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## **Dimension of Human Rights Protection Against Corporate Crimes**

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### **Abstract**

The wave of influence of Neoliberalism and globalization with its system of economic capitalism has begun to change the economic ideology by ignoring sound principles in business dealings (there is even a tendency to put forward the “anomie of success” principle), a considerable number of corporations have committed acts in violation to human rights. This paper is going to examine the implementation of human rights-based protection and law enforcement. It has now become significant considering how critical thinking in solving corporate human rights violation problems is urgently needed. The type of approach used by the writer in this research is the Normative Law Research Method. The methods applied will consist of statute approach, case approach and conceptual approach. Research shows that Indonesia is a country of law. By this concept, principles contained in that country must be applied, one of them being the presence of the acknowledgement and protection of basic human rights. In the context of a country with Pancasila as its main law, the effectual supremacy of law in Indonesia must continually be done within a framework which focuses in creating public welfare and social justice for all Indonesian people. In this context, the human potential and dignity have a high and noble position. Regulation governing the protection of human rights may be found in the Universal Declaration of Human Rights, the 1945 Constitution of the Republic of Indonesia and the 1999 Act of the Republic of Indonesia No. 39 concerning Human Rights. These human rights have frequently been violated by corporations while conducting their business activities. In international legal instruments, The United Nations Global Compact (UNGC) exists as an initiative to strategic policies for corporations to make a commitment which will align their policies and strategic operations with the ten universal principles of human rights, labor, environment and anti-corruption, in order to allow sustainable business practices. Within the sphere of human rights, the UNGC states that “business should support and respect the protection of internationally proclaimed human rights” and “make sure that they are not complicit in human right abuses”, along with other alternatives that may be conducted by the corporations. For that, the country has a responsibility to provide devices by utilizing all its resources to create equality, non-discrimination and human rights protection for every citizen. The country has to do its part to calculate every possible way to allow for human rights protection and to facilitate the recovery over losses that may arise from the violation of human rights, especially those done by corporations.

Keywords: Human rights; human rights protection; corporate crimes.

### **I. INTRODUCTION**

The term “human rights” has been widely recognized in the constitutions of countries as well as in statutory regulations applicable in many spheres of life. This concept has then been followed up with programs from central government reaching out to the counties even to the remotest part of the country and villages, as a positive law applicable in the whole region of Indonesia. However, the fact on the ground is, cases where human rights are violated in the life of society, nation and state today still exist, specifically those related to criminality or corporate crime.

From the corporate external factors point of view, the risks of corporate involvement in human rights violations are also influenced by the country’s legal and political policies (whether it’s the home country of the corporation or the place where the corporation conducts its business). In other words, it may be stated

that the corporate risk of human rights violations may be very high in areas or countries with government or positive law lacking in support of upholding the protection and dignity of human rights. This will surely cause human rights violations to spread more widely.

In addition, it needs also to be stated here that the risks of corporate human rights violations may be lower in areas or countries with government or positive law which uphold and support the protection and dignity of human rights. Therefore, it is not excessive to say that the protection and reverence of human rights require the supports of various parties such as the related corporations, public society, individuals, community groups and the countries where the corporations reside or where they conduct their business.

However, many people still suffer from physical or mental domestic violence done by corporations controlling them as they are bound by work relationship with the related corporations, and what is sad about this is that these people had not been aware of their rights as humans and never realized there had been violations done against them (and their family).

In conducting its business and activities, not a few corporations (both domestic and multinational) committed crimes against the law, that is human rights violations against their workers and against the public at large.

The strict competition of business and industrialization today has placed the interests of workers, consumers, environment and those of the public to be seconded so that they often times fall victim to corporate business activities. On one side, rapid industrialization does bring positive effects to economic growth and resource management. However, on the other side, we need to realize that this industrialization has in fact brought out an extremely dangerous negative effect, namely the culture of consumerism. The influencing wave of Neoliberalism and its system of economic capitalism has begun to change economic ideology by no longer limiting productions according to natural human necessities but that these necessities are expanded to accommodate production.

This condition cannot be detached from the economic principle which bases business competition on capital strength balanced with minimum expenditure to achieve maximum profit (properly acquired). Many corporate businessmen have started to ignore sound principles in doing business out of a belief in “economic machine” (free competition) and “invisible hand” to gain huge profit (Mukti Fajar dan Yulianto Achmad, 2010). This economic capitalism turns out to be in collaboration with globalization with which it presents dangerous influence for the creation of various types of corporate crimes. The more open the business competition within international scope also the more perpendicularly complicated and planned the committed corporate crime is going to be. It is this condition which in the end creates systematic crimes in an orderly framework for the sake of gaining profits for certain parties. The fulfillment of workers’ rights is far from the expectations of human rights protection. Fulfillment of consumers’ rights obviously is also further from the expectation that every offer of goods and services often times is not accompanied with good intentions so that it will certainly cause victims. In this matter, the workers, consumers and the public at large have to face the business interests of corporations which tend to put them at unfortunate positions and victimize them to satisfy the demands of the corporations with stronger and more dominant positions.

