate

environmental, social, and economic considerations (Lopez-Claros, 2020). Furthermore, the growing realisation on how business can have serious consequences to human rights requires concerted efforts from all international and national actors, including IFIs, to understand what and how human rights principles could be applied (Dowell-Jones & Kinley, 2011).

CONCLUSION

The concern that UNGPs implementation might jeopardize Indonesia's competitiveness appears baseless with little compelling evidence to support this claim as evidenced by the case of Thailand above.

On the contrary, the implementation of UNGPs might be able to reduce potential adverse human rights impacts from business practices and will ensure better welfare for the people. Indonesia's competitiveness will only be compromised if the country cannot provide clear, predictable, and accessible legal remedies. Indonesia's competitiveness will suffer when the law is not applied equally, when corruption and bribery still remain rampant, and when the bureaucracy remains inefficient.

Further, EDB is not the only index available worldwide, Indonesia has other options to measure its competitiveness such as by using the WEF Global Competitiveness Report that in the authors' view provide a more comprehensive picture of aspects of relevance that influence a country's competitiveness. More importantly, Indonesia should not have relied on one particular index to measure its progress. EDB should serve as a complementary to other indicators.

The World Bank itself need to consider to improve EDB as a way to exercise better due diligence and incorporating UNGPs as their point of reference. Further works might have found a common ground bet

LIMITATION AND STUDY FORWARD

This is a preliminary endeavour to analyse the linkages between UNGPs and EDB. At the time of the writing, the authors have never encountered similar efforts undertaken. The authors believe that this analysis only touch the surface. Further and deeper analysis is needed to fill in the gap between economic interest and human rights concerns. A strong buy-in from various governments and business actors towards UNGPs is a momentum that should not be missed in exploring this issue.

ACKNOWLEDGEMENT

This research is financially supported by the Indonesia Endowment Fund for Education (LPDP). The authors are also benefited from research support from the NCHR, University of Oslo, Norway.

REFERENCES

Ahsinin, A., Muttaqien, A., Fuad, M.B., & Nafisah, R.D. (2020). *National action plan on business and human rights: best practices from other countries to protect its citizens from business impact*. Institute for Study and Community Advocacy.

- Anderson, E. (2018). Economics and human rights. In B.A. Andreassen, H.O. Sano, S. McInerney-Lankford (Eds.), *Research Methods in Human Rights: A Handbook* (pp. 94-116). Edward Elgar Publishing.
- Andreassen, B.A. (2006). Development and the human rights responsibilities of non-state actors. In B.A. Andreassen, & S.P. Marks (Eds.), *Development as a Human Right, Legal, Political, and Economic Dimensions* (pp. 119-139). Harvard University Press.
- Andreassen, B.A., & Vinh, V.K. (2018). Business duties across borders: The new human rights frontier. In B. A. Andreassen, & V.K. Vinh, *Duties Across Borders: Advancing Human Rights in Transnational Business* (pp. 1-20). Intersentia.
- Asia Review. (2020). The institute for policy research and advocacy (ELSAM). *Business-related human rights violations continue unabated in Indonesia without implementation of the UNGPs*. <https://doi.org/10.37839/MAR2652-550X3.9>
- Bailliet, C.M. (2012). What is to become of the human rights international order in an age of neo-medievalism? In C. M. Bailliet (Eds.), *Non-State Actors, Soft Law and Protective Regimes: From The Margins* (pp. 95-124). Cambridge University Press.
- Bernaz, N. (2017). *Business and human rights: History, law and policy - Bridging the accountability gap*. Routledge.
- Buhmann, K., Björn, F., & Voiculescu, A. (2018). Business & human rights research methods. *Nordic Journal of Human Rights*, 36(4), 323-332.
- Clapham, A. (2006). *Human rights obligations of non-state actors*. Oxford University Press.
- Dann, P., & Reigner, M. (2019). The World Bank's environmental and social safeguards and the evolution of global order. *Leiden Journal of International Law*, 32(3), 537-559.
- Darcy, S. (2017). The elephant in the room: Corporate tax avoidance & business and human rights. *Business and Human Rights Journal*, 2(1), 1-30.
- Deva, S. (2013). Treating human rights lightly: A critique of the consensus rhetoric and the language employed by the guiding principles. In S. Deva, & D. Bilchitz (Eds.), *Human Rights Obligations of Business* (pp. 78-104). Cambridge University Press.
- Deva, S. (2016). Business and human rights, or the business of human rights. In B.A. Andreassen, & K.V. Vo, (Eds.), *Duties Across Borders* (pp. 23-38). Intersentia.
- Dowell-Jones, M., & Kinley, D. (2011). Minding the gap: Global finance and human rights. *Ethics & International Affairs*, 25(2), 183-210.
- Hosen, N., Kingsley, J., & Lindsey, T. (2020). *Indonesia at Melbourne*. Retrieved from <https://indonesiaatmelbourne.unimelb.edu.au/indonesias-omnibus-bill-typo-or-mistaken-instruction/>
- Jingga, R. (2020). *President wants Indonesia to be part of the top 40 EODB ranks*. Retrieved from <https://www.antaraneews.com/berita/1308510/presiden-ingin-peringkat-eodb-indonesia-masuk-40-besar-dunia>
- Lafont, C. (2012). *Global governance and human rights (Spinoza Lectures)*. Department of Philosophy of the University of Amsterdam
- Lopez-Claros, A., Dahl, A.L., & Groff, M. (2020). *Global governance and the emergence of global institutions for the 21st century*. Cambridge University Press.
- LPPI and Bank Indonesia. (2015). *Business profile of micro, small and medium enterprises (MSME)*.
- MacDonald, K. (2020). *Obstacles to implementing the UN guiding principles on business and human rights in Southeast Asia*. Retrieved from <https://doi.org/10.37839/mar2652-550x3.8>
- Mares, R. (2014). Respect human rights: Concept and convergence. In R.C. Bird, D.R. Cahoy, & J.D. Prekert, (Eds.), *Law, Business and Human Rights Bridging the Gap* (pp. 3-47). Edward Elgar Publishing.
- Mares, R. (2019). Disruption and institutional development: Corporate standards and practices on responsible mining. In M. Krajewski, I. Feichtner, & R. Roesch, (Eds.), *Human Rights in the Extractive Industries: Transparency, Participation, Resistance* (pp. 375-414). Springer.
- Mares, R. (2019). Securing human rights through risk-management methods: Breakthrough or misalignment? *Leiden Journal of International Law*, 32(1), 517-535.
- McInerney-Lankford, S. (2018). Legal methodologies and human rights research: Challenges and opportunities. In B.A. Andreassen, H.O. Sano, & S. McInerney-Lankford (Eds.), *Research Methods in Human Rights: A Handbook* (pp. 38-67). Edward Elgar Publishing.

