

Satya Bumi's Input to Special Rapporteur on the promotion and protection of human rights in the context of climate change

"Corporate accountability in the context of human rights and climate change"

Satya Bumi¹ is delighted to be able to contribute by providing input to the Special Rapporteur on the promotion and protection of human rights in the context of climate change's report on corporate accountability in the context of human rights and climate change, to be presented to the 56th Session of the Human Rights Council in 2024. What we said is based on our position as an NGO and working in Indonesia.

Based on the list of questions asked by OHCHR, we bring seven points that we elaborate below:

A. The poor practices of disclosure mechanism in Indonesia

Before delving deeper into the disclosure mechanism and how its absence is detrimental to Indonesia's business environment, it is important to note that the rule of law in Indonesia is constantly being undermined by business actors who (ironically) also sit in the government.

Since expressing support for the UNGPs in 2011, progress on policies related to corporate annual reporting on human rights and the environment could be faster. In 2017, the Financial Services Authority issued a relevant provision through the Financial Services Authority Regulation No. 51/2017 on Sustainable Finance. However, this provision still needs to be completed to assess whether the company's supply value chain is clean or dirty in terms of respecting human rights and the environment. It is because 1) this regulation has no binding force and monitoring mechanism, and 2) the definition of ESG in this regulation still needs to meet the standards of the UNGPs. For example, in the social aspect, it only focuses on the equality of employees in the corporate environment, the number of complaints received, and increasing public literacy on ESG; in the environmental aspect, it still focuses on the amount of waste produced and whether there is a volume of waste discharged into environmental media. These two conditions still need to catch up to the disclosure requirements of the UNGPs.

Indonesia has incorporated the UNGP framework into an operational policy document, Presidential Regulation No. 53 of 2021, on the National Action Plan for Human Rights. However, this regulation does not even address business and human rights. The only plan related to the principles in the UNGPs is limited to "raising awareness of business actors to respect human rights in their business activities." This plan needs to be stronger and more permissive. Then, the Presidential Decree No. 60 of 2023 on the National Strategy for Business and Human Rights still does not establish the obligation of companies to report in the annual report on adverse impacts that occur, how these adverse impacts are addressed, and the measures taken to prevent the recurrence of adverse impacts.

The most recent development in integrating BHR is at the level of national human rights institutions. Komnas HAM is drafting norms and procedural standards related to BHR based on information from public consultations conducted. Although this standard is considered the most progressive, it does not require companies to establish disclosure mechanisms and publish information on adverse business impacts and efforts made. It also complicates access to justice due to the lack of transparency in efforts to remedy the impacts of corporate human rights abuses.

B. Mandalika and Michelin Case

¹ Satya Bumi is here to campaign and provide environmental and human rights advocacy that reaches policy makers and industry players so as to create a transformation that encourages the government and private sector to take an active role and carry out environmental protection commitments in overcoming climate change, especially for important and vulnerable groups such as women and indigenous peoples.
<https://satyabumi.org/tentang-kami/>

We have two examples of bad practices from the absence of corporate disclosure agreements: cases. First, state-owned enterprises for developing tourism areas in Mandalika (Mandalika case); second, private sector enterprises for rubber plantations in Jambi. This rubber is used as raw material for vehicle tires by the French company Michelin (Michelin case). These two examples show that the Government of Indonesia has yet to be able to apply the principles in the B&HR and the principles in the Paris Agreement to SOEs and international private companies.

1) **Mandalika case**

Satya Bumi and the Indonesian Infrastructure Development Monitoring Coalition (KPPII) have advocacy experience related to land disputes and structural impoverishment carried out by developers of the Mandalika Special Economic Zone as a tourist area. Mandalika is located on Lombok Island, West Nusa Tenggara Province. Since 2018, the development of the Mandalika tourism area and an international circuit has caused displacement of more than 300 households and dropped the income of the Sasak indigenous people by more than 60%.²

The development company has repeatedly said that land issues in the Mandalika area are "clear and clean,"³ This is a claim that contradicts the facts found on the ground. Despite the enormous losses suffered by the communities around Mandalika, the refusal to disclose data on land acquisition they carried out in 1980 in Mandalika.