The true form of low labor rate, capital subjection and exploitation of natural resources regardless of surrounding environment is the true character of the capitalistic system with accumulation, expansion and exploitation as its motivations. By prioritizing the “anomie of success” principle (profit-oriented businessmen justifying various practices which implementations lead to huge losses for the wider community), corporations have placed the interests of its workers, consumers and people in general as victims with the implementation of every production and business practices. In relation to this, corporations have frequently done fraudulent acts which undoubtedly are very harmful to the people. Here is where the role of government becomes important, which is to conduct administrative surveillance on license, quality and circulation of goods and services as well as, in particular, to monitor what actually happens on the ground, to prevent various kinds of corporate crime and to minimize its victims. This is also important to give the assurance of health and security for the people at large from rampantly occurring harmful corporate crimes.

In reality, corporations also often exercise practices of over-pricing, over-invoicing, consumer fraud as well as exporting and importing substandard and even dangerously unsafe products. Not infrequently, in

conducting its business, corporations do not provide health and safety insurance to the people at large as their consumers to whom the corporations' manufacturing and offering of its goods and services may be harmful in terms of its effects to people's health and environment.

The violations of human rights done by corporations against its workers may be found in cases where they perform restrictions on the workers' civil liberties, such as limitations on moving, speaking, familial freedom, neglect, lack of job protection, occupational health insurance, etc.

In conducting business, corporate workers are also frequently treated differently in similar situations (no equality) and they may also experience discrimination, exclusion or gender-based restrictions which seek to reduce or eliminate the acknowledgement, enjoyment or application of human rights and basic freedom in politics, economy, social, culture, civil or other (discrimination), no associated rights and no gender equality and justice.

Furthermore, not a few corporations when conducting its business exercise various forms of exploitation, such as forced labor or forced service, slavery, or practices similar to slavery and many other forms of exploitation accompanied by violence or threat of violence, fabrication, fraud, abuse of power or vulnerable position, etc. In reality, the parties injured by corporate violations of human rights have not the courage to report and ask for protection to the apparatus, authorities or authorized institutions provided by the government. In addition to being afraid of being fired, they might not realize there had been human rights violations done against them. This condition certainly is a cause for concern and requires concrete solutions by the State, since it is impossible for the State to keep a blind eye on such a serious matter.

In some cases, workers who reported some degree of human rights violations done against them actually experienced great disappointments and even real and lasting losses (both materially and immaterially), as the corporations as the dominant party had prepared a "counter attack" by dismissing them and to even file lawsuits, so that the workers as the victims would lose everything and experience lasting afflictions, like the saying "rubbing salt into the wound".

It has also been exacerbated by a condition where the fulfilment of socio-economic and cultural rights of the community being more and more neglected by pro-market development policy (pro-capitalist system) and by not performing what in many literatures is referred to as human rights-based approach to development ([F.X. Adji Samekto, 2020](#)).

This condition has in fact kept the people away from social welfare, for examples: the elimination of State's obligation to provide inexpensive education for the community (subsidies), the increasing implementation of energy cost and the management and utilization of natural resources to benefit business and capital more than human beings, as well as the low and weak political will of the government and law enforcers themselves in enforcing law and human rights, especially against corporate human rights violations.

## **II. METHOD**

The method used by the writer in this research is the Legal Research Method, which is a method based on concepts, principles and systematic law understood by jurists (law experts). Legal Research is a process to discover rules, principles and doctrines of law to answer current legal issues. It is done to deliver new arguments, theories and concepts as prescriptions to present the current problems faced with right solutions. Specifically, this research implemented the Normative Legal Research Method, which is a method that places law as a structure of the system of norms. This system consists of principles, norms, regulation rules, court rulings, contracts and doctrines (teachings) (Mukti Fajar and Yulianto Achmad, 2010; 34). The characteristic of Normative Legal Research lies in the solving of problems or legal issues which results in legal opinion ("legal research" which creates "legal opinion" within which contains "legal problem solving"). The three approaches implemented in this research are the "statute approach" which collects and analyses the applied conditions in statutory regulations, the "case approach" which collects and analyses generally occurring cases and "conceptual approach" to analyses concepts related to the problems in question.

### **III. RESULTS AND DISCUSSION**

#### **“The Rule of Law” & “Rechtsstaat” In Relation to Human Rights Protection**

According to article 1 paragraph (3) in the 1945 Constitution of the Republic of Indonesia, Indonesia is a country of law. This article requires that any implementations within the country and by the government must be done based on legal principles to limit the governing power which means that the authority of the State is restricted by the law (*rechtsstaat*), not but power (*machtsstaat*).

