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Reconstructing State and Corporate Responsibility within the Human Rights Framework in Indonesia's Mining Sector

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Abstract: The development of the business and human rights regime represents a significant challenge to the classical paradigm that positions the state as the sole duty bearer in the protection of human rights. In Indonesia's mining sector, recurring social and environmental conflicts illustrate that violations of the rights to a healthy environment, health, and livelihood cannot be attributed exclusively to the state's failure to fulfill its obligations to respect, protect, and fulfill human rights. These violations are also closely linked to corporate conduct. Despite the introduction of the protect-respect-remedy framework by the United Nations Guiding Principles on Business and Human Rights (UNGPs), the implementation of these principles in Indonesia remains constrained by normative and institutional limitations. These limitations include the weak binding force of the National Action Plan on Business and Human Rights (Rencana Aksi Nasional Bisnis dan Hak Asasi Manusia, RAN BHAM) and the fragmentation of victim remedy mechanisms. This study seeks to reconstruct the responsibilities of the state and corporations in an integrated manner within the mining sector. Employing a normative legal approach through statutory, conceptual, comparative, and historical methods, this study identifies a structural mismatch between legal obligations and the distribution of economic power. The proposed contribution involves a model of collaborative responsibility that integrates state duties, corporate human rights due diligence, and coordinated remedy mechanisms. This integrated approach is designed to enhance human rights protection in mining governance.

Keywords: business and human rights, corporate responsibility, Indonesia, mining, state responsibility.

INTRODUCTION

The historical development of human rights law has largely been grounded in a state-centric paradigm, which identifies the state as the central actor obligated to respect, protect, and fulfill the fundamental rights of individuals within its jurisdiction. (Jean-Jacques, 1762). Under the conventional state-centric framework, non-state entities, including corporations, are not typically considered direct holders of human rights obligations under international law. Nevertheless, globalization and the increasing influence of multinational enterprises, especially

in the extractive sector, have significantly reshaped power dynamics and generated a new reality in which human rights violations are frequently linked to business operations conducted within, or authorized by, state jurisdictions. Consequently, the protection of human rights can no longer be viewed solely as a state responsibility but must be understood within a multi-actor paradigm that encompasses both public and private actors (Andrew, 2006).

The impact of this transformation is especially pronounced in Indonesia's mining sector, which serves as a key driver of national development yet remains closely associated with social and environmental disputes. Empirical studies indicate that mining operations have frequently been linked to violations of various human rights, particularly the rights to a healthy environment, life, health, and an adequate standard of living. Such findings highlight the growing tension between economic development objectives and the protection of fundamental human right (Kholis, 2025). The relationship between state authority and corporate power in mining governance is evident in issues such as land dispossession, land conflicts, environmental degradation, and the criminalization of local communities (Komnas HAM, 2021). These challenges indicate that a solely state-centric perspective is no longer sufficient to explain or address accountability imbalances in high-risk industries.

In response to this normative gap, the United Nations adopted the United Nations Guiding Principles on Business and Human Rights (UNGPs) in 2011. The UNGPs established a three-pillar framework, comprising state duty to protect, corporate responsibility to respect, and access to remedy. This framework extends the scope of human rights responsibility to corporate actors while re-establishing the obligation of states to ensure the effectiveness of remedial mechanisms for victims (United Nations, 2011). In this respect, the UNGPs signify the consolidation of a multi-actor paradigm within the global human rights governance system.

In response to these developments, Indonesia has formulated the National Action Plan on Business and Human Rights (*Rencana Aksi Nasional Bisnis dan Hak Asasi Manusia*, RAN BHAM). However, the implementation of RAN BHAM continues to encounter significant structural limitations. The primary issue with the aforementioned document is its apparent lack of legal binding force upon corporations. Additionally, it is not supported by effective monitoring mechanisms, and a comprehensive system of victim remedy has yet to be established (Kholis, 2025). In practice, both judicial and non-judicial mechanisms frequently prove ineffective in providing legal certainty and often lack sufficient enforceability, leaving victims of human rights violations in the mining sector persistently vulnerable.

Despite the rapid expansion of scholarship on business and human rights, several important academic gaps remain evident. First, a considerable number of studies continue to treat state responsibility and corporate responsibility as separate normative domains, without advancing an operational framework that meaningfully articulates shared or integrated responsibility within domestic legal systems. Second, existing evaluations of the National Action Plan on Business and Human Rights (RAN BHAM) are largely descriptive in nature and seldom engage in a normative reconstruction of its limited binding force or the effectiveness of its victim redress mechanisms, particularly in high-risk sectors such as mining. Third, the mining sector is often underexplored as a focal point for developing a systemic model of human rights accountability, despite its significance in revealing the complex interactions between state authority and corporate power and their implications for the rights of affected communities.