The Coalition has repeatedly sent emails between January 2022 and October 2023 regarding our desire to disclose land release data with the company. However, every request was rejected because the company was not obligated to disclose the data to affected residents even though more than 300 families live in limbo due to the clearing of the Ebnut and Ujung areas for the construction of the Mandalika circuit.⁴

In the 2022 annual report, the company must also address the severe impacts of displacement on its project. This lack of transparency shows B&HR's poor perspective on business governance within the company. Efforts to promote transparent and accountable governance were also made by advocating the Mandalika case to the project's financing bank, the Asian Infrastructure Investment Bank (AIIB). However, to date, AIIB has also chosen to throw the matter of displacement and impoverishment to the company, refusing to disclose information related to land release and conducting a calculation of the loss of life of the community even though AIIB has policies related to information disclosure mechanisms to ensure the implementation of good project governance.⁵

2) **Michelin case**

In May 2015, Michelin launched a joint venture to "produce environmentally friendly natural rubber ." Michelin's flagship rubber product, tires, is a collaboration between the world's largest tire company and Barito Pacific Group. The project was later backed by Asia's first \$95 million green corporate "Sustainability Bond" and presented to global investors as a contributor toward Indonesia's national climate change targets.⁶ The problem is that Michelin's big claims need to be proven to be environmentally friendly rubber. We found constant forest destruction and threats to biodiversity where the rubber is produced. Instead, we fear that a claim is a form of "greenwashing".

Satya Bumi, Walhi Jambi, and Mighty Earth have advocated for conflicts between communities, wildlife, and rubber companies. Mighty Earth's investigation found that the company's concession threatens the home to Orang Rimba and Talang Mamak (Indigenous peoples) and is a critical habitat for

² <https://walhisulsel.or.id/wp-content/uploads/2023/04/Laporan-Riset-Survei-KPPII-tentang-Dampak-Dampak-HAM-dan-Sosio-Ekonomi-Proyek-Mandalika.pdf>

³ <https://ntb.idntimes.com/news/ntb/muhammad-nasir-18/perusahaan-nyatakan-1175-hektare-lahan-kek-mandalika-clear-and-clean>

⁴ <https://walhisulsel.or.id/3818-pernyataan-sikap-koalisi-pemantau-pembangunan-infrastruktur-indonesia-menanggapi-pertemuan-konsultasi-palsu-yang-diselenggarakan-oleh-gubernur-nusa-tenggara-barat/>

⁵ <https://www.aiib.org/en/policies-strategies/public-information/policy/index.html>

⁶ https://www.mightyearth.org/wp-content/uploads/Mighty_Earth_MichelinReport8Oct2020FINAL.pdf

the endangered Sumatran elephant and critically endangered Sumatran tiger and orangutan. We found 1298 ha of conservation forest deforestation in 2015.

Indigenous Talang Mamak and Orang Rimba communities who rejected the rubber industry in their forests were intimidated by the police. We corresponded with the company to request environmental due diligence results and other key documents, including the extent of natural forest cleared for the rubber industry. But Michelin and the company never provided them. As a result of industrialized deforestation, conflicts between residents, wildlife animals, and companies are unstoppable.

Despite Michelin's commitment in its Sustainable Natural Rubber Policy to providing full transparency of its operations, Mighty Earth has found that Michelin and RLU have proved to be highly un-transparent in response to Mighty Earth's repeated requests for access to key reports, maps, satellite images and external audits and social and environmental due diligence assessments about our investigation of the RLU Project.⁷

C. Corporate disclosure requirements under human rights and environmental obligations

We want to show that ESG requirements in Indonesia do not meet the standards of good ESG implementation. ESG in Indonesia is enumerated only in sectors that are 'easy' to implement but are still weak in the regulation of reporting obligations, especially related to environmental and human rights due diligence reporting, as well as concrete efforts to restore violations committed and assessing whether ESG reporting practices in Indonesia meet human rights and Paris Agreement standards is difficult. We attach to Annex I the equivalence gap of Indonesian laws and regulations with various recognized international standards.

Indonesia has generally yet to go far in regulating human rights and environmental mitigation disclosure. As of the writing of this commentary in 2023, Indonesia is only at the point of requiring companies to conduct Sustainability Reporting based on the ESG framework, but with weak requirements and the absence of strong supervision and sanctions. POJK 51/2017 only provides the most severe sanction of a "written warning ."So, in conclusion, ESG standards in Indonesia have not yet met the disclosure mechanism requirements in both UNGPs and PA.

D. UN Guiding Principles on Business and Human Rights with respect to climate change

The lack of a binding regulatory framework [regarding climate change] at the international level contributes to the risks faced by human rights defenders (Front Line Defenders, 2019). The quote from Front Line Defenders above is one of our references in assessing how the UN Guiding Principles on Business and Human Rights are implemented about climate change. The absence of a binding regulatory framework is a factor that causes environmental human rights defenders to continue to be threatened by natural resource exploitation activities. The state, which should act as the 'main duty bearer,' has instead become an actor that contributes to human rights violations due to weak political will, high levels of corruption, friendly oligarchy, and systemic poverty. Moreover, these business activities also impact the worsening climate crisis.

