

# Corporate Responsibility and State Obligations for Human Rights in Tesso Nilo: Decision No. 36/G/TF/2022/PTUN.Pbr

Dewi Elvani Lumban Gaol<sup>1</sup>, Ulya Yasmine Prisantani<sup>2\*</sup>, Lusya Marselina Mbu Pake<sup>3</sup>,  
Aprilia Eukarista Paskaria<sup>4</sup>

<sup>1</sup> School of Law and International Studies, Universitas Prasetiya Mulya, Indonesia. E-mail:  
[13502210007@student.prasetiyamulya.ac.id](mailto:13502210007@student.prasetiyamulya.ac.id)

<sup>2</sup> School of Law and International Studies, Universitas Prasetiya Mulya, Indonesia. E-mail:  
[yasmine.prisantani@prasetiyamulya.ac.id](mailto:yasmine.prisantani@prasetiyamulya.ac.id)

<sup>3</sup> School of Law and International Studies, Universitas Prasetiya Mulya, Indonesia. E-mail:  
[13502210012@student.prasetiyamulya.ac.id](mailto:13502210012@student.prasetiyamulya.ac.id)

<sup>4</sup> School of Law and International Studies, Universitas Prasetiya Mulya, Indonesia. E-mail:  
[13502210002@student.prasetiyamulya.ac.id](mailto:13502210002@student.prasetiyamulya.ac.id)

---

**Abstract:** This study analyzes corporate responsibility and state obligations in relation to the environmental degradation of the Tesso Nilo National Park (TNTN), caused by the establishment of an illegal oil palm plantation of approximately 1,200 hectares by PT Inti Indosawit Subur. Employing a normative legal research methodology, this paper integrates international environmental law, international human rights law, and national regulatory frameworks to evaluate how corporate responsibilities ought to be fulfilled and how state obligations to protect should be exercised. The findings demonstrate that the company failed to meet its responsibility to respect human rights as prescribed under international and national standards. Conversely, the state is found to have violated both its international and domestic obligations due to negligence in preventing land encroachment, weak oversight, and the absence of effective law enforcement. The decision of the Pekanbaru Administrative Court, subsequently upheld at the appellate and cassation levels, mandated comprehensive remedies, including reforestation and permit revocation. This study concludes that the environmental damage and human rights violations in TNTN resulted from a dual failure of both state and corporate actors, and underscores the urgency of adopting binding due diligence obligations and ensuring consistent law enforcement to prevent similar harm.

**Keywords:** Business and Human Rights; Corporate Accountability; State Obligations; Tesso Nilo National Park

---

## 1. Introduction

Business activities are a sector that continues to evolve alongside the impact of globalization. The increasing intensity of interaction and the ease of establishing cross-border relations have birthed a borderless society. This development certainly exerts a major influence on the business dynamics within a country (FADHIL, 2018). Over the last twenty-five years, economic globalization has opened millions of job opportunities and helped lift millions of people out of poverty (Rohmah et al., 2024). However, the

progression of globalization also presents its own challenges, caused by increasingly sharp competition among both domestic and international business actors.

Corporations are vital actors in driving national economic development. On one hand, the presence of corporations can accelerate economic growth through the utilization of natural resources, job creation, increased state revenue, and the strengthening of public purchasing power (Mulyana, 2012). On the other hand, business activities can also lead to adverse consequences for the environment and human rights, particularly regarding corporations operating in the industrial and natural resource management sectors.

In recent years, various findings indicate that corporations operating in the industrial sector are frequently involved in human rights violations. Data from the National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia/Komnas HAM*) in 2024 shows that corporations rank third with a total of 321 complaints (HAM, 2024). Reported forms of violations include environmental destruction, the practice of forest burning for palm oil land clearing, using indigenous lands without an exchange of views, and labor exploitation. Furthermore, in several cases, the presence of a corporation can even pose a threat to the communities living around its operational areas (HAM, 2024). This situation is exacerbated by clandestine cooperation between corporations and government parties. Consequently, a perception has emerged that corporations, which are supposed to bring welfare to the community, instead cause loss and disaster for surrounding communities. These actions are clearly violations of human rights, including the right to life, the right to a healthy environment, and the right to a sense of security, which should be guaranteed by the state and respected by all parties (HAM, 2024). Regarding the right to a healthy environment, Pacheco (2025) asserts that this is a fundamental right enshrined in numerous constitutions worldwide and is increasingly recognized internationally as an autonomous human right (Ziegler et al., 2025).