In light of these documented gaps, a reconstruction of the framework of state and corporate responsibility for human rights protection in Indonesia's mining sector is required. This reconstruction is not intended to displace the state's position as the primary duty bearer. Instead, it aims to integrate corporate responsibility more explicitly and operationally into the national legal system. By establishing the mining sector as the primary domain of analysis, this study proposes a collaborative responsibility model that underscores the complementary

relationship between state obligations and corporate responsibilities, while positioning victim remedy as the core of the accountability system.

The novelty of this study is reflected in three main dimensions. First, at the theoretical level, it reconstructs the multi-actor responsibility paradigm within the framework of Indonesia's constitutional-based legal system, thereby offering a more integrated understanding of human rights accountability. Second, at the normative level, it advances a proposal to transform the National Action Plan on Business and Human Rights (RAN BHAM) from a predominantly administrative policy instrument into a legally binding framework equipped with effective enforcement and remedy mechanisms. Third, at the sectoral level, it positions the mining industry as a critical analytical locus for developing and testing a more context-sensitive model of human rights accountability.

Accordingly, this study contributes not only to national legal scholarship but also to the broader international discourse on the domestication of international human rights norms within developing countries whose economies are heavily dependent on extractive industries.

Problem Statement

According to the traditional framework of human rights law, the state is regarded as the principal duty bearer entrusted with the responsibility to respect, protect, and fulfill the rights of individuals within its jurisdiction. Nevertheless, the rapid expansion of corporate activities in the mining sector has significantly reshaped existing power relations in the implementation of human rights protection. In the Indonesian context, numerous mining-related disputes demonstrate that human rights violations arise not only from shortcomings in state action but also from corporate practices that negatively affect the right to a clean and healthy environment, the right to health, and the economic well-being of local communities. These developments call into question the effectiveness of a purely state-centered approach and highlight the need to reassess accountability mechanisms in addressing human rights impacts associated with business operations.

Although the UN Guiding Principles on Business and Human Rights (UNGPs) introduced the protect-respect-remedy framework as a global standard for addressing business-related human rights impacts, its implementation within domestic legal systems continues to face significant structural limitations. In Indonesia, the National Action Plan on Business and Human Rights (RAN BHAM) reveals several shortcomings. First, its provisions lack strong legally binding force. Second, its principles have not been adequately incorporated into the regulatory regime governing the mining industry. Third, the framework has yet to establish comprehensive and effective mechanisms to ensure access to remedies for victims of business-related human rights violations.

At both the conceptual and normative levels, there remains a lack of a systematic framework capable of integrating state obligations and corporate responsibilities into a unified accountability structure. This gap highlights the need for a more comprehensive approach to governing human rights protection in high-risk sectors. Therefore, this study seeks to explore how the respective responsibilities of the state and corporations can be reconstructed within an integrative accountability model that ensures effective human rights protection and provides meaningful remedies for victims in Indonesia's mining sector.

METHOD

This study adopts a normative (doctrinal) legal research methodology, which views law as a system of norms and analyzes legal issues through a systematic examination of legal literature and relevant legal sources. The research aims to develop a reconstructed accountability framework for both the state and corporations within the context of human rights protection, with particular emphasis on the mining sector. To complement the doctrinal

analysis, in-depth interviews were conducted with human rights scholars and practitioners. These interviews served to enhance the conceptual understanding of the issues under investigation and to provide additional support for the analytical framework.

The study applies four complementary research approaches. First, the statutory approach is utilized to assess the consistency, coherence, and interaction of national and international legal instruments governing human rights protection, state obligations, corporate responsibilities, and mechanisms for victim redress. Second, the conceptual approach draws upon Social Contract Theory, Welfare State Theory, and John Rawls's Theory of Justice as theoretical foundations for examining the allocation of responsibilities between public authorities and corporate entities. Third, a comparative approach is employed to evaluate the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs), including the National Action Plan on Business and Human Rights (RAN BHAM), across different jurisdictions in order to identify relevant best practices and regulatory models. Fourth, the historical approach is used to trace the evolution of state and corporate accountability within the broader development of international human rights law, thereby providing a contextual basis for the proposed reconstruction of accountability mechanisms.

