

PRECARIOUS AND NEGLECTED: INDONESIA'S OIL PALM WORKERS TEN YEARS AFTER THE UNGPs

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ABSTRACT

This study aims to explore the correlation between the UNGPs and casual workers toiling precariously in oil palm plantation in Indonesia. The analysis is built from qualitative research which led to an exploratory study with data from interview, various secondary references related to the UNGPs interpretation and implementation, as well as reports on oil palm casual worker in Indonesia. We argue that the UNGPs, while promising to improve respect to human rights by corporations, still overlook the actual precarious situation faced by casual workers. This research is relevant for further study of the field of business and human rights, in particular on issues related to the rights of casual workers. Although the context of this study is on oil palm sector and Indonesia, the analysis might contribute to any discussion related to casual worker and/or gig workers in other sectors and other developing countries. At the time of the writing, the authors have not seen any similar efforts finding linkages between the UNGPs and casual worker.

Keywords: Business and Human Rights, Casual Worker, Oil Palm, UNGPs

INTRODUCTION

The underlying idea for Business and Human Rights (BHR) is the concept of human rights obligation of business enterprise. Corporation or business enterprise has power, capital and leverage to contribute to the respect, protection, and fulfilment of human rights, without replacing the main function of the state. Corporations can have positive or negative impacts on the state of human rights in areas where they operate. In particular, corporation could affect human rights and labour rights of their direct workers and workers in their supply chain and business partners. Yet, implementation of this discourse is challenging as many business actors may already see it as an impediment in their efforts to pursue business profit.

Discussion on BHR cannot be separated from the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (UNGPs). The UNGPs has been around for a decade since its unanimous endorsement by the Human Rights Council in 2011. It brings hope that business will show an improved respect to human rights in its operations. And indeed, the world has seen more interest and commitment from various state actors and non-state actors to adopt the UNGPs. The 31 principles in the UNGPs elaborate state obligation to protect human rights, corporate responsibility to respect human rights, and access to remedy for those who face adverse human rights impact from

business operation (Office of the United Nations High Commissioner for Human Rights, 2011).

The UNGPs has been seen as the authoritative guide on the issue of business and human rights. Its structure is divided into three pillars. The first pillar, consist of 10 Guiding Principles, on the State duty to protect human rights that basically provide a basis for State duty to prevent human rights abuse committed by a third party *vis-à-vis* business entity through its legislation, policies, and other enforcement measures applicable for State and business actors; the second pillar, with 13 Guiding Principles, elaborates on the corporate responsibility to respect human rights, which provides measures to be undertaken by any business enterprise, regardless of its size, sector, location, ownership and structure, to avoid infringing human rights and should prevent, mitigate, and address adverse human rights impact caused by its presence or operation in short, applying due diligence; the seven Guiding Principles of the third pillar, provides standards for access to effective remedy through judicial and non-judicial means (Office of the United Nations High Commissioner for Human Rights, 2011).

One problem to underline when discussing the UNGPs in relation to labour is that it mainly focuses on the classic type of employment and labour contract as guaranteed in the ILO declaration and core conventions - already adopted as normative labour rights in Indonesia. However, the civil society of Indonesia criticizes this because it fails to accommodate specific labour condition in the oil palm plantation sector (Sawit, 2018). Indonesia is one of the biggest palm oil producers in the world. Oil palm plantation from Indonesia is responsible to supply raw material to the global supply chain network that will later-on be processed by the manufacture industry to produce consumer goods for the public (Hampton, 2019).

There is one particular type of labour that is referred as a challenging issue in improving oil palm business practice, which is the casual worker. Casual worker exists due to a certain legal loophole in Indonesian labour law framework and therefore more vulnerable to abuse, exploitation, and harassment. This is where the UNGPs could play an important role. The following discussion is going to analyse whether the UNGPs can make a different for casual workers in particular in oil palm sector in Indonesia.