The palm oil industry is one of the major industries supporting the country's economy. In 2024, export foreign exchange from the palm oil industry and its derivatives reached USD 31 billion (*[Infografis] Sawit Pahlawan Devisa Indonesia (2025)*, 2025). However, behind this high export revenue, there are various human rights violations within this industry, including environmental destruction through forest fires for plantations, work safety that does not meet national standards, the unfulfilled rights of plantation workers, and violations of indigenous peoples' rights (Yuliani & Ramadana, 2025). These violations cause the Indonesian palm oil industry to frequently fall under international scrutiny. The UN, in its letter to Indonesia, highlighted structural human rights violations in the Indonesian palm oil sector, specifically regarding environmental impacts and aggrieved human rights, including the intimidation and criminalization of environmental human rights defenders, violations of community land rights, and environmental destruction (Yuliani & Ramadana, 2025).

The implementation of law enforcement against corporations still faces various challenges, including weak capacity of law enforcement officials, intervention of political and economic interests, and a lack of transparency in corporate activity reporting (Ismail et al., 2025). Furthermore, Rizki Atsari Samanha and Tri Hayati (2023) explain that such human rights violations occur not only in the textile industry sector

but also encompass environment-related sectors such as plantations, the palm oil industry, and other business sectors. According to them, human rights violations by corporations can generally be categorized into three types: forced displacement or migration of residents, corporate involvement in acts of violence, and violations of the right to decent work (Samanha & Hayati, 2023). A study by Markus H. Simarmata (2018) shows that corporate accountability for human rights violations has been comprehensively regulated in international regulations but has not yet been comprehensively addressed in Law Number 39 of 1999 on Human Rights, particularly regarding the definition of human rights violations by corporations and the definition of the corporation itself. In fact, both aspects are crucial for providing legal certainty.

Ziegler, Canapa, and Cardozo describe the intersection of business and human rights as a complex landscape, characterized by a fragmented patchwork of soft law and mandatory provisions across national, regional, and international levels (Ziegler et al., 2025). Reflecting this complexity, this research will provide an in-depth analysis of both Indonesian national regulations and international standards. Although various studies have discussed the issue of human rights violations by corporations, most of this research has not provided an in-depth explanation of the role and relevance of the international legal framework, specifically the UN Guiding Principles on Business and Human Rights (UNGPs), in regulating the relationship between corporations and the respect for human rights. Based on this background, this paper seeks to fill that research gap by proposing two primary research questions:

1. How should corporate responsibility toward Human Rights in Decision Number: 36/G/TF/2022/PTUN.PBR be implemented based on international and national law?
2. How is the issuance of permits by the state in Decision Number 36/G/TF/2022/PTUN.PBR assessed in relation to the state's obligation to protect the public from potential human rights violations by corporations?

## **2. Method**

This research employs a normative legal research methodology. Primary legal sources consist of Indonesian legislative regulations and international regulations. These regulations include, such as 1992 Convention on Biological Diversity, 1982 United Nations World Charter for Nature, and Rio Declaration on Environment and Development, 1992. There are also the national regulations such as Law No. 5 of 1990 concerning the Conservation of Living Natural Resources and Their Ecosystems, Law No. 5 of 1994 concerning the Ratification of the Convention on Biological Diversity, and Law No. 6 of 2023 concerning the Stipulation of the Job Creation Government. Further, these regulations will be further analyzed by using Gustav Radbruch's justice theory, more specifically with regard to the factors of justice, utility (benefit), and legal certainty.

In addition, this study utilizes secondary legal sources such as scientific journal articles, international environmental law textbooks, official United Nations reports, and

academic publications from research institutions focusing on Business and Human Rights, corporate obligations, and state obligations in human rights violations

### 3. Basic Concepts of Business and Human Rights

In previous agreements, human rights were primarily addressed to governments rather than corporations. This later shifted based on the Universal Declaration of Human Rights, which states that every individual and every organ of society shall strive through teaching and education to promote respect for human rights (Global Compact Network Indonesia, 2019). This transition demonstrates a paradigm shift from a strictly state-centric approach toward a model of shared responsibility between the state and non-state actors, particularly corporations (Klink & Craveiro, 2024).

The primary normative foundation for corporate responsibility is the UNGP BHR. Although these provisions are non-binding, the UNGP BHR establishes a conceptual framework with broad influence through its three main pillars: the state duty to protect, the corporate responsibility to respect, and access to remedy for victims (Buhmann & Hall, 2014). This corporate responsibility is not merely a moral response to human rights violations but a logical consequence of the increasing capacity and influence of corporations within the global economic structure (Vorng, 2025). This aligns with Morgane Ventura who states that the UNGPs on Business and Human Rights serve as a symbolic mechanism for recognizing the social role of businesses in global integration and their significant impact on fostering respect for human rights across all legal systems (Ziegler et al., 2025). Within the UNGPs, respect for human rights as a corporate responsibility is characterized, among other things, as a negative obligation to avoid causing or contributing to human rights violations.