The sources of legal materials consist of three categories: primary legal materials, including international instruments, constitutional provisions, statutory regulations, and judicial decisions; secondary legal materials, such as books, academic journals, United Nations reports, and documents related to the RAN BHAM; and tertiary legal materials, including dissertations on state and corporate responsibility and relevant monitoring and investigative reports issued by the National Human Rights Commission (*Komisi Nasional HAM*, Komnas HAM) concerning corporate conduct. The analysis of these materials was conducted through a deductive legal reasoning process, where legal norms functioned as the major premise and specific legal issues served as the minor premise. This method was employed to formulate coherent and systematic conclusions.

RESULTS AND DISCUSSION

The Construction of State Responsibility in Human Rights Norms

In the Indonesian constitutional context, this responsibility is explicitly recognized in the Constitution of the Republic of Indonesia of 1945, which establishes the protection of human rights as a fundamental state obligation (Undang-Undang Dasar Negara Republik Indonesia, 1945). This constitutional mandate is further delineated in Law Number 39 of 1999 on Human Rights, which stipulates that the state is responsible for the protection, promotion, enforcement, and fulfillment of human rights (Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia, 1999).

Within the framework of international human rights law, state responsibilities are commonly expressed through the tripartite obligations to respect, protect, and fulfill human rights. The obligation to respect requires the state to abstain from actions that directly interfere with or infringe upon the rights of individuals. The obligation to protect compels the state to prevent, investigate, and address human rights violations committed by third parties. Meanwhile, the obligation to fulfill requires the state to adopt appropriate legislative, administrative, and institutional measures to facilitate the realization and enjoyment of human rights by all individuals under its jurisdiction (Donnelly, 2003).

Within the mining sector, the obligation to protect acquires particular importance because threats to the rights to a healthy environment, health, and sustainable livelihoods frequently arise from corporate activities. Accordingly, the state's failure to establish, implement, and enforce effective regulatory and monitoring mechanisms may constitute a breach of its international human rights obligations. In this regard, state responsibility extends beyond the

mere prevention of direct violations and encompasses the duty to regulate private actors whose activities may adversely affect human rights.

Moreover, from a welfare state perspective, the state cannot remain neutral in economic relationships that produce or reinforce structural inequalities. Rather, it bears a positive obligation to ensure that the exploitation and management of natural resources are conducted in a manner consistent with the protection of human rights, particularly those of vulnerable and marginalized communities. Consequently, state responsibility should be understood as fundamentally structural and preventive, rather than merely reactive to individual instances of human rights violations. This broader conception requires the state to actively shape legal, institutional, and policy frameworks capable of balancing economic development objectives with the protection of fundamental rights.

The Evolution of Corporate Responsibility in the Human Rights Regime

The traditional state-centered paradigm of human rights law has experienced significant transformation as corporations have become increasingly influential actors in global governance. Economic globalization has contributed to the development of new power dynamics in which corporations, particularly those operating in extractive industries, possess substantial economic resources and considerable influence over policy-making processes. As a result, the protection and realization of human rights can no longer be understood solely through the lens of state responsibility, but must also take into account the growing role of corporate actors in shaping social, economic, and environmental outcomes.

In response to this development, the UNGPs have been adopted, thus introducing the protect-respect-remedy framework (United Nations, 2011). This framework does not displace the state's position as the primary duty bearer; rather, it affirms that corporations hold an independent responsibility to respect human rights.

The principle of human rights due diligence constitutes a core development in the contemporary evolution of corporate accountability. It requires business enterprises to proactively identify, prevent, mitigate, and address the human rights impacts arising from their operations and business relationships. In this context, corporate responsibility has shifted beyond voluntary philanthropic practices and the conventional boundaries of corporate social responsibility (CSR). It is increasingly conceptualized as a mandatory, process-based obligation rooted in risk management, continuous assessment, and enforceable accountability standards.

Conversely, within the national legal system, corporate regulation remains predominantly influenced by the paradigm of social and environmental responsibility as delineated in Law Number 40 of 2007 on Limited Liability Companies (Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, 2007). This regulatory framework has yet to explicitly internalize the obligation of human rights due diligence in the sense conceptualized by the UNGPs. This phenomenon reveals a discrepancy between the evolution of international human rights standards and the establishment of corporate obligations within domestic legal frameworks.

Implementation Challenges in Indonesia

The government of Indonesia has demonstrated a normative commitment to this principle through two key actions. First, it has formally endorsed the International Covenant on Civil and Political Rights (ICCPR) through its ratification (International Covenant on Civil and Political Rights (ICCPR), 1966). Second, it has established the RAN BHAM, which aims to promote the protection of human rights in the corporate sector (Rencana Aksi Nasional Bisnis Dan Hak Asasi Manusia (RAN BHAM) 2021–2024, 2021). However, the findings of this study

indicate that the internalization of business and human rights norms remains limited and has not been systematically integrated into the legal framework governing the mining sector.