Climate change also occurs as a result of business activities, especially extractive industry businesses, which sacrifice land, environmental sustainability, and indigenous communities, especially women. The impact on women in indigenous communities differs significantly from that on men. In Indonesia, the energy transition as a solution to climate change is used as an excuse for countries and companies to exploit new resources with claims of being environmentally friendly and low emissions, for example, nickel. As a result, the massive business activities of the nickel industry led to violations of human rights and even environmental sustainability around the business area. Not to mention other extractive companies whose activities also support the increase in emissions causing climate change.

Regarding climate change, we adopt a path to the interrelationship of climate change, human rights, and the UN Guiding Principles on Business and Human Rights from Surya Deva, which uses the three pillars of the UNGP as its basis. The first pillar is 'Protect'; the state must be an example and lead business actors to protect human rights and adopt the UNGPs in business practices. State-owned companies must

⁷ https://www.mightyearth.org/wp-content/uploads/Mighty_Earth_MichelinReport8Oct2020FINAL.pdf

be empowered to lead by example for private companies operating in the country. The second pillar is 'Respect'; with or without the phrase climate change in the UN Guiding Principles on Business and Human Rights, companies should be aware of the impacts of climate change, especially if they claim to have complied with the UN Guiding Principles. Business people must understand the differences in effects that climate change has on specific groups of society, especially groups that are most vulnerable to being affected by climate change—especially the impacts resulting from their business activities. The third pillar, 'Remedy,' in the context of climate change, is no longer about environmental pollution and is not about the remediation of human rights in general. Climate change occurs globally, and the role of companies that impact increases in emissions and global average temperatures seems to be a transnational unit. Many businesses operate in multiple jurisdictions, so an international accountability mechanism that affects companies in more than one jurisdiction is needed. Companies directly involved in extractive business and funding institutions must also be more accountable and responsible per the UN Guiding Principles.

E. The effective measure for applying UNGPs in regard with climate change

From various sources we studied, the UN Guiding Principles on Business and Human Rights still cannot be suitable for protecting human rights in climate change. Companies and the state should be equally positioned as 'duty-bearers' in protecting and respecting human rights and accessing remedies. The absence of the phrase climate change in the UN Guiding Principles on Business and Human Rights document may influence how countries and companies comply with and adopt the framework. It would be better if international regulations that protect human rights and climate change were more binding on companies.

Due diligence is formed with an integrated assessment of human rights and climate change aspects. Due diligence must be carried out with high standards, for example, being oriented towards targets and outcomes. Not just what has been done but also whether the positive impact has been felt and the mark achieved - if it can be measured. How many emissions or harmful effects have been successfully prevented by companies, and what results have been achieved by implementing the three pillars of the UN Guiding Principles on Business and Human Rights?

F. Role of the finance and banking sector

We specifically advocated for the financing and use of the Asian Development Bank (ADB) country safeguard system. Regarding financing on fossil fuels, ADB issued money for a fossil fuel industry project. The project involves constructing, operating, and maintaining a 1,760 megawatt (MW) combined-cycle gas turbine (CCGT) power plant and associated facilities. The liquefied natural gas (LNG) power plant project is located approximately 100 kilometers (km) east of Jakarta on the coast of Java. An independent power producer, PT Jawa Power Satu, will develop and implement the project under a 25-year power purchase agreement (PPA) with the state electricity company (PLN). The project's purpose is to provide electricity supply in Java Bali, which, according to PT PLN Indonesia, is experiencing an oversupply of electricity.⁸ Based on ADB's risk categories, the project is rated a high risk for environmental impacts and a medium risk for involuntary resettlement.⁹

Despite ADB promoting a new energy policy in 2021. While this provision states that it will not support coal-fired power and heating plants, funding LNG is a form of project smuggling because LNG comes from fossil fuel and requires heating plants.

Communities around the plant are beginning to experience health impacts such as ARI and skin diseases. ADB also ignores the livelihood restoration of affected communities. Moreover, ADB is indirectly involved in coercing affected women to sign approval for project development by providing handshake money of Rp 150,000.