However, in literature concerning corporate obligations, the responsibility to respect human rights should not be understood solely as a passive obligation; in practice, corporations possess the structural capacity to influence the social and economic conditions where human rights violations occur (Macchi & Bright, 2020). Therefore, these corporate obligations should be viewed as a minimum standard that requires further elaboration through binding legal instruments. The obligation to prevent negative impacts on human rights is realized through the implementation of Human Rights Due Diligence (HRDD). This instrument functions as an operational tool that enables corporations to proactively identify, assess, prevent, and mitigate human rights risks arising from all aspects of business activities, including their supply chains. This approach affirms that corporate responsibility is not a passive duty to merely avoid violations, but an active responsibility requiring corporations to take preventive measures before impacts occur. HRDD must be seen as a legal standard that governs corporate behavior in identifying, assessing, preventing, and mitigating human rights risks. This progress is reflected in recent developments such as the Corporate Sustainability Due Diligence Directive (CSDDD), which illustrates the transformation of HRDD from a voluntary norm into a mandatory due diligence legal obligation (Fu, 2025).

This indicates progress toward strengthening formal legal instruments to ensure corporate accountability. One principle identified within HRDD is the principle of non-

complicity, which asserts that a corporation can be held responsible for human rights violations even if it is not the primary perpetrator (Stewart, 2015). Indirect involvement through the provision of capital, technology, or logistical support can trigger legal and reputational liability for the corporation. Therefore, the principle of non-complicity reinforces the need for more stringent and comprehensive HRDD.

Another critical component of corporate obligations is access to remedy for victims affected by human rights violations. This obligation is an integral action of the corporate responsibility to respect human rights. Thus, where a corporation causes or contributes to a violation, they have an obligation to eliminate, rectify, or compensate for such impacts through effective recovery mechanisms. This principle arises from the realization that corporate impacts on human rights are often both direct and indirect; hence, remediation mechanisms must be accessible, transparent, free from intimidation, and capable of providing substantive resolution for victims. However, these mechanisms often focus on company-developed processes that are highly procedural in nature without providing substantive recovery (Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse: Report of the United Nations High Commissioner for Human Rights, 2016). Furthermore, the power imbalance between corporations and affected communities makes it difficult for victims to obtain effective redress (Harrison et al., 2024).

Although the UNGPs affirm that corporations have a responsibility to respect human rights, this framework cannot stand alone without understanding the fundamental role of the state in protecting citizens from the adverse effects of business activities. The first pillar of the UNGPs establishes the state duty to protect, which is the state's legal obligation to take legislative, administrative, and judicial steps to ensure that corporations do not commit or contribute to human rights violations, as stipulated in Article 1 of the UNGP BHR. This obligation is rooted in international human rights instruments, such as the ICCPR and ICESCR, which require states to act proactively to prevent violations by third parties. When a state fails to establish adequate regulations or provide effective recovery mechanisms, a governance gap occurs, allowing corporations to operate without sufficient accountability. It is in this context that the global push toward mandatory HRDD has emerged, essentially as a response to the state's weakness in enforcing these protection obligations. Thus, state obligations and corporate responsibilities are two complementary elements in ensuring human rights protection within business activities.

#### **4. Analysis of the Decision**

The destruction of the Tesso Nilo National Park ("TNTN") area cannot be separated from the dynamics of the region since the early 2000s. As mentioned in the lawsuit, after PT Inhutani IV ceased operations and its permit was revoked around 2002, the forest area around TNTN lost effective supervision, leading to the emergence of encroachment since 1999. The community cleared land for oil palm and rubber plantations, though they often failed due to disturbances from wildlife, such as elephants. Since 2005, land transaction practices increased, paving the way for the entry of "*cukong*" (financiers/land speculators) and external parties. During the

2005/2006 period, an oil palm plantation development emerged covering an area of ±1,200 hectares for the KKPA (Primary Industry Member Cooperative) plantation by PT Inti Indosawit Subur ("PT IIS"), located within the TNTN conservation area, as indicated by coordinate points and official maps of the national park establishment decree.

Normatively, the area had been designated as a conservation area through Ministry of Forestry Decree No. 225/Menhut-II/2004, Decree No. 663/Menhut-II/2009, and Decree No. 6588/Menhut-VII/KUH/2014; therefore, all plantation activities are illegal activities. Nonetheless, the government—through the TNTN Agency (*Balai TNTN*), the Ministry of Environment and Forestry, and the Directorate General of Forestry Law Enforcement—failed to take protective, security, or law enforcement actions against this oil palm land clearing. This omission resulted in deforestation, loss of wildlife habitat, and the degradation of TNTN's ecological functions. These conditions prompted the Plaintiff, the Riau Madani Foundation, to file a Government Factual Action lawsuit at the Pekanbaru Administrative Court ("PTUN Pekanbaru").