The National Action Plan on Business and Human Rights (RAN BHAM) primarily functions as a policy-oriented instrument and does not possess legally binding force equivalent to statutory regulation. Consequently, the requirement of human rights due diligence has not yet been institutionalized as a mandatory normative condition within the licensing, supervision, and evaluation processes of mining activities. This regulatory gap limits the framework's ability to effectively shape and regulate corporate conduct at the operational level.

Furthermore, supervisory authority within the mining sector is dispersed across multiple governmental bodies. This fragmentation weakens the state's capacity to fulfill its obligation to protect human rights, particularly due to insufficient inter-agency coordination. In parallel, remedial mechanisms are similarly spread across various legal pathways without coherent institutional integration. As a result, affected individuals are often required to navigate complex procedural systems and bear significant financial as well as administrative burdens in their pursuit of legal remedies.

These conditions suggest that the underlying problem is not the absence of relevant norms, but rather the lack of coherence within the institutional design for integrating state obligations and corporate responsibilities.

Empirical Analysis of the Mining Sector

The mining sector occupies a strategic position in the national economy and is governed by a specialized legal regime (Jean-Jacques, 1762). However, the extractive and land-intensive character of this industry entails a high level of risk to the rights to a healthy environment and to the livelihoods of communities residing in and around mining areas.

The pattern of conflict in Indonesia's mining sector can be illustrated through recurring land disputes and environmental impacts. According to the annual reports published by Komnas HAM, agrarian conflicts and mining-related disputes are consistently among the most significant categories of public complaints. These complaints are particularly related to restrictions on community access to land and sources of livelihood. Disputes between mining permit holders and local communities frequently escalate into the criminalization of residents or horizontal conflicts. These dynamics reveal the weakness of consultation procedures and the absence of meaningful participation in decision-making processes.

The environmental contamination resulting from mining operations further underscores the limitations of state supervision in fulfilling its duty to protect the environment. The contamination of water sources and the degradation of agricultural land have far-reaching ecological consequences, as well as adverse effects on the rights to health and livelihood. Although administrative and civil litigation avenues are formally available, obstacles related to evidence and disparities in resources between affected communities and corporate actors have led to the ineffectiveness of these remedial mechanisms. This condition suggests that the remedy pillar within the UNGPs framework has not yet been fully internalized in national practice.

The findings of this study further suggest that mining-related conflicts are not solely economic in nature but also encompass social and ecological dimensions. In many cases, affected communities confront substantial power asymmetries when engaging with corporations and bureaucratic structures.

From the perspective of distributive justice, these communities may be regarded as the most disadvantaged parties within the distribution of the benefits and burdens of development. This situation necessitates policy designs that prioritize the protection of vulnerable groups, rather than approaches that focus exclusively on aggregate economic growth.

The ongoing inadequacy of access to effective remedial mechanisms underscores the need for the remedy pillar of the UNGPs to function at its optimal capacity within the national context.

Empirical Analysis of the Mining Sector

Building upon the normative and empirical analyses presented in the preceding sections, this study reconstructs an integrative and systemic model of accountability. This reconstruction is based on the finding that the primary challenge in mining governance does not lie in the absence of legal norms, but rather in the disjunction between state obligations and corporate responsibilities within a coherent architecture of accountability. Accordingly, the proposed model does not seek merely to reinforce one actor over the other; rather, it aims to establish a functional relationship between both.

Normative Foundations

The proposed model is predicated on three principal normative foundations. Firstly, it is based on the principle of the welfare state, which stipulates that the state is obligated to act affirmatively to ensure the protection of vulnerable groups. This principle derives constitutional legitimacy from the Constitution of the Republic of Indonesia of 1945 and is further elaborated in Law Number 39 of 1999 on Human Rights (Undang-Undang Dasar Negara Republik Indonesia, 1945; Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia, 1999).

Secondly, the principle is anchored in the doctrine of state obligations under international human rights law, as articulated through the tripartite duties to respect, protect, and fulfill (Donnelly, 2003). In the context of the mining industry, the obligation to protect entails the responsibility of state authorities to guarantee that corporate operations do not contribute to human rights violations. This commitment is to be fulfilled through the implementation of preventive regulatory measures and the establishment of effective supervisory mechanisms.

Thirdly, the model incorporates the protect–respect–remedy framework articulated in the UNGPs, which extends the scope of responsibility to corporate actors (United Nations, 2011). In this sense, the reconstructed model does not displace the state's position as the primary duty bearer. Rather, it affirms that effective human rights protection in extractive industries can only be achieved where state obligations and corporate responsibilities are structurally integrated.

