

Indonesian Director's Duty to Act in the Interest of the Company: Can Human Rights Due Diligence be Included?

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ABSTRACT

Business is nowadays inseparable from the scrutiny of human rights protection measures. Among many instruments that ensure businesses are aligned with human rights protection is the United Nations Guiding Principle on Business and Human Rights (UNGPR) which calls for corporate responsibility to respect human rights. One of the principles upheld by the UNGPR is Human Rights Due Diligence (HRDD). The Indonesian government recently indicates that, in the renewal of the National Action Plan on Business and Human Rights, HRDD will become mandatory for companies. As the organ that has the duty to manage a company, board of directors will be the one responsible in ensuring that HRDD, when it becomes mandatory, is complied with. Using juridical normative legal research, this paper answers the question on how HRDD can become part of the director's duty to act in the interest of the company. This paper argues that HRDD is a part of Indonesian director's duty. Using corporate objective theory, this paper finds that maximizing stakeholder's interest is a part of fulfilling company's interest under Indonesian company law that is drafted with collectivism (*asas kekeluargaan*) in Pancasila. This paper intends to inform business actors on potential additional obligation of director's duty in the future. It also wishes to inform Indonesian policymaker on potential challenges in the implementation of HRDD such as the broad scope of human rights violation, absence of clear procedures, and risk of more burden for micro, small and medium companies.

Keyword: Business and Human Rights, Director's Duty, UNGPR, Pancasila, Collectivism (*Asas Kekeluargaan*)

ABSTRAK

Bisnis pada masa kini tidak dapat dipisahkan dari pengawasan terhadap upaya perlindungan hak asasi manusia. Di antara berbagai instrumen yang memastikan agar kegiatan bisnis selaras dengan perlindungan hak asasi manusia adalah United Nations Guiding Principles on Business and Human Rights (UNGPR) yang menegaskan tanggung jawab korporasi untuk menghormati hak asasi manusia. Salah satu prinsip yang diusung oleh UNGPR adalah Uji Tuntas Hak Asasi Manusia (Human Rights Due Diligence/HRDD). Pemerintah Indonesia baru-baru ini mengindikasikan bahwa dalam pembaruan Strategi Nasional Bisnis dan Hak Asasi Manusia, HRDD akan diwajibkan bagi perusahaan. Sebagai organ yang memiliki kewajiban untuk melakukan pengurusan perusahaan, direksi akan menjadi pihak yang bertanggung jawab untuk memastikan bahwa HRDD, ketika telah menjadi kewajiban, dilaksanakan secara patuh. Dengan menggunakan penelitian hukum yuridis normatif, tulisan menjawab pertanyaan mengenai bagaimana HRDD dapat menjadi bagian dari kewajiban direksi untuk bertindak demi kepentingan perseroan. Tulisan ini berpendapat bahwa HRDD merupakan bagian dari kewajiban direksi di Indonesia. Melalui penggunaan teori tujuan korporasi (*corporate objective theory*), tulisan ini menemukan bahwa memaksimalkan kepentingan para pemangku kepentingan merupakan bagian dari pemenuhan kepentingan perseroan berdasarkan hukum perseroan Indonesia yang disusun dengan semangat kolektivisme (*asas kekeluargaan*) dalam



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Pancasila. Artikel ini bertujuan untuk memberikan informasi kepada pelaku bisnis tentang potensi kewajiban tambahan dalam tugas direksi di masa depan. Tulisan ini juga bertujuan memberikan informasi kepada pembuat kebijakan Indonesia terkait potensi tantangan pelaksanaan HRDD seperti ruang lingkup pelanggaran hak asasi manusia yang luas, ketiadaan prosedur yang jelas, serta risiko meningkatnya beban bagi usaha mikro, kecil, dan menengah.

Keyword: Bisnis dan Hak Asasi Manusia, Tugas Direksi, UNGP, Pancasila, Asas Kekeluargaan

1. Introduction

The correlation between business and human rights is as close as ever. International communities have noticed that many companies in many ways participate in human rights violations. For example, in September 2025, the United Nations Human Rights Council issued a list of 150 corporations which are involved in the activities relating to Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people (UN Human Rights Council, 2025). Furthermore, in national courts, cases involving companies' responsibility to human rights violations are seen in among others the United Kingdom, France and Germany (McCorquodale & Neely, 2022).