The Plaintiff in this case is the Riau Madani Foundation, a legally incorporated forest conservation organization that has met the requirements of Article 73 of the Law 41/1999, thereby having the right to file a lawsuit in the interest of preserving forest functions. The identity of the Plaintiff, including legal standing, was recognized in the Pekanbaru Administrative Court decision. The Defendants consist of three government officials who hold direct authority over protection and law enforcement in the TNTN area, namely:

1. Defendant I: Head of the Tesso Nilo National Park Agency, as the direct manager of the conservation area;
2. Defendant II: Minister of Environment and Forestry (KLHK), as the official holding licensing and national policy authority, as well as the recipient of reforestation funds;
3. Defendant III: Director General of Environment and Forestry Law Enforcement, as the institution responsible for environmental and forestry law enforcement throughout Indonesia.

The object of the dispute is a Government Action in the form of an unlawful act by a government official (*onrechtmatige overheidsdaad*), specifically the failure to implement forest protection in TNTN, resulting in damage to the conservation area due to the existence of the ±1,200 ha oil palm plantation. According to the lawsuit, this action meets the elements of a Government Action as intended by Article 1 point 8 and Article 87 of Law 30/2014, as well as Supreme Court Regulation No. 2/2019. The Administrative Court emphasized that the failure of government officials to take concrete action constitutes an action that can be reviewed by the Administrative Court (factual action) because it is final, has legal impact, and causes ecological loss to the community and the environment.

The lawsuit was filed in June 2022 and was declared to have passed the dismissal process. The Defendants submitted various exceptions, including objections to absolute competence, the Plaintiff's legal standing, and allegations that the object of the dispute was incorrect (*error in objecto*). However, the Panel of Judges rejected all

exceptions because:

- a. The object of the lawsuit is a factual action by government officials—a category that expressly falls under the jurisdiction of the PTUN based on Perma 2/2019.
- b. The Plaintiff has legal standing based on Article 73 of the Forestry Law because it is a legal entity that has the objective of forest conservation.

In the examination of the merits of the case, the Panel assessed that the 1,200 ha oil palm plantation was indeed located within the TNTN conservation area based on coordinate evidence and Ministry of Forestry Decree maps. Although no evidence was found to confirm who the perpetrator of the land clearing was, the Panel stated that the uncertainty of the perpetrator does not eliminate the state's obligation to protect conservation areas. The negligence of the Defendants in acting was considered an unlawful act by the government.

The Pekanbaru PTUN subsequently granted the Plaintiff's lawsuit in part, ordering the total restoration of the 1,200 ha area through the felling of oil palms and reforestation; the cessation of all utilization and the closure of access to the area; law enforcement by Defendants I and III; and the financing of restoration by Defendant II.

The MA even improved the ruling's injunction by adding an additional obligation for Defendant II to cancel all permits located within the TNTN area, specifically in the 1,200 ha area, as well as to bring into order all permits within the conservation area. Meanwhile, the obligations for restoration, closure of the oil palm area, and law enforcement remain binding on Defendants I and III.

Through the cassation decision, all orders for environmental restoration, law enforcement, permit ordering, and permit revocation within TNTN became legally binding (*inkracht*). The Defendants were declared to have committed an unlawful act because they did not carry out the forest protection actions that are their legal obligation.

#### **4.1. Analysis of Corporate and State Responsibility Based on International Regulations**

As mentioned in the lawsuit, the destruction of TNTN is caused by the existence of an oil palm plantation of ±1,200 hectares by PT IIS. This is closely relevant corporate responsibility and state obligations as regulated in international environmental law and business and human rights. Under the framework of Article 8 of the CBD, the state is obliged to protect protected areas, prevent activities that threaten biodiversity, and ensure the ecosystem integrity of conservation areas. However, this obligation does not stop at the state; when a state designates an area as a national park, corporations operating within that jurisdiction have a derivative obligation to respect the ecological boundaries set by the state. Thus, the presence of PT IIS's oil palm plantation within TNTN reflects not only a violation of conservation provisions by the state due to omission and weak supervision but also the corporation's failure to respect the environmental boundaries that are a prerequisite for fulfilling the human rights of the surrounding community. Biodiversity damage not only threatens ecological stability but can also be categorized as an indirect violation of the right to health and the right

to a decent life (Willetts et al., 2025).

This is in line with Article 6 of the ICCPR and Article 12 of the ICESCR, which position both the state and corporations as parties that must ensure corporate activities do not create conditions that endanger human life. Consequently, a single act of deforestation in TNTN simultaneously becomes a violation by both the state and the corporation.