Besides Julius Stahl, the concept of the country of law in Continental Europe was also developed by Immanuel Kant, Paul Laband Fichte and other figures by using the German term “*rechtsstaat*”. In Anglo-Saxon tradition, this concept development was spearheaded by A.V. Dicey by the term “the Rule of Law”.

From historical perspective, the concept of the country of law may be differentiated between that of the Continental Europe with the term “*Rechtsstaat*” and that of the Anglo-Saxon with the term “Rule of Law”. Therefore, it may be stated that the concept of “*Rechtsstaat*” has been reduced into a system of law which is called Civil Law or into what is usually referred to as “Modern Roman Law”. Whereas the concept of “Rule of Law” is a concept which was developed in the system of Common Law.

A country may be declared as a country of law if it qualifies its own legal elements. Friedrich Julius Stahl, for example, put forward characteristics that must be present in a country, such as the presence of human rights acknowledgement and protection, power sharing, statutory government and State Administrative Court. Whereas according to A.V. Dicey, a country may be declared as a country of law if it qualifies the elements of “Rule of Law”, such as the presence of supremacy of law, equality before the law, due process of law and constitution based on human rights.

Furthermore, A.V. Dicey states that the “Rule of Law” is a legal doctrine which emerged in the 19<sup>th</sup> century, along with constitutional and democratic countries. It is a concept concerning the Common Law which states that every aspect of the country upholds the supremacy of law built on the principles of justice and egalitarian. “Rule of Law” is a rule “by the law” not a rule “by the man” ([A.V. Dicey, 1959](#)).

On that basis, both in the concepts of “*Rechtsstaat*” and “Rule of Law”, the protection and reverence of human rights are the supporting pillars of the country of law itself. In other words, it may be said that a country of law is essentially an integral part of the implementation and fulfillment of human rights. Moreover, it is a basic condition for the establishment and reverence of human rights.

The norms concerning human rights (and its protection), which has evolved for more than 60 years, establish the values and standards acceptable in treating individuals, communities and in setting the boundaries of state authority and power. Likewise, the concept of “Rule of Law” is closely related to the right implementation of state power and authority. “Rule of Law” establishes substantive values and standards for government and mandates the restriction of arbitrary control of power (<http://www.uneca.org>).

In the concept of the country of law which upholds the supremacy of law, there is an underlying principle which states that “No one is above the law” or that everyone is equal before the law. As important as it is, the principles of “Rule of Law” have earned a spot in a UN Charter. According the UN, “Rule of Law” refers to a government principle where every person, institution and entity, both public and private, including the State itself, are responsible to the law (enacted publicly) enforced indiscriminately, as well as to the courts independent and consistent with international norms and standards on human rights. As a logical consequence, efforts have to be made to ensure submission to the principles of the supremacy of law, equality before the law, accountability of the law and justice in the implementation of the law (<http://www.un.org/en/ruleoflaw/index.shtml>).

As mentioned before, the Constitution has clearly stated Indonesia as a country of law (“*Rechtsstaat*” / “The Rule of Law”) and not a country of power (“*Machtsstaat*”). It is declared in Chapter 1, specifically in the provision of Article 3 in the 1945 Constitution of the Republic of Indonesia which states “The State of Indonesia shall be a state based on the rule of law”.

In relation with the concept of the “Rule of Law”, it is also important to note that the State of the Republic of Indonesia based on the 1945 Constitution of the Republic of Indonesia belongs to a type of “welfare” country (Indonesia as a welfare state). In line with the 1945 Constitution of the Republic of Indonesia, its functions may be defined as welfare state function which has to be interpreted in the broadest sense including social service and social welfare. Hence, the supremacy of law applied in Indonesia has to

be constantly implemented in a framework which realizes public welfare and social justice for all Indonesian people.

Quoting the opinion of Jimly Assidique, there are 13 (thirteen) basic principles of rule of law applied today which act as the main pillar supporting the foundation of a country to be properly qualified as a “Rule of Law” in its true sense. “The State of Indonesia shall be a state based on the rule of law” means that the State of Indonesia is built upon basic principles contained within the rule of law itself. The thirteen main principles of the “Rule of Law” are as follows: [\(Kristian, 2013\)](#).

1. Supremacy of law;
2. Equality before the law;
3. Due process of law;
4. Human rights protection;
5. Power sharing;
6. Independent executive;
7. Impartial and independent;
8. Administrative court;
9. Constitutional court;
10. Democratic (*demokratische rechstaat*);
11. Functioning as a medium to achieve welfare (*welfare rechtsstaat*);
12. Transparency and social control;
13. A State with the belief in the one and only God.

It is also important to note that the concept of “Rule of Law” has different characteristics for each country, so that in Indonesia itself the concept is known as “Pancasila State Law”. Padmo Wahyono states that the assumed pattern does not deviate from the “Rule of Law” concept in general, however it needs to be adjusted to the Indonesian peoples’ social conditions or appropriately implemented with the Indonesian perspectives [\(Marjanne Termorshuizen-Artz, 2004\)](#).