LITERATURE REVIEW

International human rights treaties are generally aimed at protecting individual rights and fundamental freedoms against potential abuse by the power of states, and therefore, do not focus on private entities (Office of the United Nations High Commissioner for Human Rights, 2011). One of the reasons for this approach is that states are seen as the subject of international law, and accordingly, the international human rights law as part of the public international law regime can only apply and impose obligation to states. This approach is no longer relevant, especially if one realizes that human rights and business dilemma can be traced back to the 16th century (Bernaz, 2017)

Andrew Clapham argued that this shift happens due to globalization, privatization, fragmentation, and feminization (Clapham, 2006). While Bård A. Andreassen and Võ Khánh Vinh believed 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 (Andreassen & Vinh, 2016). Koskeniemi reasoned that globalization in international law created a new need to have specialization that allows non-state actors to have a more influential role in developing new legal standard or soft law (Koskeniemi, 2011).

One earlier reference used as a basis to argue the human rights obligation of business actors is the preamble of the Universal Declaration of Human Rights 1948 (UDHR). The preamble contains a set of standard behaviours applicable not only for states, but also for every individual and every organ of society. More recent interpretations have started to clarify this matter and consider the other actors, vis-à-vis corporation, to also have human rights obligation, for examples, the UN General Comment No. 16 (2003) on State obligations regarding the impact of the business sector on children's rights or the UN General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. However, BHR is still considered as a relatively new discourse in international human rights law. C. M. Bailliet argued that the current human rights system has failed to address corporate responsibility for human rights violations, even though business actors have been enjoying many human rights (Bailliet, 2012). While Bernaz argues that it is safe to interpret that the UDHR set limits on the behaviour of business actor's (Bernaz, 2017). Efforts to regulate the conduct of multinational companies started since the 1970s when the world realized that corporations can be as powerful, if not more powerful, than states.

With many high-profile cases involving big corporations exposed by the media in the 90s, awareness about how business operation can cause human rights impact is growing (Ruggie, 2013). Any corporate decisions or actions can significantly affect human rights enjoyment of others. A shift in human rights perspective from state-centred into accepting the fact that non-state actors are equally influential finally took place (Buhmann et al., 2018). In order to clarify the concept of human rights obligation for corporation, Surya Deva emphasized that we need to differentiate between obligation according to international human rights law and human rights convention-based obligation (Deva, 2013).

After a couple of failed efforts, the global community was finally ready to adopt a soft law in 2011 with mixed reception between strong support from developed countries and business actors on one side, and criticism mainly from civil society on the other side. Legal scholars also have different opinions about the UNGPs. Surya Deva, for example, is concerned that treating human rights as a business case instead of standard norms will undermine human rights from an ideal into a means to reach certain business objectives (Deva, 2016). While, Radu Mares believes that, despite all criticism, one has to acknowledge that clever formulation of 'responsibility to respect' for business enterprise in the 2011 version, which later on adopted as the UNGPs, actually create requirements of a similar level with state's human rights obligations (Mares, 2014).

The UNGPs does not use the word obligation for business enterprise and uses the word respect instead to appeal to business community who had apprehension with their human rights obligations. As stated in Principle 12, business responsibility to respect human rights here at the minimum should be based on the International Bill of Human Rights (the UDHR, the ICCPR, and the ICESCR) and the ILO's Declaration on Fundamental Principles and Rights at Work (Office of the United Nations High Commissioner for Human Rights, 2011).

Labour rights are regulated in two legal regimes, the ILO conventions and the UN human rights conventions. The merge of labour rights and human rights is particularly highlighted in articles 4, 20, 22, 23 and 24 of the UDHR; articles 8 and 22 of the International Covenant on

Civil and Political Rights (ICCPR); and articles 6 to 10 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The right to work is seen as an important right to ensure that any person is able to live in dignity (Office of the United Nations High Commissioner for Human Rights, 2006). This right should be exercised alongside the right to be free from discrimination, the right to just and favourable working condition, the right to social security, the right to be free from slavery, forced labour, labour bondage, etc. Labour rights as part of human rights are perceived to be more universal and less technical compare to the ILO standards (Saul, 2014).

ILO reciprocally, also recognised these human rights standards and the UNGPs in its updated MNE Declaration. Article 8 of the declaration recognizes the International Bill of Human Rights and Article 10 recognize those different actors, governments, business and workers' organizations, have obligation to apply principles as set-out in the UNGPs (International Labour Organization, 2017).