Aligned with this, the UNGP provides operational standards that are morally binding and increasingly leaning toward legal obligations. Corporations hold the responsibility to respect as per Principle 11 of the UNGP BHR, while the state bears the state duty to protect as per Principle 1 of the UNGP BHR. These two obligations are interconnected: the state is obliged to create an effective legal, supervisory, and enforcement framework, while the corporation is obliged to conduct HRDD (Human Rights Due Diligence) according to Article 15 of the UNGP BHR to ensure that all its operations do not cause negative impacts on human rights and the environment. In the TNTN case, the state's failure to protect the forest and crack down on encroachment allowed PT IIS to operate within the conservation area without hindrance, while also proving that corporate HRDD was never substantively carried out in accordance with Articles 17–19 of the UNGP BHR. HRDD serves as the minimum measure of corporate compliance with human rights; therefore, the absence of HRDD makes the corporation directly involved in human rights violations even if it does not commit physical violence against the community. In other words, the clearing of oil palm plantations in TNTN is a double violation because the state failed to prevent it, and the corporation failed to respect human rights by mitigating violations according to Article 13 of the UNGP BHR.

The precautionary principle in Article 15 of the Rio Declaration requires the state to act even if scientific evidence is incomplete if there is a risk of serious environmental damage. The state must also ensure that licensing mechanisms and natural resource governance are carried out using a risk-based governance approach as per Article 7 of the UNGP BHR. However, the fact that TNTN had shown signs of encroachment since the early 2000s but was not met with supervision and law enforcement indicates that the state ignored these preventive obligations. This failure created conditions that allowed PT IIS to enter the conservation area and clear land for oil palm. Thus, the state's violation simultaneously opened the space for corporate violations, showing a causal relationship between the state and the corporation.

Furthermore, both the state and the corporation have an obligation to provide a remedy mechanism when negative impacts have occurred. The UNGP emphasizes that the state is obliged to provide access to remedy through both judicial and non-judicial mechanisms, while corporations are obliged to participate meaningfully in restoration if they cause or contribute to such impacts. The Pekanbaru PTUN Decision, which ordered total restoration of the 1,200 ha, permit regulation, and law enforcement, reflects the direct implementation of the remedy principle in the UNGP, as well as judicial recognition that both the state and corporations have a role in restoring damaged ecosystems. The Supreme Court reinforced this view by asserting that the state must cancel permits located within the TNTN area—an action that clearly reflects

the principle of the State Duty to Protect.

Accordingly, in assessing how corporate responsibility should be implemented, this case shows that PT IIS should have conducted HRDD before operating, respected conservation area boundaries, ensured no contribution to deforestation, and provided ecological remedy after the damage occurred. The Indonesian Company Law has yet to regulate on the matter of human rights due diligence and environmental responsibility is limited to Social and Environmental Responsibility (*Tanggung Jawab Sosial dan Lingkungan – “TJSL”*) as mentioned in Article 74. Human rights due diligence is only related to several reporting mechanisms such as the annual Sustainability Report that is required by the Financial Services Authority (*Otoritas Jasa Keuangan*) for issuers and public company, but not yet specifically imposed for closed companies. Nevertheless, for damages that occur as an effect of failure in conducting HRDD, general provisions under civil and criminal law still prevail.

Meanwhile, in answering how the issuance of permits by the state is assessed, Decision 36/G/TF/2022/PTUN.PBR demonstrates that the state has failed to fulfill its international obligations to protect the public from potential human rights violations by corporations, because the permits and omissions that occurred were inconsistent with the CBD, ICESCR, Rio Declaration, and UNGP. The state was not only negligent in enforcing the law but also negligent in carrying out preventive, corrective, and remedial obligations. Overall, the analysis of TNTN shows that environmental and human rights violations can never be separated between the corporation and the state; both are bound within a single normative regime that requires environmental protection and respect for human rights as mutually reinforcing obligations. The international regime positions the corporation as an actor with real human rights responsibilities and the state as the primary guardian of ecosystem integrity and community rights. The PTUN and Supreme Court decisions ultimately provided a correction to these failures and became an important precedent on how international standards must be operationalized in environmental and business governance in Indonesia.

#### **4.2. Analysis of Corporate and State Responsibility Based on National Regulations**

The utilization of national park areas must be guided by constitutional principles governing natural resources and environmental protection. Article 33 paragraph (3) of the 1945 Constitution of the Republic Indonesia states that land, water, and natural resources contained therein are controlled by the state and must be used for the greatest prosperity of the people. In addition, Article 28H paragraph (1) guarantees every persons the right to a good and healthy environment. These provisions imply that conservation areas such as national parks must be managed in a manner that preserves their ecological functions and prevents environmental degradation, as environmental protection is the part of the state’s constitutional obligation to ensure public welfare.

These constitutional principles are further implemented through statutory regulations.