From international law point of view, corporation is not a subject to international human rights treaties, but some soft laws are created by international organizations to prevent businesses from violating human rights. One prominent guidance is issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2011 called the UN Guiding Principles on Business and Human Rights (UNGP). UNGP contains principles that guide (i) the state duty to protect human rights; (ii) the corporate responsibility to respect human rights; and (iii) access to remedy. To date, there has been 35 countries that put efforts to align their national law with the UNGP principles by enacting National Action Plan (NAP) to implement the principles under the UNGP domestically¹.

This paper focuses on a procedure to guide corporate responsibility to respect human rights namely human rights due diligence (HRDD). Principle 17 of the UNGP explains that HRDD is a process of assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how such impacts are addressed. Despite the voluntary nature of the principles of the UNGP, including those relating to HRDD, some countries impose obligations for corporations to conduct HRDD through their national law or supranational law. For example, the European Union in 2024 issues Corporate Sustainability Due Diligence Directive (CSDDD) which makes HRDD mandatory for corporations having their seat in EU member countries.

Indonesia is one of the countries that has adopted NAP on business and human rights through the enactment of Presidential Regulation No. 60/2023 on National Strategy on Business and Human Rights (PR 60/2023). PR 60/2023 includes national strategy on business and human rights (*Strategi Nasional Bisnis dan Hak Asasi Manusia*) (Indonesia NAP) which just recently expired in 2025 and has not since renewed. Similar to the principles of the UNGP, Indonesia NAP addresses HRDD although in a less detailed manner. The Ministry of Law has recently stated that Indonesia NAP will be renewed soon and that HRDD will be made mandatory for Indonesian companies (Fath Putra Mulya, n.d.).

If HRDD becomes mandatory for Indonesian companies, the organ of the company who will have to ensure the compliance is the board of directors. Under Indonesian Law No. 40 of 2007 on Limited Liability Company (as amended) (Law 40/2007), Indonesian company's director has the duty to manage the company for the interest of the company. The definition of the company's interest in its relation with duties of director is not explicitly stated in the Law. The question on whose interest is the company's interest has long been debated among corporate law theorists and there are two surviving main idea, i.e. either the company is run for the maximization of shareholders' wealth or for the benefit of stakeholders. The answer will shape the duty of director in that deviation from the company's interest may result in the director's personal liability. In Indonesia, past court decisions regarding director's duties were inconsistent in determining whether a director has acted on the interest of the company (Cesaria, 2025). Adding the HRDD obligation into the duty of director without a clear guiding procedure on the HRDD itself and the understanding of duty of director may risk personal liability on the director for taking a certain decisions.

This paper will answer the question of "how can HRDD become part of the Indonesian director's duty to act in the interest of the company?". Research and publication on business and human rights in general and HRDD in particular is certainly growing in Indonesia. They are mainly highlighting the issue

¹ List of countries that has adopted UNGP principles and enacting National Action Plan can be accessed here: <https://www.ohchr.org/en/special-procedures/wg-business/national-action-plans-business-and-human-rights>

from the perspective of, among others, human rights law (Citrawan, 2021), state's responsibility (Prihandono, 2025), labour law in specific sector (Chandra R, n.d.), and implementation and enforcement of business and human rights in Indonesia (Lestari, 2025; Mustaspa et al., 2024). Meanwhile, when this paper is written, an assessment on business and human rights and especially HRDD from the perspective of Indonesian company law and director's duty has been lagging, if not non-existent. Naturally, the topic of HRDD and director's duty is mostly assessed in the countries where HRDD has been made mandatory. Easily, there has been a body of research on the impact of HRDD to director's duty European countries (see for example, Choudhury, 2023; D'Alessandro, n.d.; Faracik et al., 2024; Rock, 2024; Rogerson et al., 2024). Hence, this research intends to fill the gap on issues pertaining to HRDD and director's duty in Indonesia. A comparative study on Indonesian law and other countries' law may on this issue may be assessed in further research.