METHODOLOGY

The rationale behind this research is to explore correlation between the UNGPs, as the most authoritative soft law on business and human rights in the world at present, with casual workers working in oil palm estates in Indonesia. This research aims to examine the casual worker phenomenon and whether the UNGPs can help to improve their precarious working situation. The authors realise that many human rights researches are often normative and might have overlooked the impact beyond legal constructs (Anderson, 2018). That is why this research tries to look at human rights impacts from a more practical angle.

The basic premise of this article is that the contemporary interpretation of human rights obligations relevant for both state and non-state actors as represented by the UNGPs should have helped the casual workers in gaining their normative labour rights. Upon this basic premise, the article tries to show a simplified causality analysis between the explanatory variables and dependent variable (Anderson, 2018).

This research is mostly based on a systemic desk review of existing relevant international human rights references from the UN and the ILO, international and sectoral initiatives, as well as national legislation along with selected reports from state and non-state actors. Where appropriate, the research also uses other material, including policy papers, scholarly materials as well as news articles. While not necessarily exhaustive, this selection hopefully covers all central aspects related to the two main variables of the UNGPs and the oil palm's casual worker. Interview with relevant stakeholders as well as observation regarding civil society position on BHR between 2018-2020; have also been used to gather information.

RESULTS

Palm oil is an important commodity for Indonesia. As per 2019, Indonesia has 22.2 million hectares oil palm plantation. Indonesia and Malaysia represent 85% of total produced CPO in the world (Sawit, 2020). Different sources have different estimates on the total work

force in this sector, from the conservative estimates of 16.2 million to 21 million workers. ELSAM, prominent human rights NGO in Indonesia, estimates that oil palm sector directly and indirectly employs 16.2 million workers in 2018. Another estimate claims that 70% of oil palm plantation workers are casual workers employed and paid daily wage (Economic News, 2016). Casual worker is a labour phenomenon in oil palm sector made possible since the government issued an implementing regulation, the Decree of the Minister of Labour No. 100 of 2004, on temporary labour contract (The Ministry of Labour, 2004). The term casual worker relates to any short-term employment contract as determined by domestic legal framework (ILO Regional Office for Asia and the Pacific, 2017).

At the beginning of the COVID-19 pandemic in 2020, Indonesian parliament decided to enact a controversial new law, the Law on Job Creation, dubbed the Omnibus Law (Suriadinata, 2019). The law was criticized by many legal experts, NGOs, and trade unions during its drafting, since it contains many problematic provisions while ignoring concerns related to environmental situation, human rights and labour issues. Despite a brief of strong criticism against the draft law by Hosen et al. (2020) the government and parliament of Indonesia insisted on passing the law. The authors believe that the new law on job creation (Indonesia, 2020) will not stop the use of casual workers and might even justify it.

A Government Regulation No. 35 of 2021 issued to further define the Law No. 11 of 2020, in its Article 5 paragraph (1), stipulated that a temporary labour contract is allowed for three types of work: any work with completion within a short duration; any seasonal work; and any work in relation to any new product, new activity, or supplementary product still in trial phase. Furthermore, another provision in Article 10 paragraph (4) stated that daily/casual labour contract is no longer valid in the event that any daily worker works for twenty-one days or more for three consecutive months or more (The Government of the Republic of Indonesia, 2021). These provisions are similar with the provisions available in the previous labour regulations.

In reality, neither the previous law, nor the new law acknowledged or improved the condition of the casual worker. Many casual workers have been working for years as documented in various reports. Two female workers in North Sumatra interviewed for this research have been working for one oil palm plantation for eight and ten years consecutively, and when they approached the management and inquire about their status, the management said that they are too old to have permanent labour contract. The plantation management will ensure that casual workers only work for a maximum of 19-20 days in a month to ensure that they will not meet the legal threshold above. It does not mean that all casual workers will work 19-20 days per month. One of the casual workers interviewed said that he sometimes only worked for 2 or 3 days a month. Decision on how many days a casual worker can work in a month is more often than not a subjective decision from the plantation foremen. They were also assigned to work in the farthest block when the plantation is being audited or had a visit from labour inspectorate. Another interview with a labour union representative from West Kalimantan province revealed that companies will automatically stop recording working hours after it reaches eight hours per day regardless of the actual hours spent by the casual worker (Balasa, 2020).