Pancasila is the state philosophy and way of life of the people of Indonesia, therefore all legal systems applied within the country has to refer to it. Pancasila as a national principle also greatly influence the implementation of law and its enforcement in Indonesia. Philipus M. Hadjon provides an opinion on the characteristics of the Pancasila State Law, which are as follows: a presence of harmony between government and the people according to principles of accord, proportionate functional relationship among the powers of the State, dispute resolution principles done by consensus and justice as the last means and balance between rights and obligations [\(Henry Campbell Black, 1999\)](#).

Even though the State of Indonesia declares itself as a country of law which upholds the “Rule of Law” and human rights protection, in reality the principle has been frequently abused and systematically manipulated as such that oftentimes legal instruments are used as means of justification for committing the acts. The “Rule of Law” principle, rather, is often made as an excuse by justifiers to commit acts that violate human rights and freedom. By the manipulation of the principles, the State of Indonesia is no longer a country based on law in substance but a country that uses legal instruments as “means of power and oppression”.

### **Human Rights Definition and Violations**

Every human possesses the most essential and fundamental basic rights ever since he was born and are unalterable by anyone. They are attached within him as a gift of God, ever since he is in the womb and until he dies. Ever since a fetus is present in the womb of a mother, it has the right to live and to be born. When man lives within societies, he has the right to integrate with other people. These basic rights attached within humans are called by the term “human rights”.

Therefore, human rights may be defined as rights attached to human dignity as God’s creation. They are carried ever since humans are born, which means that they are natural and not given by man or by the State [\(Mahrus Ali, 2008\)](#).

The discourse on human rights in international relations are usually synonymous with western civilization, since the development of human rights conception originated from the thinkers there at the

time, such as by Thomas Hobbes, Sir Edward Coke, J.J. Rousseau, Max Webber, James Madison, Karl Marx and other thinkers. Until the emergence of Bills of Rights initiated by Elanor which was a response to the disavowal of human values as a result of World War I and World War II.

The basic idea of human rights and its protection may be discovered in the thoughts of John Locke which states that humans in the concept of natural law are free and equal, they also possess natural rights which cannot be handed over (or even taken) by other people except through community agreements (Miriam Budiardjo, 1986).

Furthermore, Theo Huibers also states that the significance of human rights will be evident should the acknowledgement of them be regarded as part of “humanization of life” which has begun to be elevated since man became aware of his station and role in this world. Through law, the principles contained in human acknowledgement as legal subjects are defined as an integral part of legal system. Through law, human rights of both male and female are recognized and protected, therefore law will always be required to accommodate the commitment of the State to protect the basic rights of its peoples.

The basic human rights are essentially irrevocable, non-transferable and indivisible. With their application, the rights of every individual are protected, especially with the presence of Universal Declaration of Human Rights (in addition to Universal Declaration of Human Rights, the protection of human rights has also been regulated in various international instruments, such as in EKOSOB, Viennese Convention, ILO and many others). On December 10<sup>th</sup> 1948, the United Nations declared the general statements regarding human rights or what is known as “Universal Declaration of Human Rights”. It was a historical milestone for the development of human rights, as a general standard to achieve success for all people and nations.

Moreover, the clauses in Article 1 and 2 of the Universal Declaration of Human Rights state that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”.

On that basis then the UN general statements on human rights emphasize that everyone is born free and equal in dignity and rights and is entitled to all rights and freedoms set forth in the Declaration, regardless of race, color, sex, language, religion, political opinion, national or social origin, property, birth or other status.

The acknowledged rights in the Universal Declaration of Human Rights which entitle the civil, political, economic, social and cultural rights to everyone are as follows:

1. Right to live;
2. Right to personal freedom and security;
3. Right to be free of slavery and servitude;
4. Right to be free of persecution and from cruel, inhuman or demeaning treatment and punishment;
5. Right to obtain personal legal
6. Recognition anywhere;
7. Right to effective legal pardon;
8. Right to be free from arrest, detainment or arbitrary disposal;
9. Right to fair trials and hearings conducted by independent and impartial court;
10. Right to presumption of innocence;
11. Right to be free from arbitrary intervention on personal authority, familial, residential
12. Right to be free from offenses on honor and reputation;
13. Right to legal protection against such offenses;
14. Right to move independently;
15. Right to obtain asylum;



16. Right to nationality;
17. Right to marry and have a family;
18. Right to property rights;
19. Right to independent, conscious and religious thinking;
20. Right to express opinion;
21. Right to gather and associate;
22. Right to take part in government; and
23. Right to equal access to public services.

Articles 22 to 27 of the Universal Declaration of Human Rights contain the economic, social and cultural rights which everyone is entitled to. These rights are as follows:

1. Right to social security;
2. Right to occupation;
3. Right to form and join labor unions;
4. Right to rest and leisure;
5. Right to appropriate living standards in health and welfare;
6. Right to education; and
7. Right to participate in community of culture.