To answer the research question, the first part of this paper will introduce the concept of HRDD under the UNGP and PR 60/2023. The second part will answer how HRDD become part of the interest of the company. To address such discussion, this paper will discuss the interpretation of "interest of the company" by using the corporate objective theory and prove that HRDD is a procedure that Indonesian company's board of director shall perform as a part to lead the companies to achieve its interest. Thirdly, this paper will discuss the challenges for Indonesian company's directors in performing HRDD by reflecting on experiences in other jurisdiction where necessary. The last part concludes.

2. Method

This paper uses normative juridical method with statute approach. According to Marzuki (2005/2021), a research with statute approach means analysis using existing rules and regulations. In this paper, to respond the research question, the research uses primary and secondary source of law. The primary source of law analysed for this research includes Law No. 40 of 2007 on Limited Liability Company as amended lastly by Law No. 6 of 2023, and Presidential Regulation No. 60 of 2023 on National Strategy on Business and Human Rights. Meanwhile, the secondary source of law uses to analyze the research question are books, journals, scientific articles and reports by reputable bodies (such as United Nations reports) that are relevant to the topic.

3. Result and Discussion

3.1. Human Rights Due Diligence

3.1.1. Human Rights Due Diligence under UNGP

UNGP contains non-binding guiding principles that apply to all states and to all business enterprises which goals are to enhance standards and practices on business and human rights to achieve tangible result for affected individuals and communities and contribute to socially sustainable globalization (OHCHR, 2011). UNGP intends to apply to all states and to all business enterprises regardless of their size, sector, location or ownership structure. The instrument contains foundational and operational principles that build on the following three pillars:

- Pillar 1: the state has the obligation to respect, protect, and fulfil human rights;
- Pillar 2: businesses must follow the law, and respect human rights; and;
- Pillar 3: when rights or obligations are violated, there must be a proper and effective remedies

Human Rights Due Diligence (HRDD) is mentioned across the UNGP and is addressed in detail under Pillar 2.

HRDD is an ongoing management process that a reasonable and prudent enterprise shall perform to meet its responsibility to respect human rights (OHCHR, 2012). Principle 17 of the UNGP explains that HRDD includes the process of assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed. There are two types of findings from the HRDD; potential and actual human rights impact. The actual human rights impact, which is an adverse impact that has already occurred or is occurring, is addressed through remediation. Meanwhile, potential human rights impact or an adverse impact that may occur but has not yet occurred, is addressed through prevention or mitigation. Principle 17 of the UNGP also mentions that the HRDD can be included in the broader enterprise risk-management systems.

The procedure of HRDD is further explained in Principles 18-21 of the UNGP, which can be illustrated by the following diagram:

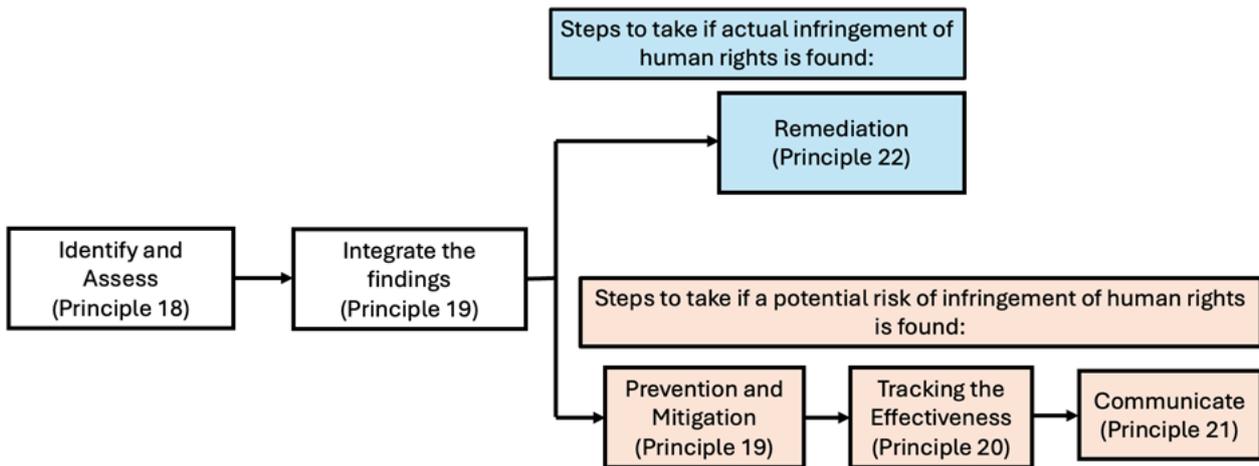


Figure 1

Source: Author

In summary, the first step of the HRDD process is identification and assessment on the potential or actual violation of human rights resulting from its own business activities or as a result of business relationship with third parties. Businesses shall then integrate the findings into their internal functions and processes. If an actual impact on human rights has been found, the enterprise shall launch the remediation process. Meanwhile, if the enterprise finds potential human rights impact, they shall take the prevention and mitigation measures. Certainly, if the business itself causes or may cause human rights impact, the form of integration should be steps to cease or prevent the impact. Meanwhile, if the business contributes or may contribute to such impact, it shall use its ‘leverage’ or its ability to make a change if the potential impact e.g. by terminating the relationship, finding another alternative party, or offering capacity building to such party. Following this, business enterprises shall track the effectiveness of the measures taken so far, which could be in the form of internal reporting, performance contracts and reviews, surveys, and audits. Lastly, the enterprise shall provide transparency to external parties, which can be in the form of in-person meeting, online dialogue, consultation with affected stakeholders, and a formal public report.

3.1.2. Human Rights Due Diligence under PR 60/2023

Presidential Regulation No. 60 of 2023 on National Strategy on Business and Human Rights (**PR 60/2023**) indicates Indonesia’s commitment to align business actors (*pelaku usaha*) with UNGP principles. Following other countries before it, through PR 60/2023, Indonesia adopts its national action plan (**NAP**) on business and human rights namely *Strategi Nasional Bisnis dan Hak Asasi Manusia (Indonesia NAP)*. Indonesia NAP is intended to reflect Indonesia’s national policy that contains strategies and action points as guidance for ministries, institutions, regional government, business actors and other stakeholders. It builds on the three pillars of UNGP, and acknowledges all the principles thereunder including HRDD in Pillar 2. Furthermore, it sets out three strategies to tackle challenges faced on adverse human rights impacts caused by businesses:

- Strategy 1: increasing the understanding, capacity, and promotion of business and human rights for all stakeholders
- Strategy 2: developing regulations, policies, and guidance that support protection and respect of human rights
- Strategy 3: strengthening an effective remedy mechanism for victims of alleged human rights violation in business practices

Notwithstanding the intention to become guidance for, among others, business actors, Indonesia NAP lacks clarity that could become guidance for business actors in fulfilling their human rights “obligations”. Despite acknowledging HRDD in Pillar 2 of UNGP, HRDD is not mentioned as one of action points to achieve any of the three strategies envisioned. Compared to the UNGP which elaborates the steps of HRDD, Indonesia NAP includes only action point such as “increasing capacity of private business actors, state-owned enterprises, regional-owned enterprises and small-medium enterprises and its supply chain on business and human rights” without so much follow up as to how business actors can achieve this. It does mandate certain ministries to conduct training for business actors in using PRISMA, a digital app that

business actors can access and voluntarily report their business' compliance on human rights protection. That said, there has not been any publicly available information on the progress of the government in doing so.

If anything, Indonesia NAP acts more like a mandate for various ministries and state institutions to support business actors in avoiding violation of human rights in their practices. For example, several ministries such as Ministry of Manpower and Ministry of Industry are responsible to urge business actors and its supply chain to adopt internal policy on human rights protection as well as internal reporting system on human rights violation. That said, so far, tracking the success of this mission carried out by the Ministries in publicly available spaces is challenging. PR 60/2023 states that the implementation of Indonesia NAP shall be monitored and evaluated by a business and human rights task force at the regional level and national level to be further reported to the Ministry of Human Rights. Furthermore, the Ministry of Human Rights will report to the President every December and such report will be made available to the public. However, a publicly available report as mandated by the PR 60/2023 is not yet available.