First, there is Law 5/1990, which provides strict limits on the utilization of national park areas. National parks may only be utilized for non-extractive activities such as research, education, cultivation support, tourism, and recreation. The fact that a palm oil corporation built a 1,200 ha KKPA plantation inside TNTN—a conservation area within a strict zoning system (core zone, wilderness zone, utilization zone)—directly violates Article 33 paragraph (1) and paragraph (3) of Law 5/1990, which prohibits activities that alter the integrity of natural conservation area ecosystems. Furthermore, Article 19 paragraph (1) of Law 5/1990 prohibits the introduction of non-native plant species into conservation areas. The planting of oil palm, which is a non-endemic species, constitutes a legal violation of the principle of ecosystem authenticity. Thus, the existence of the 1,200-hectare palm oil plantation in TNTN normatively lacks any legal basis and is an act explicitly prohibited by the national conservation regime. A crucial fact from the court's decision is that PT IIS did not possess any permits to operate in TNTN; therefore, such actions fulfill the elements of "utilization of an area without a permit," which is a criminal offense under Article 40 of Law 5/1990. Consequently, based on the framework of Law 5/1990, all oil palm plantation activities in TNTN are illegal acts that should have been immediately prosecuted before causing ecosystem damage.

Furthermore, Law 41/1999 establishes the fundamental principle that every forest utilization permit holder is obliged to maintain and preserve the area in accordance with its conservation function. However, in the TNTN case, PT IIS not only lacked the necessary permits but also converted the function of a conservation area into an oil palm plantation—an act that violates Article 50 paragraph (2) letter a of Law 41/1999, which prohibits any person from carrying out activities that result in forest damage. Because the oil palm plantation was built in a conservation area without a permit, the activity fulfills the elements of a serious violation subject to criminal sanctions as per Article 78 of Law 41/1999. Additionally, the norm in Article 45 obliges permit holders to conduct rehabilitation if forest damage occurs due to their activities. The PTUN and Supreme Court (MA) decisions consistently expanded this principle by asserting that even if the specific perpetrator is not proven with absolute certainty, restoration remains a state obligation because the violation occurred within a conservation area. However, from a corporate perspective, the rehabilitation norm remains attached if the perpetrator is identified. The fact that PT IIS accepted and processed oil palm fruit from an illegal area also provides a basis for the application of administrative sanctions by Defendant III, as ordered by the court.

Moreover, Government Regulation (PP) 22/2021 emphasizes that all spatial utilization activities must comply with the Spatial Plan (RTR) and zoning. National park areas are protected areas with a conservation function and automatically become areas with strict restrictions. The existence of oil palm plantations in TNTN clearly violates Article 18 paragraph (3) letter c and Article 21 paragraph (3) letter c of PP 22/2021, which prohibit spatial utilization that contradicts the function of a conservation area. Additionally, corporations are required to possess a KKPR before conducting activities. The facts of the case show that PT IIS did not possess a KKPR; thus, all oil palm

activities in TNTN stand outside the valid spatial planning licensing framework. From the state's side, PP 22/2021 obliges government officials to conduct supervision, control spatial utilization, and apply administrative sanctions in the form of cessation of activities, revocation of permits, and closure of locations. The Cassation Panel of Judges affirmed this obligation by ordering Defendant II to cancel permits within TNTN and bring all non-compliant activities into order. The Supreme Court decision confirms that spatial planning violations are acts that give rise to the obligation for restoration and permit regulation, in accordance with PP 22/2021.

Furthermore, PP 47/2012 regulates that companies engaged in the field of natural resources are obliged to implement TJSI, including preventing environmental damage. In the context of TNTN, the practice of opening illegal oil palm plantations demonstrates an absence of environmental due diligence, risk assessment, and TJSI reporting as mandated by Articles 4 and 6 of PP 47/2012. However, the fact that PT IIS actually accepted and processed yields from an illegal area shows a substantial violation of TJSI principles. Regulatorily, the corporation should have been aware that their palm oil supply chain cannot be sourced from conservation areas. The failure of risk identification and non-compliance with TJSI strengthen the basis for both administrative and environmental criminal sanctions. Albeit carrying out illegal activities in TNTN, as a limited liability company established in accordance with the Company Law as well as PP 47/2012 it is still under the obligation to conduct TJSI as its business activity has been revolving around crude palm oil production since 1979 and hence, is within the natural resources' specification.

Almost the entire national regulatory framework emphasizes preventive action by the state as the most important stage in protecting conservation areas. Law 5/1990 obliges the government to protect nature reserves and national parks, conduct supervision, and take action against violations through Civil Servant Investigators (PPNS). Similarly, Law 41/1999 requires the state to conduct forest protection, fire prevention, control of encroachment, supervision of permits, and the enforcement of criminal and administrative law. Furthermore, PP 22/2021 clarifies the obligation for active spatial planning supervision to ensure no activities violate zoning. In the TNTN case, the three Defendants (Head of Balai TNTN, Minister of LHK, and Director General of Law Enforcement) were proven to have failed in implementing these preventive and repressive obligations. The court assessed the existence of negligence in securing the area, negligence in stopping illegal activities, negligence in enforcing the law and, negligence in regulating permits.