Integrating State and Corporate Responsibility

This reconstruction situates the state and corporations within a single, interrelated system of accountability. The state is not merely conceptualized as a formal regulator; rather, it is regarded as the guarantor of a justice-oriented structure that ensures the distribution of benefits and burdens arising from natural resource exploitation does not engender inequalities that are incompatible with human rights. In accordance with the prevailing national mining legislation, this obligation is to be incorporated into the conceptualization of licensing regimes, supervisory mechanisms, and sanctions, as stipulated within the framework of the Mineral and Coal Mining (*Mineral dan Batubara, Minerba*) regime (Undang-Undang Nomor 3 Tahun 2020 Tentang Pertambangan Mineral Dan Batubara, 2020).

Conversely, corporations are no longer regarded exclusively as economic actors subject to administrative compliance; rather, they are increasingly viewed as entities that carry a preventive responsibility for risks of human rights violations. The implementation of human rights due diligence, as articulated in the UNGPs, serves as a pivotal mechanism to ensure that potential adverse impacts are identified and mitigated at the earliest stages of business planning and operation (United Nations, 2011).

This integration aims to avoid a dualistic model of accountability, in which the state and corporations avoid responsibility by allocating it to each other. Instead, it establishes an institutional linkage between the state's duty to protect and the corporate responsibility to respect, thereby enabling both to operate within a single and coherent normative framework.

Elements of the Ideal Accountability Model

The ideal model reconstructed in this study consists of several interrelated elements. First, regulatory strengthening is required to explicitly internalize human rights obligations within mining law. This suggests that human rights due diligence should no longer be regarded as a voluntary standard but should become a normative requirement within licensing and operational evaluation processes in the mining sector.

Secondly, remedial mechanisms must be designed in a multidimensional and integrated manner. The current fragmentation between administrative, civil, and criminal pathways has the effect of weakening the effectiveness of protection. Institutional coordination is therefore necessary to ensure that victims have access to justice that is effective, timely, and non-discriminatory.

Thirdly, the model emphasizes the significance of periodic human rights audits in the mining sector. Such audits function as both preventive mechanisms, serving to identify potential violations early on, and instruments of public accountability.

Fourthly, guarantees of non-recurrence constitute an integral component of accountability. The scope of responsibility should not be limited to mere compensation; it must also encompass policy and operational reforms aimed at preventing similar violations in the future.

Fifthly, it is imperative that these elements be systematically integrated into the national legal system, as opposed to their implementation as isolated sectoral policies. Such integration ensures that business and human rights principles become an inherent part of natural resource governance.

In summary, the reconstruction proposed in this study does not merely expand corporate responsibility or reaffirm state obligations in isolated contexts. Instead, it establishes an architectural framework of accountability that establishes normative and institutional connections between the two actors. This model addresses the discrepancy between the structure of legal obligations and the structure of economic power in the mining sector, while enhancing the overall effectiveness of human rights protection in Indonesia.

CONCLUSION

This study argues that human rights accountability in Indonesia's mining sector cannot be sufficiently explained through a purely state-centric paradigm that clearly separates state obligations from corporate responsibilities. Although the state remains the primary duty bearer under international human rights law, governance dynamics in the extractive sector indicate that corporations exercise substantial economic power and operational control that directly affect the realization of rights among affected communities. This misalignment between the structure of legal obligations and the distribution of economic power has generated a persistent accountability gap.

The study employs a combination of normative and empirical analysis to show that the central problem in the Indonesian context does not lie in the absence of legal norms, but rather in the fragmented institutional architecture and the weak integration between the state's duty to protect and the corporate responsibility to respect human rights. In this regard, the implementation of the National Action Plan on Business and Human Rights (RAN BHAM), which lacks binding legal force and remains insufficiently integrated into the mining regulatory

framework, highlights the necessity of a more coherent and systematic reconstruction of accountability mechanisms.

As a theoretical and normative contribution, this article advances a collaborative responsibility model that integrates state obligations and corporate responsibilities within a comprehensive accountability framework grounded in the protect, respect, remedy paradigm. Within this model, the state is conceptualized as the guarantor of a justice-oriented governance structure, while corporations are assigned preventive responsibilities through the implementation of human rights due diligence, with particular emphasis on the effectiveness of victim redress mechanisms. By situating the mining sector as the primary analytical focus, this study contributes to the broader international discourse on the domestic implementation of international human rights standards in developing countries that remain structurally reliant on extractive industries.

Accordingly, the proposed reconstruction extends beyond the Indonesian context and offers a conceptual framework that may be adapted to other jurisdictions facing comparable challenges in governing the relationship between business activities and human rights protection.

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