3.2. The Duty of Indonesian Company's Director If HRDD Becomes Mandatory

3.2.1. Director's Duties under Indonesian Law

Generally, there are two functions of board of directors in under Law No. 40 of 2007 on Limited Liability Company (as amended) (**Law 40/2007**). First, board of directors represents the company inside and outside of the court of law and second, board of directors conduct management of the company. In performing such functions, Chapter VII of Law VII of the Law 40/2007 sets out the duties the directors shall uphold:

- Duty to act in good faith (Article 97(2))
- Duty to use proper policy which refers to the use of expertise, opportunities and common business practice (Article 92(2))
- Duty to act in accordance with the articles of association and applicable laws (Article 92(2))
- Duty to act with full responsibility, which refers to the execution of a management with prudence (Article 97(2))

Most importantly, the above duties are owed to the company. Article 92 (1) of the Law 40/2007 stipulates that board of directors exercises their duties for the interest of the company and in accordance with its purpose and objective of the company. The elucidation of Article 92(1) of Law 40/2007 mentions that the "purpose and objective of the company" means the company's objective in the articles of association e.g. conducting trading business. The said article, however, does not explain what "interest of the company" means.

The meaning of the "interest of the company" has been a subject of discussion among corporate theorists, particularly the question on for whom the company shall be run. There are two contrasting theories namely stakeholder primacy theory and shareholder primacy theory. Stakeholder primacy theory begins in 1932 with the argument that corporation shall be seen as a member of society who has social responsibility (Berle & Means, 1932/1933). In its normative meaning, stakeholder primacy theory promotes the idea of a company that values social, economic and political perspective, focusing on how to achieve benefits for all stakeholders e.g. local people, the environment, customers, and employees, not only the shareholders (Keay, 2011). On the contrary, shareholder primacy theory that is launched in 1923 by Milton Friedman which notions that the company's social responsibility is only to the ones providing capital i.e. shareholder (Friedman, 1923). Both theories have since being developed and supported by corporate law theorists and are adopted by company laws across jurisdiction.

These two theories shape the director's duty under a country's company law. For example, in the United States particularly the Delaware corporation law explicitly stipulates that the duty of the board of the director is owed to the shareholders, indicating shareholder primacy theory applies in such jurisdiction (Bennet et al., 2025). While there rarely a company law that solely use stakeholder primacy theory, some company laws of Asian countries, such as Japan's company law, require that representative of employees are taking seat as board (Puchniak, 2022). Another example is a combination of the two; in the United Kingdom, Article 172 of the UK Companies Act adopts enlightened shareholder primacy approach whereby, although the interest of the shareholders is the priority, in making business decisions to achieve such interest, director shall consider the interest of a group of stakeholders such as employees and creditors.

The way director's duty is shaped further determines director's liability. To illustrate, a director holding an office in a country that adopts stakeholder theory may be allowed to take business decision with environmental impact consideration even if it may lead the company losing a certain business opportunity. The same may not be the case for a director holding an office in a company law regime that uses shareholder theory. This is because the duty of the director is focused on maximizing the shareholders' value e.g. taking a

business opportunity that creates the most value for shareholders despite the environmental impact. Hence, their liability will be different too; one director may be deemed as performing well by protecting the environment in their business decision, the other may face claim from shareholder for creating loss for shareholders.

Given that Indonesian Law 40/2007 does not explicitly stipulate whose interest the company shall pursue which results in inconsistencies in past court decisions. In a case involving president director of PT Merpati, a subsidiary of state-owned company, a decision to acquire an aircraft to save the company from financial crisis was seen as good corporate governance by the district court but not by the Indonesia Supreme Court (Cesaria, 2025). On the other hand, a decision by the president director of PT Pertamina (Persero) to participate in a tender with the purpose of training its employees in a tender process is seen as violation of director duties by the district and high court but exercise of good corporate governance according to the Indonesia Supreme Court (Cesaria, 2022). There is, therefore, a room for more discussion on Indonesian company law reform towards a clearer director's duties.