Regulations of human rights as well as economic, social and cultural rights contained in the Universal Declaration of Human Rights mentioned above are frequently violated by corporations when conducting its business activities. In other words, there are yet considerable instances of human rights violations in reality as the result of criminal acts or corporate crimes.

In relation to this, many corporations when conducting its business activities have no regard or at least contribute to human rights violations, such are the rights to live, to have personal freedom and security, to be free from slavery and servitude, to be free from persecution and cruel, inhuman and demeaning treatments, to be free from arbitrary interventions and restrictions, to be free from offenses on honor and reputation, to express opinions, to form and join labor unions, to rest and leisure, to appropriate living standards in health and welfare and many others.

In Indonesia, regulations on the security and protection of human rights may generally be found in the second amendment of the 1945 Constitution of the Republic of Indonesia from letter A to J and in the 1999 Act of the Republic of Indonesia No. 39 concerning Human Rights. Whereas, regulations concerning the protection, advancement and fulfilment of human rights are the responsibility of the State (especially the government). To uphold and maintain the protection of human rights according to the principle of a democratic rule of law, the implementation of human rights is guaranteed, regulated and included in statutory laws and regulations. Besides, an emphasis needs to be made on this point that everyone has the obligation to respect the rights of other people to live an orderly social and national life. In practicing his rights and freedom, everyone is obliged to submit to the restrictions set by the law for the sole purpose of securing the acknowledgement and reverence of other people's rights and freedom and to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society.

Moreover, apart from the 1945 Constitution of the Republic of Indonesia, the 1999 Act of the Republic of Indonesia No. 39 concerning Human Rights is an umbrella to all statutory regulations applied within the country. Therefore, human rights violations may be subject to criminal, civil and administrative sanctions in accordance with the provisions of the applicable laws and regulations.

As outlined in the previous section, human rights according to Article 1 paragraph (1) in the 1999 Act of the Republic of Indonesia No. 39 concerning Human Rights are a set of rights attached to human nature and existence as God's creation and it is a gift that must be respected, upheld and protected by the state, law, government and all the people for the sake of reverence and protection of human honor and dignity.

And then the regulation in Article 4 in the 1999 Act of the Republic of Indonesia No. 39 concerning Human Rights states that "The right to live, to be free of torture, personal freedom in mind and conscience, to have religion, to be free of slavery, to be acknowledged as a person and equal before the law and to not be charged on the basis of applicable law are the human rights irreducible by anyone in any condition".

The regulation emphasizes that the rights mentioned above are indiscriminately applicable to all human beings of any religion, race, ethnicity, community, class, social status, economic status, sex, language and political belief.

Whereas what is referred to as human rights violations according to the 1999 Act of the Republic of Indonesia No. 39 concerning Human Rights are all conducts by a person or a group of persons including state apparatus whether intentionally or unintentionally or negligence which unlawfully reduces, prevents, restricts and/or deprives a person's or a group of persons' human rights guaranteed by the law, and not getting, or feared not obtaining fair and true legal settlement in accordance with the applicable rule of law.

### **Capitalism And Corporate Crimes**

The crimes and criminalities rampantly occurring today certainly cannot be separated from the economic and political conditions of the people involved. The system of hegemony which gave birth to current crisis and poverty has become evidence of the failure of capitalism. The true form of low labor rate, capital subjection and exploitation of natural resources regardless of surrounding environment is the true character of the system of capitalism with accumulation, expansion and exploitation as its motivations. The system of capitalism only has an eye to quick maximum profits so that, with such underlying character, it is incapable of providing protection and welfare for all mankind.

Throughout its history, the system of capitalism has undergone a crisis. In 1929, for example, stock prices across America collapsed as the result of over production within the capitalistic economic system itself. This condition lowered the people's purchasing capacities, as the goods' substantive value was unpurchasable due to relatively high prices (costly). It can be observed that with its system of capitalism, the United States of America and other developed countries have since the 1970s ceased to witness significant growth in their production profit.

The substantive growth of the world's capitalistic economy began to fall from the average of 4.9% per year in the 1960s, to 3.8% in 1970s, and then to 2.7% in 1980s and only 1.2% in 1990s. Various data concerning world development in the last ten years reveal that 2.5 billion (40%) people live below 2 USD/day; sharing only 5% of total global revenue; while 54% of the revenue goes into the pockets of wealthy people or certain parties in developed countries which is only 10% from the total population. This condition kept occurring up until the year 2000s which resulted in ongoing crisis in information technology industry.