These activities had caused massive ecological damage in the conservation area. Thus, the government's actions fulfill the elements of an unlawful act by the authorities (*onrechtmatige overheidsdaad*) based on the Indonesian environmental administrative law regime.

### **4.3. Evaluation of Remedies in the Decision**

The evaluation of the restorative orders in PTUN Decision No.

36/G/TF/2022/PTUN.PBR shows that the forms of remedies established by the panel of judges are fundamentally consistent with both international and national standards regarding the obligation for environmental restoration and the protection of human rights. In the context of international law, the CBD obliges states to carry out in-situ conservation and the restoration of degraded ecosystems, as emphasized in Article 8. The court's order to close encroached areas, cease all illegal activities, and perform reforestation reflects the application of restorative principles aligned with ecosystem recovery obligations under the CBD. Similarly, Article 12 of the ICESCR requires states to guarantee a safe and healthy environment as part of the right to health, which the ESCR Committee interprets as including the state's obligation to control ecological damage and provide remedies when degradation has occurred. From a human rights perspective, ecological restoration is not merely a technical action but a form of state fulfillment toward the public's right to health. Furthermore, UNGP Principle 25 asserts that states must ensure the availability of effective remedy mechanisms for parties harmed by business activities or state omission, encompassing restitution, compensation, rehabilitation, and guarantees of non-repetition. The court's ruling—ordering law enforcement, the cessation of destructive activities, and ecological restoration—substantially fulfills these effective remedy principles.

Within the national legal framework, the court's restorative orders are strongly supported by Law 32/2009 on Environmental Protection and Management, which stipulates that the government is obliged to restore the environment, stop sources of damage, and collect restoration costs from responsible parties (Articles 53, 54, and 87). Law 5/1990 and Law 41/1999 also position the state as the primary actor required to actively protect and restore conservation areas, including through supervision, law enforcement, and rehabilitation. Thus, the court's orders for sealing, investigation, closure of encroached areas, and reforestation are aligned with the state's preventive and corrective obligations in national law. From a normative perspective, this decision represents an ideal implementation of the polluter pays and state responsibility principles in Indonesian environmental law.

However, the primary critique that emerges is that these remedies have not been effectively implemented by the relevant authorities. The failure to carry out restoration demonstrates a gap between normative standards—both international and national—and factual implementation by the state. In the perspective of UNGP Principle 25, implementation failure is a form of violation of the state's obligation to ensure access to effective remedy. It is not enough for the state to simply be ordered to perform restoration; it must demonstrate concrete, measurable, and verifiable steps to return the environmental conditions and guarantee the non-repetition of damage. The CBD also demands real and sustainable restoration mechanisms, rather than merely declarative ones. Similarly, in the context of the ICESCR, the state's failure to carry out restoration means the state is not fulfilling its obligations to protect and to fulfill the right to health and a healthy environment. From the standpoint of national law, the non-execution of the restorative orders indicates a violation of the government's administrative and ecological obligations as regulated in Law 32/2009,

as well as the conservation and forestry laws that mandate immediate restorative action. Consequently, the remedies ordered by the court are normatively correct, but the ineffectiveness of their implementation highlights the weakness of environmental law enforcement and state accountability mechanisms.

Furthermore, this is clearly a violation of the three basic values as proposed by Gustav Radbruch namely justice, legal certainty, as well as benefit or social aims. What the law states, and imposed to other companies, is not being enforced to PT. IIS. This is in violation of Radbruch's all three basic values (Alexy, 2021). The first basic value is justice (*gerechtigkeit*) because the law is supposed to give the same rights to every people. Secondly, order and predictability as mentioned in Radbruch's legal certainty (*rechtssicherheit*) is also not fulfilled in this case. The existing remedy is expected to be carried out, but due to weak enforcement and state accountability mechanism this predicted outcome cannot be achieved. Last but not least, the aspect of benefit or social aim (*zweckmäßigkeit*) is also not achieved because clearly this lack of enforcement does not give advantage to society as a whole, but rather a disadvantage.

Ideally, restoration should be carried out through a series of transparent, measurable, and science-based actions, taking into account damage inventories, the preparation of rehabilitation plans, the implementation of reforestation using native species, law enforcement against all encroachers, and regular public reporting mechanisms. Additionally, the state must establish timelines, success indicators, and restoration budget allocations. Restoration must also ensure guarantees of non-repetition through strengthened supervision, improvements in licensing governance, and long-term monitoring. Thus, the overall evaluation shows that while the design of the remedies in the PTUN decision reflects international and national standards, the failure of implementation reinforces the weakness of the state's commitment to ecological restoration obligations and the fulfillment of human rights.