- Methven, O.C., Mehra, A., Blackwell, S., & Poulsen-Hansen, C.B. (2015). National action plans: Current status and future prospects for a new business and human rights governance tool. *Business and Human Rights Journal* 1(1), 117-126.
- Ministry of State-Owned Enterprises. (2019). *Profile*. Retrieved from <https://bumn.go.id/portfolio/overview>
- Mota, R. (2018). Banks as human rights enforcers? A comparative analysis of soft law instruments. *American University International Law Review*, 34(2), 351-386.
- Nandyatama, R.W., & Rum, M. (2020). *Is ASEAN doing enough to address business and human rights?* Retrieved from <https://doi.org/10.37839/MAR2652-550X3.7>
- Noor, A. (2017). *Darmin: Indonesia is Aiming to Become Top 40 EoDB*. Retrieved from <https://www.republika.co.id/berita/ekonomi/keuangan/17/11/01/oyqcuc383-darmin-indonesia-kejar-target-40-besar-peringkat-eodb>
- Office of the United Nations High Commissioner for Human Rights. (2011). *United Nations guiding principles on business and human rights: Implementing the United Nations. Protect, Respect and Remedy” Framework (A/HRC/17/31)*.
- Office of the United Nations High Commissioner for Human Rights. (2012). *The corporate responsibility to respect human rights: An Interpretative guide*.
- Office of the United Nations High Commissioner for Human Rights. (2016). *Guidance on national action plans on business and human rights*. UN Working Group on Business and Human Rights.
- Office of the United Nations High Commissioner for Human Rights. (2017). *Report of the working group on the universal periodic review Indonesia*.
- Prihandono, I., & Sandra, R. (2018). *Policy paper towards the implementation of the UN guiding principles on business and human rights in Indonesia*. INFID.
- Ruggie, J.G. (2013). *Just business*. W.W. Norton & Company Inc.
- Schmitt, P. (2017). *Access to justice and international organizations: The case of individual victims of human rights violations*. Edward Elgar Publishing.
- Shihata, I.F. (1992). Human rights, development, and international financial institutions. *American University International Law Review*, 8(1), 27-36.
- Suriadinata, V. (2019). Drafting investment laws: Review on the drafting of omnibus law in Indonesia. *Legal Reflection*, 4(1), 115-134.
- Taletting, A. (2019). *Head of international cooperation sub-directorate of the directorate general on human rights, the ministry of law and human rights of the republic of Indonesia*.
- Thailand. (2019). *The national action plans on business and human rights*. Retrieved from <https://globalnaps.org/country/thailand/>
- Transparency International. (2018). *Corruption perceptions index 2017*.
- Wibowo, P.M. (2018). *BHR focal point of the government of Indonesia*.
- World Bank. (2008). *Doing business: An independent evaluation taking the measure of the world bank- IFC doing business indicators*.
- World Bank. (2017). *The world bank environmental and social framework*.
- World Bank. (2018). *Doing business 2019: Training for reform*.
- World Bank. (2019). *A world bank group flagship report, doing business 2019: Training for reform, economy profile Indonesia*.
- World Bank. (2020). *Indonesia economic prospects: The long road to recovery*.
- World Bank. (2020). *Overview: The world bank in Indonesia*. Retrieved from <http://www.worldbank.org/en/country/indonesia/overview>
- World Economy Forum. (2016). *The global competitiveness report 2016–2017*.