The corporations' substantial capital naturally required investment fields, when the "profit harvest" seemed low and slow, many international capitalists resolved to use fictional investments (through stock sales, portfolios, foreign exchange and even other illegal means) in the hope of gaining quick maximum profit. However, what actually happened was the opposite, a crisis ensued again at the end of 2008. It was the biggest crisis ever transpired in the history of capitalism (worst since the Great Depression in the 1930s), where this large-scale crisis occurred out of a combination of economic recession, the collapse of housing sector, credit crisis and deflation on massive assets that took place at the same time (<http://kprm-prd.blogspot.com>, [globalisasi-krisis-less-miserables.html](http://globalisasi-krisis-less-miserables.html)).

Such was the consequence of concentrated capitals only in a handful of people or parties, the crumbling of real sectors would also result in the disintegration of the people's productive capacities. The capitalistic system would be operating with low labor rate in the middle of increasing numbers of unemployment as a consequence of mass layoffs ever since the Great Depression in the 1930s.

Capitalism, as an economic system built by a class of capital owners, was said to have given a foundation for the people to return to production sectors and it was expected to raise the quality of the economy and improve the living standards for the wider community. However, it could not be applied consistently for all mankind since the existence of capitalism relies on the swallowing of each other between humans which was realized in the forms of exploitation, accumulation and expansion. So that in this aspect, capitalism really has no interest or responsibility to create mass productive employment field for everyone. On that basis, then naturally the protection and welfare of the people are impossible to achieve through the application of the system.



By the ownership of tools and production results, capitalism will continually be in contradiction with itself. On one hand, the system will suppress the revenue of the working class for maximum profit, on the other hand, it will increase production using high technology or with the quickening of accumulation through non-production activities (speculation). It is the latter which is more commonly conducted by corporations today. As a consequence, productive employment field is shrinking, costs of basic needs are rising and people's income is dwindling. This is what we may refer to as a crisis which happens inside the body of the system of capitalism. On the basis of such idea and concept, many experts (both economists and legal experts) state that "capitalism is digging its own grave".

The crisis of capitalism (or what is better known as "neoliberal"), unrecoverable since 1997 and followed by a recent crisis, has repulsed even more the welfare (and protection) of the people. The system of capitalism has in fact also worsen the people's quality of life by directly or indirectly forming (or at least contributing) to the birth and increase on the number of non-skill people (especially workers), rising of educational cost, poor societies (which amount to a very large number) and also to the birth of unproductive and oppressive works, such as household servants, migrant workers, sex workers, street vendors, homeless people, beggars, etc.

The capitalistic system certainly has no interest to increase the protection and welfare as well as the improvement of human resources as a whole (including human resources in Indonesia). It happens as a result of the main interest out of only 3 (three) interests of capitalism which is to expand market, natural resources/cheap raw materials and labor for maximum profit as well as to store up wealth in minimum time. In relation to this, many Indonesian workers (as cheap labor with no skills or abilities), people's consumptive attitude, lack of education and other factors will be freely swallowed up for the sake of the interests of corporations as capital owners.

It needs to be noticed that Indonesian people are also really the victims of capitalistic system since they are potential consumers of capitalistic output, beginning with products, advertisements, fashions and many other. It also presents a picture that Indonesian people is an important commodity for the system.

The capitalistic system today has also naturally caused massive inflations in major cities. The effect of capitalism which has led to various crisis in many parts of life has in fact brought out considerable unemployment and victims. It is exacerbated by the number of crimes occurring in societies, both general crimes such as robbery, theft, prostitution, alcohol and drug addiction, violence as well as various other crimes and special crimes such as corruption, environmental crime, money laundering, corporate crime and many other crimes with great impact.

Related to this legal research, the system of capitalism has given birth to various forms of criminal act or corporate crime. Ever since World War II, the world population has begun to realize the importance of individual and communal human rights. However, on the other side of the industrial revolution, a significant change has come to pass in conducting business activities in accordance with principles of effectiveness and efficiency. The change has influenced the order of value embraced by businessmen which focuses on self-actualization, and materialism which in turn gives color to many kinds and forms of corporate crimes and other white-collar crimes (Muladi, 2002). The rampant occurrence of corporate and white-collar crimes will certainly result in considerable amounts of victims. Romli Atmasmita explained the 3 (three) stages of business power development which are the era of mercantilism with the defining characteristic of exhausting the colony, the era of capitalism emphasizing on the control and monopoly of production output using unbalanced trading pattern, as well as the era of modern capitalism pioneering in global trade with reverence to equal treatment and openness between countries (international) as its characteristics. Furthermore, criminal law expert Romli Atmasmita defined the correlation among corporations, globalization and corporate crimes as follows: "It is expected that from the governance of trade and business in globalization perspective as a system to be an absolute control by a superrational economic power through market deregulation. The market power is a mechanism where international corporations develop and expand its net to the whole country down to the regional level to take control of land, water, oil, culture, health, education, information, finance and banking".

Corporate businessmen apparently have its own power even to influence the government's economic policy. Today, globalization itself has an important impact considering how increasingly dependent

Indonesia's economy is to international economy or to create an open economic system. In relation to this, it is not excessive to say that multinational corporations today have strong bargaining position with the government in deciding business policies or at least to be a crucial factor of consideration for the stability of domestic economy, making the government not completely free to make its economic policies.