Table 1 COMPARISON BETWEEN DAILY WAGE AND MONTHLY IN DELI SERDANG DISTRICT				
Assumption	Total work days/month	Total Wage (USD 8.60 per day)	Basic Salary	Wage gap between the daily & permanent workers
Worst	3	USD 25.80	USD 230.78 per month (excl. allowances and overtime – if any)	(88.83%)
Moderate	9	USD 77.41		(66.46%)
Best	19	USD 163.43		(29.19%)

The table above shows data comparison from one oil palm plantation in North Sumatra, while the table below show similar comparison in West Kalimantan. Even though the two provinces have different minimum salary standards, the casual workers still earn less than the minimum. Both tables show three different scenarios, in the worst scenario, the oil palm casual workers only work for three days a month. In the moderate scenario 9 days per month and in the best scenario, they work for 19 days a month. Even in the best situation, they still earn roughly 25-30% less than permanent workers.

Table 2 DAILY WAGE OF CASUAL WORKERS V. MONTHLY SALARY OF TWO OIL PALM PLANTATIONS IN WEST KALIMANTAN PROVINCE				
Assumption	Total work days / month	Total Wage (USD 6.80 per day)	Provincial Minimum Salary Standard	Wage gap between the daily & permanent workers
Worst	3	USD 20.40	USD 170.55 per month	(88.04%)
Moderate	9	USD 61.20		(64.12%)
Best	19	USD 129.20		(24.25%)

The table above uses data from PT Bumi Pratama Khatulistiwa and PT Mitra Aneka Rezeki, West Kalimantan Province, Indonesia. Reports on the oil palm casual worker in different areas document similar problems, including a study carried out by the Ministry of Law and

Human Rights, that identifies that the casual worker faces status uncertainty and lower wages compare to workers with permanent status. Casual worker wages typically are linked to a certain target. Working hours and working days often exceed the limit with no adequate compensation and they are not entitled to social security or other allowances. Additionally, their normative labour rights are not fulfilled, they are tasked to dangerous areas with inadequate or substandard PPE and they also need to procure their own tools and PPE. Last but not least, they are often discouraged from joining any labour union (Rinwigati, 2019).

Imbalance between the employer and the workers, as well as lack of support from the government, make it easy for the employer to dictate the terms and condition of employment for the workers. The operational staff can easily pose a take it or leave it attitude when dealing with daily workers since they know that the workers need the meagre wage badly. On freedom of association, it is quite common for plantation management not to allow their workers to join an independent trade union based on the premise that these workers are not permanent employees, thus have no right to join a trade union. Further, certain companies impose veiled or open threats against workers who try to exercise their right of freedom of association. In example, by not extending their employment contract, relocate the worker to another plantation or, or by allegation of criminal activities. Since the plantation is often the only provider of employment and basic services in the area, the workers have to succumb to the will of the management instead of bargaining for their rights.

Casual workers in oil palm plantation are predominantly women. Women work in pruning, maintenance, and spraying. Actually, there are four important stages in oil palm estate management (1) clearing, (2) fertilizing and maintenance, (3) harvesting and transporting, and (4) replanting. Failure in one of the above stages will cause significant losses for the estate, as they will have lower yield or lower selling price. Casual workers are mostly utilized in at least stage 1, 2, and 4.

The Indonesian Palm Oil Association (GAPKI) issued a circular back in 2003 on the flowchart of working process in an oil palm plantation. The circular itself is not about the use of casual worker per se, but actually a business association response to a national policy on outsourcing. The circular meant to clarify which jobs in oil palm estate that can or cannot be outsourced. The circular highlights that only harvesting qualifies as a core job in oil palm plantation. In reality, this circular has been interpreted by many plantations as a justification to continue the use of casual workers for the so-called non-core jobs.

Female casual worker working in spraying and maintenance will have two daily targets that they have to meet in the form of the amount of fertilizer or pesticide that each person has to carry per day (+/- 25 kg or 225 litre) (Purba, 2020) and area size (2-4 hectares per person per day) or number of trees (400 trees in average) (Ridho, 2019). Casual workers interviewed said that they are not entitled for overtime and many have to work up to 12 hours a day to meet these targets and/or bringing their family member to help without pay. Any worker fails to meet these daily targets will have to pay certain fine or wage deduction, and repeated failure will be reprimanded with warning, transfer, and ultimately termination (Purba, 2020).