3.2.2. Interpretation of the “Interest of the Company”

Given the indication that HRDD will become mandatory for Indonesian companies, this paper analyse whether HRDD can be included as Indonesian director's duties. Having regard Article 92 of the Law 40/2007 which mandates board of director to perform their duty for the “interest of the company”, HRDD therefore shall be justified as company's interest for board of director to act upon such obligation. Justifying HRDD to be one of the Indonesian company's interests is needed to avoid board of directors' liability if they shall conduct HRDD in the expense of, for example, the shareholders' interest.

Defining the interest of Indonesian company is not an easy task because the Law 40/2007 does not explicitly explain the term. Hence, this paper proposes to use corporate objective theory to find the Indonesian company's interest. A corporation shall have an objective as a clear objective allows an organization to clarify its corporate governance policies implemented by the board (Carver, 2010; Keay, 2011). Corporate objective refers to the objective beyond that of the articles of association prescribed (e.g, to conduct a distribution business). It is rather a concept that most corporate law does not explicitly state that leads to a question of for whom a corporation is operated (Farrar, 1998). This means that we must question the purpose of the existence of Indonesian limited liability company in the first place.

3.2.2.1. Corporate Objective of Indonesian Company

An enterprise limited by shares has existed in Indonesia prior to the country's independence and has evolved into a limited liability company that we know today. As elaborated in Soemitro (1956), prior to the independence, enterprise limited by shares is a legal entity regulated under the Dutch commercial code (*Wetboek van Koopendandle* or **WvK**) and is named *Naamloze Venootschap* (**NV**). Even though any person were allowed to establish NV, the government allowed native Indonesians to establish a similar entity but one which was regulated by adat law, called *Indonesische Maatschappij op Aandelen* or *Maskapai Andil Indonesia* (**I.M.A**) based on *Ordonnantie op de Indonesische Maatschappij op Aandeelen* or *Ordonansi Maskapai Andil Indonesia*. Following Indonesia's independence, by virtue of Article II Transitional Provision of the 1945 Constitution, the pre-independence rules still apply as long as Indonesia has not created a new law to revoke them. Therefore, until 1995, NV and I.M.A still exist in Indonesia.

In 1995, Indonesia enacted Law No. 1 of 1995 on Limited Liability Company (**Law 1/1995**) which supersedes the provisions on NV in the WvK and revokes the *Ordonansi Maskapai Andil Indonesia*. Law 1/1995 was intended to change some cumbersome rules on company establishment and regulate modern corporate transaction to support the domestic and foreign private investment (Wahjono, 1991). Later in 2007, the Indonesian government renewed the limited liability law with Law 40/2007 to improves, among others, the corporate governance practice of Indonesian limited liability company.

Even though throughout the history, Indonesian limited liability company is used as a vehicle for its founder to generate business profits, there is a significant different in legal framework underlying limited liability company before and after the independence. Prior to the independence, NV and I.M.A were regulated by Dutch law which is based on individualism (Sardjono, 1998; Wahjono, 1991). Meanwhile, after the independence, limited liability company is regulated by Indonesian law driven by an economic democracy by virtue of Pancasila.

Pancasila or five principles (*sila*) is Indonesia's state ideology. As an ideology, Pancasila inspires people's activities as collective beings who live in this country. The five principles that are supposed to guide Indonesian people's lives are:

1. Believe in One and Only God;

2. Just and civilized humanity
3. Unity of Indonesia
4. Democracy led by wisdom in deliberation and representation; and
5. Social justice for all Indonesian people.

Pancasila economy is reflected in Article 33 of the 1945 Constitution. Wahjono (1991) summarizes it into: (i) the welfare of the people shall be prioritized against the individual welfare; (ii) economic activities are conducted with joint effort based on collectivism (*asas kekeluargaan*) with cooperative as its most suitable business construct; and (iii) private entities are allowed to conduct economic activities so long as the business does not affect people's livelihood, in which case shall be controlled by the state. These values in the Pancasila economy shall cover any economic vehicles not only cooperatives but also state-owned and private-owned business (Swasono, 2015).