In this era of globalization, corporations play a crucial role as businessmen whose conducts can influence the people at large. Muladi cited the idea of BVA Roling to expand the scope of corporate crimes perpetrators in accordance with functional corporation theory (*theorie van het functioneel daderschap*) (Mahrus Ali, 2008) which is so influential to the economic condition of the people. It is the connection between globalization and economic crimes which produces the "anomie of success" principle (profit-oriented businessmen justifying various practices which implementations lead to huge losses for the wider community) as the heart of the rampantly occurring corporate crimes.

In relation to this matter, Nikos Passas emphasizes that "...contrary to conventional wisdom, neoliberalism and globalization contribute to processes leading to global anomie, dysnomie, and ultimately, economic misconduct. They do so by activating the criminogenic potential of economic, political, legal, and cultural asymmetries ..." (Muh. Tahir Ashary, 1992).

Such conditions inevitably put the labors and workers, consumers or the people at large and various other parties in the position as victims of planned corporate business activities done merely for obtaining maximum financial profit. This is what we generally refer to as corporate crimes. Mahrus Ali emphasizes that "the modus operandi of corporate crimes is done secretly, organized and built upon the skills of the perpetrators". Therefore, corporate crimes is a type of extremely harmful criminality and may be continuously occurring, with the huge losses suffered by its victims.

### **Corporation And Human Rights Protection Concept In The United Nations Global Compact (Ungc)**

The United Nations Global Compact (UNGC) is a strategic policy initiative for corporations committed to aligning their policies and strategic operations (corporate and business activities) with the 10 (ten) universal principles of human rights, labor, environment and anti-corruption (Kristian, 2013; 12).

Specifically, in the field of human rights, UNGC declares that businesses should support and respect the protection of internationally proclaimed human rights and make sure that they are not complicit in human right abuses. On that basis then a business community or corporation has the responsibility to constantly honor and respect as well as uphold human rights by not violating them in all of their business activities and by avoiding the corporate involvement in human rights violations.

The businessmen and corporations have to observe and refer to The Ten Principles of The United Nations Global Compact as fundamentals which must not to be overlooked. The human rights principles that corporations must be uphold and implement its business activities are as follows:

Principle 1: Business Should Support and Respect the Protection of Internationally Proclaimed Human Rights.

Companies interact with all levels of government in the countries where they operate. They therefore have the right and responsibility to express their views on matters that affect their operations, employees, customers and the communities of which they are a part.

- a. Through differential pricing or small product packages create new markets that also enable the poor to gain access to goods and services that they otherwise could not afford;
- b. By fostering opportunities for girls to be educated to empower them and also helps a company to have a broader and more skilled pool of workers in the future; and
- c. Perhaps most importantly, a successful business which provides decent work, produces quality goods or services that improve lives, especially for the poor or other vulnerable groups, is an important contribution to sustainable development, including human rights.
- d. If companies use security services to protect their operations, they must ensure that existing international guidelines and standards for the use of force are respected.
- e. To avoid the corporate involvements in human rights violations, corporations can make a commitment to prevent and to not be involved by considering: (Kristian, 2013; 101)

- f. Has the company made a human rights assessment of the situation in countries where it does, or intends to do, business so as to identify the risk of involvement in human rights abuses and the company's potential impact on the situation
- g. Does the company have explicit policies that protect the human rights of workers in its direct employment and throughout its supply chain?
- h. Has the company established a monitoring system to ensure that its human rights policies are being implemented?
- i. Does the company actively engage in open dialogue with stakeholder groups, including civil society organizations? And
- j. Does the company have an explicit policy to ensure that its security arrangements do not contribute to human rights violations?