Moreover, another investigation finds that since casual worker is not documented in the company's social security database, when they fall sick or suffer from work-related accident or injury, they have to cover for their own healthcare expenses and the plantation management often refuse to take-up responsibility (The Danish Institute for Human Rights, 2018). Sometimes, casual worker can only get compensation from the management for their work-related injury

and/or accident after their pleas are supported by civil society advocacy or labour union.

Women casual workers in oil palm plantation have to face discrimination and gender-based violence. Other researchers found similar situation for women. For example, Tania Murray Li research in Sanggau district, West Kalimantan found that most casual worker were women whom received lower wage, while at the same time the size of low-skilled work force was substantial and makes the plantation have a strong bargaining power (Li, 2015). Women casual workers have been exposed to chemical and pesticides in their work without proper PPE and eventually experience health problems especially on their skin and reproductive organ (Balasa, 2020).

The UN Working Group on Business and Human Rights in 2019 acknowledged that overrepresentation of women in casual work, like the one in oil palm plantation, is a worldwide phenomenon that makes women even more prone to abuse and exploitation in work place (UNWG on Business and Human Rights, 2019). One can conclude that casual worker in oil palm plantation in Indonesia as a gendered type of labour situation. One of the consequences is that women have very little chance to be promoted into permanent workers because the plantation is going to prioritize harvesters and all harvesters are (young) men. Women casual workers are also vulnerable to sexual harassment, violence and abuse since they are 'invisible', working in remote and insecure areas, always under male supervisors, and quite often they have no access to the company's grievance mechanism – if any (Mason & McDowel, 2020).

After listing all the issues pertaining to casual worker in oil palm sector in Indonesia above, the table below aims to summarize the different rationales compiled from the corporation side and the worker side on why the plantation corporations use and why the workers become casual workers. The loss of alternative livelihoods is one of the most prominent reasons why the local people are becoming casual workers (Crambs & McCarthy, 2016). The table shows how the corporation actually benefited from the lack of bargaining power of the casual workers and therefore will try to maintain the status quo.

Table 3 COMPARISON OF CORPORATION & WORKER POINT OF VIEWS		
No.	Corporation	Worker
1.	The local worker prefers to work as casual worker;	Worker has no options (no other job opportunities);
2.	The work assigned to casual worker is of temporary nature;	Poor agriculture yields or another plantation commodity (e.g. rubber) has lower selling price;
3.	Most casual workers are locals with low education and capacity;	Workers need cash for their family;
4.	Corporation is doing the local community a favour by providing them with work opportunity;	The local community lost their agricultural field (transformed into oil palm plantation and/or other business);
5.	Employing casual worker means less operational cost, as the workers are easily replaceable and the corporation does not have to pay allowances.	The local community lost their forest that used to be source of their livelihoods.

Any discussion on palm oil always generates heated debate between the economic development argument and the socio-environmental impact argument. Corporations and government entities often use the phrase ‘black campaign’ to counter any criticism against this lucrative sector, for example, in a statement from the head of Labour and Transmigration Service of West Kalimantan Province, Drs. H. Manto M.Si, in a Virtual Discussion organised by CNV on Social Dialogue and Challenges in Building Mutual Trust between Workers and Employers in Oil Palm Sector, 24 November 2020. But if we have a commonly acceptable standard to measure the impacts, can it still be called a black campaign?

DISCUSSION

Why does precarious work or casual work need to be properly examined using the UNGPs lens? Because it is not only relevant for oil palm sector or Indonesia, but for sectors in other countries as well. The world continues to see less of regular employment and more of non-standard and casual employment and the trend are likely to remain.

The rising number of casual workers or non-standard forms of employment cannot be ignored. Both developed and developing countries have witnessed a shift away from regular employment to non-standard employment, that ILO categorized into four types as follow (1) temporary employment; (2) part-time and on-call work; (3) multi-party employment relationship; and (4) disguised employment/dependent self-employment (International Labour Organization, 2016). The Asia–Pacific region itself has 1.3 billion informal workers with the overall proportion of 68.2% (International Labour Organization, 2020). 85% of casual jobs in Indonesia are in agriculture with almost 90% of the workers only have a primary level education (ILO Regional Office for Asia and the Pacific, 2017). Though corporation might perceive hiring casual worker as an economically sound decision, it might bring long-term negative impacts at the macro level due to lack of innovation and investment, low productivity, unsustainable practices, instability of labour market and poor economic performance (International Labour Organization, 2016). Moreover, the pandemic has caused millions of people to lose their jobs and they might be replaced with casual workers or other informal job relationships.