The preamble of Law 1/1995 and Law 40/2007 emphasizes that limited liability company operates in collectivism (*asas kekeluargaan*) based on Pancasila and it shall be seen as an intention to differ from its predecessor, the Dutch limited liability entities. Collectivism in Pancasila economy means that although individual rights is respected, the priority of the economic activity is the welfare of the people and that individual rights shall be in harmony with people's rights (Wahjono, 1991). In the sense of Indonesian limited liability company, collectivism prevents exploitation by shareholder but rather promotes equality based on humanity principle (Sardjono, 1998). In the version of limited liability company under Law 1/1995 and Law 40/2007, collectivism is reflected among others in exercise of shareholders rights which require deliberations (Pulungan, 2019; Sardjono, 1998). All of this is carried out in the framework of Pancasila economy which is an idea developed following the colonialization whereby native Indonesian became the victim of capitalism (Mangunpranoto, 1987/1997). Pancasila Economy system requires all the economic entities to be used to achieve the nation's goal (Soetrisno, 1981/1997).

The above draws a picture of the objective Indonesian limited liability company shall operate i.e. becoming a part of national economy to achieve welfare for the people while respecting individual rights. Connecting this with the duty of director, positioning the director's duty in the stakeholder primacy theory should be more suitable with the Law 40/2007. This is because, in line with the collectivism that underlies the Indonesian limited liability company, individual rights (i.e. shareholders' rights) shall align with the other people's rights (i.e. stakeholders). Given this, an Indonesian limited liability company does not exist only to maximize the wealth of the shareholders but also to maximize the wealth of the stakeholder.

3.2.2.2. Director's Duties to Achieve Indonesian Company's Objective

Having established that the stakeholder primacy suits the Indonesia Company Law, it should shed a light on the director's duties' rule. Under a company law that adopts stakeholder primacy, the job of the party who manage the company is not to manages and balancing the relationships with key groups such as customers, employees, suppliers, and communities to maximize their interests as stakeholders (Freeman & Phillips, 2002). Article 33 of the 1945 Constitution even emphasizes that the interest of the people shall be prioritized against individual's interest in the economic activity. This means that business decisions shall prioritize stakeholders' interest against the shareholders' interest.

To illustrate, if a director is faced with an option to expand a business that will increase company's profits but at the same time damage the environment where certain *adat* people live, the director fulfils his duty if he halts the plan. Even if the shareholders later file a civil claim under Article 97 of Law 40/2007 against the director for failing to generate profit for the company, Indonesian court shall impose business judgment rule where the director is protected from liability because he has performed his duty according to what Law 40/2007 has intended.

3.2.3. HRDD is a Part of Indonesian Company's Director's Duty to Act in the Interest of the Company

This paper argues that HRDD is a part of Indonesian company's interest to enhance stakeholders' welfare which directors shall pursue. Stakeholder is not a defined term under Indonesian company law. The first definition of "stakeholder" was formulated by Stanford Research Institute in 1963 as "those groups without whose support the organization would cease to exist", such as employees, customers, society including shareholders. HRDD promotes the very idea that director's duty shall be directed to benefitting the company's stakeholders. Firstly, the principles of business and human rights enshrined in the UNGP promotes the interests of several company's stakeholders. The general principle of the UNGP recognizes business enterprise as specialized organs of society that is required to comply with applicable laws and to respect human rights.

Secondly, a company that performs HRDD integrates in its business decisions a human rights consideration for various stakeholders. As explained in previous section, HRDD requires a company to prevent and mitigate human rights violation, tracking the effectiveness of the taken measures, and communicate the actions with the impacted communities. Such action could provide positive impact to the various company's stakeholders such as the community around the company's business, employees, and customers. Furthermore, the remediation step could contribute to the Indonesia's effort to prevent adverse human rights impact.