⁸ <https://www.cnbcindonesia.com/news/20230208131025-4-412103/bos-pln-blak-blakan-alasan-di-balik-oversupply-listrik-ri>

⁹ <https://www.adb.org/projects/51112-001/main>

The entire community, starting from fishermen, land-owning farmers, sharecroppers, women, teachers, and elementary school students whom PSOD met, have been subjected to a wide range of serious negative socio-economic impacts as a result of the construction of the power plants (PLTGU). Fishermen, farmers, sharecroppers, women, teachers, and children affected by the PLTGU project have never been asked for consent or involved in meaningful consultations by PT Jawa Satu Power (PT JSP). Even since August 2018, PT JSP has never conducted consultation meetings regarding negative impacts on the community.¹⁰

G. Greenbonds

Our experience of Indonesia's attempt to use green bonds to help Indonesia meet its climate mitigation targets, via the RLU project in Jambi has had a negative impact on environment and human rights as green bonds were misused to pay for legacy deforestation and to support a project that violated the rights of local and indigenous communities living in Jambi, Sumatra. The finance sector is creating tools, through ICMA, with voluntary standards. Sustainability-linked and green bonds principles lacks language and guidance around human rights due diligence. These instruments can only deliver human rights obligations and climate mitigation targets if human rights and rigorous environmental and social impact assessments are incorporated into these tools. Our experience of the RLU project shows that there is very little independent oversight for the green bond financing for the project, to ensure credible human rights results and credibility, either from the finance side or the governance side.

H. Fossil fuel subsidies

Overall, the Indonesian government still heavily subsidizes the fossil fuel industry. Historically, over the last decade (2010-2019), Indonesia's fossil fuel subsidies peaked from 2011 to 2014 and then declined to reach a value of USD 8.6 billion in 2019. During this period, most of the subsidies were directed to support the production and consumption of petroleum and fossil fuel electricity consumption. However, according to Energy Policy Tracker data, in 2020, Indonesia pledged at least USD 6.54 billion for fossil fuel energy as part of its energy-related funding commitments and economic response to COVID-19. These funding commitments include bailout packages aimed at the state energy enterprises, Pertamina and PLN, and the national aviation company, Garuda Indonesia, as well as support packages to lower gas prices for industrial use and three-month electricity bill holidays for vulnerable consumers. (Energy Policy Tracker, 2021; OECD-IEA Fossil Fuel Support Database, 2020).¹¹

Furthermore, according to the World Bank Report "Detox Development, Repurposing Environmentally Harmful Subsidies (June 2023)". Indonesia is the largest provider of fossil energy subsidies in ASEAN and the 8th largest globally in 2021. The report explains that throughout 2021, the Indonesian government disbursed fossil energy subsidies worth USD 11.9 billion or around Rp170.6 trillion (assuming the 2021 exchange rate of IDR 14,269 per USD). This figure includes subsidies for consumers and producers of LPG, kerosene, natural gas, coal, fossil fuel electricity, and refined petroleum products.¹²

State subsidies to fossil fuels, specifically subsidies to fuel oil for vehicles in Indonesia, are still large and are made to provide affordability for Indonesians, especially when world oil prices are high. Even in 2022, the budget allocation for the fulfillment of fossil-derived energy is still far greater than that for renewable energy. On the one hand, nationally, this is needed, but it should gradually reduce the use of fossil fuels and switch to new and renewable energy.

¹⁰ https://walhijabar.id/wp-content/uploads/2023/06/Pernyataan-sikap-PLTGU-Jawa-1_Eng_3052023.pdf

¹¹ Climate Transparency Report 2021, Indonesia. Dapat diakses di <https://www.climate-transparency.org/wp-content/uploads/2021/10/CT2021Indonesia.pdf>

¹² <https://databoks.katadata.co.id/datapublish/2023/06/19/indonesia-negara-pemberi-subsidi-energi-fosil-terbesar-di-asean>

Appendix I

Reporting Requirements and the Equivalencies with Indonesia Regulations			
UNGPs	Indonesia Regulations	Global Reporting Initiatives (according to Paris Agreement)	Indonesia Regulations
Provide a substantive response to the overarching question about the companies' commitment to respect human rights	Exist in draft of SNP BHR but not required to be included in routine company reporting	Fully disclose climate change transition and adaptation plans and actions	No strict requirements Only regulated companies must report on social and environmental responsibility (Govt Regulation No. 47/2012)
Provide a substantive response to the overarching question about the demonstration of the implementation of the companies' commitment	No obligation	Detail annual progress on emissions reduction targets	Regulated in POJK 51/2017 regarding efforts and achievements to reduce emissions
Information of the statement of salient issues on human rights	No obligation	Robustly explain and be transparent about their use of carbon credits	Regulated in POJK 51/2017 (Appendix II) Required reports are limited to energy usage (electricity and water)
Information of the determination of salient issues	No obligation	Robustly explain and be transparent about their greenhouse gases removals	Regulated in POJK 51/2017 (Appendix II) The required reports are limited to reducing waste and effluent for companies that are directly related to the environment

Information of the choice of focal geographies;	No obligation
Information of the additional severe impacts	No obligation
The specific policies around the salient issues	No obligation
Approach and engagement with relevant stakeholders	No obligation
The decision making process on the issues	No obligation
Make sure the effectiveness in practice	No obligation
Provide the effective remedy for the harmed people	No obligation