Nevertheless, the palm oil sector has not been affected much by the pandemic as the demand for its product remains stable, yet their casual workers have been adversely affected the most (Tiur Rumondang, RSPO Indonesia, 2020).

The ECOSOC Committee expressed its concern towards violation of labour rights and exploitation of labour in mining and plantation sectors in Indonesia as a response to Indonesia’s first country report in 2014 (Office of the United Nations High Commissioner for Human Rights, 2014). Moreover, the Committee also underlined the lack of just and equitable working condition and dominant proportion of women in informal and low-paying jobs (such as casual worker in oil palm plantation). Furthermore, in the report to the UN Secretary-General in 2016, the UN Working Group on Business and Human Rights identified child labour, forced labour, precarious working condition, safety and health, and limitation of the right to associate, as issues prevalent in oil palm plantation (UN Working Group on Business and Human Rights, 2016).

Precariousness is the main attribute of casual worker. Precariousness has some numeric parameters such as low wage, low status and low job certainty prospect (Mantouvalou, 2012). Another parameter for precariousness is short-term duration of employment (Choonara, 2019). One can also refer to the four factors used by Lisa Rodgers to determine precariousness, (1) the

level uncertainty; (2) the unclear working condition, wage and lack of individual or collective control over the employment; (3) unappealing remuneration; and (4) the lack of legal and social protection (Rodgers, 2016). Another parameter suggested by ILO is that work-related risks are borne by the worker rather than the business or the management (International Labour Organization, 2016).

One can easily confirm all these parameters for casual workers in oil palm plantations. The UNGPs has managed to convince many corporations to adopt a better and more comprehensive human rights policy for their operation and is seen as a success compared to its predecessor, the 2003 Norms (UN Subcommission on the Promotion and Protection of Human Rights, 2003). Accordingly, many large corporations declare themselves as champions for business and human rights (BHR) and endeavour to utilise their leverage to elevate respect to human rights amongst their subsidiaries, supply chains, and business partners. However, many affected stakeholders in the field still doubt that this Guiding Principles will eventually improve the actual human rights condition.

This doubt is valid when we are examining the precarious working situation experienced by casual workers. Workers are seen as a natural and direct stakeholder in any discussion on business and human rights. However, interestingly only one principle (Principle 12) is specifically aimed to cover labour-related issues because it refers to ILO Declaration. And issues related to labour only appear in commentaries of four other UNGPs principles, but just as an example for policy coherence, necessity for harmonization of legal instruments or BHR disputes to address (Principles 3, 8, 23 and 29).

Where and how should we address casual worker in BHR discourse? First, we have to realize that those who are being exploited as casual workers in oil palm plantation usually suffered from layers of marginalization. Thus, any measures to implement the UNGPs in oil palm sector should recognize the causality of precariousness and vulnerability. Precariousness can act as a trigger to exacerbate adverse human rights impacts or as a consequence of marginalization. In order to understand this, precariousness should be assessed in conjunction with different attributes of vulnerability, such as gender, minority group, ethnicity, poverty, and education, etc. Next, government and corporation need to have willingness to acknowledge precariousness of casual worker as a BHR dimension. And there should be concerted efforts to mitigate the likelihood for abuse and exploitation in the casual work situation. At the practical level, precariousness has to be examined and included in human rights due diligence process.

Vulnerability implies higher likelihood of being subjugated to discrimination and other adverse human rights impacts. Unfortunately, vulnerability of casual worker can be overlooked because the issue is perceived not material enough for the corporation in comparison with the scale and complexity of the business. This kind of assumption should be challenged because corporation should examine any material BHR issues with rights-holders framework. Corporation should also be aware of any attributes that make certain groups suffer from adverse human rights impact disproportionately. Corporation should assess their system and see whether they have indicators that can help them understand how their actions and responses to impact vulnerable groups (Office of the United Nations High Commissioner for Human Rights, 2012).

Giving particular attention to marginal groups or causes of vulnerability is part of corporate responsibility to respect human rights (Office of the United Nations High Commissioner for Human Rights, 2012). In order to do so, corporation will need clear guidance and legal framework.