Thirdly, actively performing HRDD could ultimately lead to the company's long-term success which will benefit the shareholders too. Today, the traditional idea that company shall only benefit shareholders has been left behind as stories have proven that short-term shareholders value may result in short-term company life. Companies in developed countries have since turn to increasing stakeholders value instead of focusing on solely profiting shareholders. Evidently, in 2019, the Business Roundtable releases the new Statement on the Purpose of a Corporation signed by 181 America's CEOs that declares that companies should not only serve their shareholders but also their customers, employees, suppliers and communities. Meanwhile, Asian countries who have long been operating companies with stakeholders in mind are proving that benefitting stakeholders in business decision led to long-term success for the company (Puchniak, 2022). HRDD could be one way that led the Indonesian companies to a more conscience business practices that may result in the trust of its stakeholders and as a result create long-term value for shareholders.

3.3. Potential Challenges for Company Directors if HRDD Becomes Mandatory in Indonesia

Theoretically, HRDD may become part of Indonesian company's director but the implementation of such requirement remains to be seen in practice. This paper presents three potential challenges that directors should anticipate: (i) the broad scope of HRDD; (ii) unclear procedures and requirements of HRDD may lead directors without guidance in performing their duties; and (ii) the risk of burdening small-medium enterprises with HRDD obligation.

The first challenge is relating to the scope of HRDD. In international level, there are many human rights instruments. One example is United Nation Declaration on Human Rights (UDHR) which stipulates that all human beings are born free and equal in dignity and rights. Another example is International Covenant on Civil and Political Rights (ICCPR) which guarantees fundamental rights such as right to life and International Covenant on Economic, Social and Cultural Rights (ICESCR) which guarantees, among others, right to self-determination. In domestic level, Indonesia Law No. 39 of 1999 on Human Rights defines human rights as a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and which are His gifts that must be respected, upheld, and protected by the state, law, government, and every person for the sake of honor and protection of human dignity and honor.

Indeed, corporation is not subject to international law but if Indonesian government intends to make HRDD as obligation to companies, the question is what type of human rights violation shall be covered in the HRDD procedure. The concern is, over time, the scope of human rights violation extends beyond the definition provided by international treaties as mentioned above. For example, in July 2025, the International Court of Justice confirms in its Advisory Opinion that adverse effects of climate change may impair the effective enjoyment of human rights such as the right to live guaranteed by the ICCPR and the right to health as protected by ICESCR. Given such a broad and evolving interpretation of human rights, it remains to be seen how Indonesian government regulate and impose specifically HRDD obligation on the company, and director, to prevent itself from failing to their duties.

Secondly, regardless of the scope of HRDD that the Indonesian government would require for companies, the renewed Indonesia NAP shall make it clear on the procedures that HRDD shall include. Certainly, HRDD should be included as part of the internal risk management systems of a company. However, in order for a company to create such system, an interpretation of HRDD shall be provided by the government. This is to avoid companies and especially directors who run such company perform a certain business judgment which, according to the director is for HRDD purposes, but result in the director's personal liability due to misinterpretation of the HRDD itself.

Last but not least, if we follow the UNGP, HRDD should be done by any companies regardless of their size. This may be an issue to Indonesian companies if all companies, regardless of their type, shall do same procedure of HRDD. This is because in Indonesia, there are companies who are qualified as micro, small, and medium enterprises according to the Law No. 20 of 2008 on Micro, Small and Medium Businesses (as amended). These companies may not have the means to perform HRDD in a similar way as large companies. Therefore, related to the second potential issue above, government shall adjust the HRDD procedure requirement for these companies according to their abilities.

4. Conclusion

In conclusion, if the government of Indonesia decide to shift HRDD into mandatory action for all companies, such obligation will be part of Indonesian companies' directors to act in the interest of the company based on Law 40/2007. This is because Indonesian company's objective under the law should not only maximize the value of shareholders but also support the national goal which is to provide welfare to all people based on collectivism (*asas kekeluargaan*) in Pancasila. The role of director in Indonesia is similar to that of the role of director in a country with company law that adopts stakeholder primacy theory whereby their duties are to ensure that companies balance the interest of the stakeholders such as employees, customers, communities and creditors. HRDD fits into this idea because HRDD is an action to ensure that the company's stakeholders are protected from the company's potential or actual human rights impact. That said, the implementation in Indonesia may not be without challenges broad by the ever-developing scope of human rights violation, potential lack of clarity of procedures of HRDD, and potential burden for Indonesia's micro, small and medium enterprises.

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