### **The Role of State in Overcoming Corporate Violations of Human Rights**

The State is responsible to provide devices by utilizing all its national resources to create equality, non-discrimination and human rights protection for every citizen without exception. The State has to do its part to calculate every possible way to allow for human rights protection and to facilitate the recovery over losses that may arise from the violation of human rights. In relation to this, the State has to guarantee the implementation of planning, organizing, executing, monitoring and evaluating of national development programs and policies in accordance with the protection of human rights. Strategic schemes to provide the human rights-based protection and law enforcement also need to be implemented rationally and systematically to achieve human rights protection in all aspect of life through programs and policies that consider experiences, aspirations and needs. Therefore, a thorough planning, execution, monitoring and evaluation of all programs and policies in many aspects of life and development is required. Basic human rights and freedom cannot be detached from the individual himself for without them a person would lose his human dignity. Therefore, the Republic of Indonesia including the government has the responsibility, both legally and politically, economically, socially and morally to protect and improve as well as to take concrete actions to uphold basic human rights and freedom in all fields and aspects of life. The protection of human rights here must be implemented with respect to human rights, justice and upholding gender equality, non-discrimination and protection of victims which is no less important. Its implementation is crucial to prevent any forms of human rights violations, especially those done by corporations, to protect the victims of corporate violations of human rights as well as to take firm actions against the offending corporations. These are important in order to provide due protection and welfare for the people both materially and spiritually. The State is able to establish responsive formulation policies and/or programs (and its implementations) for human rights protection, to give special consideration on parties vulnerable to human rights violations and to increase the understanding and awareness of both the government and non-government (including all corporations) to conduct actions not in violation of those rights, that is by adopting and applying the principles contained in the UNGC as previously explained. Moreover, law enforcement and application of human rights protection in all aspects of life demand the role of Integrated Criminal Justice System. It is a concept that combines the process or working mechanism of law enforcers (police, prosecutors, judges and advocates) with institutions which act as a subsystem in law enforcement and justice. Mardjono Reksodiputro states that criminal justice system is a system within a society to overcome criminalities. According to Black's law Dictionary, integrated criminal justice system is defined as: "... the collective institutions through which an accused offender passes until the accusations have been disposed of or the assessed punishment conculd..." (Henry. In functional criminal justice system as crime controller, Noval Morris concludes that: "The Criminal Justice System is best seen as a crime containment system, one of the methods that society uses to keep crime at whatever level each particular culture is willing to accept. But, to a degree, the criminal justice system is also involved in the secondary prevention of crimes, that is to say, in trying to reduce criminality among those who have been convicted of crimes and trying by deterrent processes of detection, conviction, and punishment to reduce the commission of crime by those who are so mended and so acculturated" (UNAFEI, 1982; 5). Within this framework, therefore, the integrated criminal justice system not only contributes to the continuity and relational harmony among

criminal justice institutions, that is by eliminating institutional centric attitude, developing an attitude of awareness in moderation and realizing consultative attitude but also to the implementation of equal protection of law for suspects/defendants and to the security the public interests. With the integrated criminal justice system mentioned above, it is expected that law enforcement on the protection of human rights will give rise to a helpful and fair law enforcement process as well as to uphold the principle of legal certainty and law supremacy as a part of Indonesia as a country of law. Therefore, all corporate human rights violations may be processed in accordance with the applicable laws and regulations so that every victims affected may obtain the protection, service, handling and assistance of both law enforcers and authorities as well as many other related institutions.

#### **IV. CONCLUSION**

The fight for justice and the enforcement of human rights against the rampant occurrences of corporate crimes and criminality is long and difficult in its applications for it encounters many oppositions all around and tends to be politically overlooked. The protection of victims affected by corporate crimes and human rights violations today is yet very far from expectation for in reality, many corporations still violate these rights and not legally processed. A lot of people had not even been aware that they were the victims of these violations and had suffered unfair treatments even huge losses and other threats (especially for people of lower classes with weaker standings, functions and roles in society). The workers' and people's lack of awareness of their possession of these rights is an obstacle which hinders them to fully benefit from it and to attain welfare and justice. It is also exacerbated by a paradigm of thoughtless corporations not considering seriously the importance of the protection and reverence of human rights. In the daily practices of people's life, the enforcement of laws and regulations upholding human rights have yet to be implemented as it ought to in its formulation, because of the presence of many obstacles, both internally and externally. By looking at the many cases of human rights criminality and corporate crimes as well as weak law enforcement, the rule of law applied in Indonesia needs to be improved. Due to the existence of inappropriate positive law not in line with the principles of human rights protection, various formal attempts still have to be made, with strategic mechanisms, to realize the strengthening of human rights enforcement in Indonesia. It is also necessary to form and enforce a minimum national standard of service concerning human rights. Its implementation is important to reduce law violations, allowances and various other forms of corporate crimes. Corporation have to be viewed as the party capable of crimes and of violating human rights, hence corporations must be held legally responsible. Special attention must be given to the victims of corporate crimes where they oftentimes are not aware of the offenses done against them, including violations of human rights. Parties involved must be educated on human rights, including knowledge on institutions that may provide legal assistance and procedures required for obtaining it if there are people in general who experience human rights violations. Every person or group of persons who have strong argument that his/their human rights have been violated may submit verbal or written reports and complaints to the Commission on Human Rights (*Komnas HAM*). Full and complete disclosure of all corporate legal scandals and human rights violations is obligatory. Corporate human rights violations and crimes are extremely serious problems relating to the livelihood of many people, and for that a serious cooperation of all relevant instances is necessary, including policy makers (executive and legislative) and all the people in order to achieve human rights security. There are some areas to be regarded concerning the protection and enforcement of the human rights of workers and people in general in relation with corporate business activities, such as: the protection (recovery) against poverty, education and work training, occupational health and safety, equality and non-discrimination, violence and possible conflicts, power and decision making, institutions for the advancement of workers, gender equality and justice, protection of women and children as well as the environment.

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