Of course, the authors acknowledge that the UNGPs as guiding principles cannot cover all issues in detail and needs to be accompanied with specific guidelines and action plans. That is why the OECD, the European Union, and many national governments decided to issue their own policy and regulation to implement the UNGPs. The OECD issued human rights due diligence guideline in line with the UNGPs and the 2017 ILO's MNE Declaration. The European Union is going to implement mandatory human rights due diligence to implement the UNGPs that will apply throughout value chain (Committee on Legal Affairs of the European Parliament, 2020). As of 2021, 24 countries have issued their BHR National Action Plan as recommended by the UN Working Group (UN Working Group on Business and Human Rights, 2016). The Roundtable on Sustainable Palm Oil (RSPO) has included the UNGPs in their 2018 Principles and Criteria as one of the legal references for their sustainable certification. However, these measures are still following the same mind-set on labour issues which focus on regular employment. It means that the casual worker phenomenon and precariousness have not been properly addressed.

As for Indonesia, Indonesia is still in the process of developing a national strategy on business and human rights (Abdi, 2020). The process focuses on four vulnerable groups, i.e., women, children, indigenous groups, and persons with disabilities. No feasible efforts to link labour, precariousness with this process yet. Indonesia has also enacted a legal framework in the form of a Presidential Instruction in 2019 on sustainable oil palm plantation (Indonesia, 2019). This legal framework mandates fourteen government ministries and agencies as well as local governments to carry-out measures in improving sustainability in oil palm sector. The Ministry of Labour of the Republic of Indonesia is tasked to review labour laws and regulations in relation to oil palm sector. Even though sustainability cannot be separated from human rights, but there is deafening absence of human rights in this national action plan. No provision mentions about the corporate responsibility to respect human rights. No effort is given to link the new action plan with the pre-existing National Action Plan on neither Human Rights nor the UNGPs. Moreover, despite the fact that casual worker has been acknowledged as one of the most problematic labour issues in oil palm sector, but no specific mention about it either.

We need more initiatives to adopt and implement the UNGPs at international, national, and sectoral levels. We also need to encourage oil palm plantation management to have their sectoral guidelines on the interpretation and implementation of the UNGPs. In particular, the palm oil sector should realise that human rights for workers are applicable for all types of worker and not limited only for those with formal employment status. Other momentum that should not be ignored is the increase acceptance of human rights due diligence. There should be efforts to incorporate the issue of casual worker as a material issue in due diligence cycle.

Policy coherence based on clear understanding on the concept of human rights for all and human rights obligation of corporation is imperative. Any policy, regulation, or guideline in relation to UNGPs and labour rights should take into account the contemporary development of employment and its impact on human rights.

CONCLUSION

The right to work is an important right to ensure human dignity and should be guaranteed and fulfilled by state and non-state actors alike. This right cannot be separated from the right to be free from discrimination, the right to just and favourable working condition, the right to social

security, the right to be free from slavery, forced labour, labour bondage, etc., regardless of the types of employment.

We should start to examine casual worker phenomenon that is commonly found in oil palm plantation in Indonesia from a human rights perspective. There should be a growing awareness that these workers are prone to abuse and exploitation due to the lack of legal recognition and guarantee. Meanwhile, there is a lacuna of guiding principles pertaining to casual worker.

The UNGPs has the potential to fill-in the gap but unfortunately has not been explored even after ten years since its endorsement. Many initiatives from international, supranational, national, and sectoral levels also show promising prospective to help addressing the precariousness of casual workers but have not been examined as well.

Efforts from the Government of Indonesia to develop a strategy to implement the UNGPs should be applauded. But its efforts should be complemented with efforts to harmonize relevant policies, such as the policy on sustainable palm oil and the business and human rights policy.

LIMITATION AND STUDY FORWARD

This research is still at an early stage in exploring the correlation between UNGPs and casual worker. At the time of the writing, the authors have never encountered similar efforts undertaken elsewhere. The authors are aware that this analysis only touch the surface and based on one specific sector only. However, the authors believe that this is a sensible decision as there is no one size fits all approach. Deeper analysis is needed to design a suitable approach and methodology to address the precariousness of casual worker phenomenon from BHR angle.

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.

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