## **5. Conclusion**

The analysis of Decision No. 36/G/TF/2022/PTUN.PBR indicates that corporate responsibility and state obligations in the context of the destruction of the TNTN conservation area must be understood through the integration of international legal standards and national legal frameworks. First, corporate responsibility for human rights in this case should have been implemented through Human Rights Due Diligence (HRDD) as stipulated in the UNGP, which requires corporations to identify, prevent, mitigate, and address the negative impacts of their operations. The absence of HRDD and the operation of oil palm plantations in a conservation area demonstrate that PT Inti Indosawit Subur failed to carry out the basic obligation of respecting human rights and failed to comply with the imperative ecological boundaries set by the CBD, ICCPR, and ICESCR, as well as national regulations such as Law 5/1990 and Law 41/1999. Second, the issuance of permits and the state's omission in the TNTN case clearly contradict the state's obligation to protect the public from potential human rights violations by corporations. The state failed to implement its preventive, supervisory, and law enforcement obligations.

The restorative orders mandated by the court—including the revocation of permits, cessation of activities, law enforcement, and reforestation—are consistent with the effective remedy principle in the UNGP and restoration obligations in national law. However, the failure to implement remediation following the verdict indicates weak environmental law enforcement and a lack of state commitment to fulfilling human rights and conservation obligations. Thus, the relationship between the corporation and the state in this case reflects not only an ecological violation but also a structural human rights violation resulting from a dual failure: the state's negligence in protecting and the corporation's failure to respect human rights. This decision reaffirms that the protection of conservation areas and community rights cannot rely on regulations alone, but on effective implementation consistent with international and national standards.

## 6. Acknowledgment

The authors would like to express their sincere gratitude to all parties who supported the successful completion of this paper, especially Universitas Prasetiya Mulya for funding the publication of this paper. This paper is a further development of the Transnational Corporations and Human Rights course during the 2025/2026 academic year, within the Business Law Program at the School of Law and International Studies, Prasetiya Mulya University, taught by the second author.

## References

Alexy, R. (2021). Gustav Radbruch's concept of law. *Law's Ideal Dimension*, 26(1946).

Buhmann, K., & Hall, O. (2014). Business and Human Rights: Understanding the UN Guiding Principles from the Perspective of Transnational Business Governance Interactions. *Osgoode Legal Studies Research Paper Series*, 6(2).  
<https://doi.org/10.1080/20414005.2015.1073516>

FADHIL, G. (2018). TANGGUNG JAWAB SOSIAL DAN LINGKUNGAN PERUSAHAAN DI INDONESIA DITINJAU DARI GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS. In *Universitas Islam Indonesia*. Universitas Islam Indonesia.

Fu, C. (2025). The Shift from Soft Law to Hard Law: CSR, HRDD, and the International Trend Toward Mandatory Corporate Responsibility. *Communications in Humanities Research*, 88(1), 146–151. <https://doi.org/10.54254/2753-7064/2025.HT28579>

- Global Compact Network Indonesia. (2019). *Tanggung Jawab Perusahaan untuk Menghormati HAM*. Global Compact Network Indonesia.  
<https://bisnisdanham.id/bab-2-apakah-itu-bisnis-dan-hak-asasi-manusia/>
- HAM, K. (2024). *CATATAN AKHIR TAHUN 2024 HAK ASASI MANUSIA DI INDONESIA* (Vol. 6, Issue 337).
- Harrison, J., Wielga, M., & Parejo, M. (2024). In Search of Effective Corporate Grievance Mechanisms: Can Mandatory Due Diligence Laws be a Progressive Force ?  
*Journal of Human Rights Practice*, 16(3), 819–835.  
<https://doi.org/10.1093/jhuman/huae011>
- Improving accountability and access to remedy for victims of business-related human rights abuse: Report of the United Nations High Commissioner for Human Rights* (A/HRC/32/19). (2016). United Nations General Assembly.
- [Infografis] *Sawit Pahlawan Devisa Indonesia (2025)*. (2025). Palm Oil Agribusiness Strategic Policy Institute. <https://palmoilina.asia/berita-sawit/sawit-pahlawan-devisa-indonesia/>
- Ismail, Syafrizal, Manurung, A. A., Sofian, & Nasution, A. W. (2025).  
PERTANGGUNGJAWABAN KORPORASI TERHADAP PELANGGARAN HAM AKIBAT  
PENCEMARAN LINGKUNGAN. *Majalah Ilmiah Warta Dharmawangsa*, 19(2),  
1149–1162. <https://doi.org/10.46576/wdw.v19i2.6956>
- Klink, E. L., & Craveiro, J. L. (2024). *The Role of Polycentric Governance , Public-Private-Civil Partnerships , and Citizen Science as Developed by the C2IMPRESS Project in Building Disaster Resilient Societies \**. 44(1), 1–16.  
<https://doi.org/10.26650/SJ.2024.44.1.0017>

- Macchi, C., & Bright, C. (2020). *Hardening Soft Law: The Implementation of Human Rights Due Diligence Requirements in Domestic Legislation*. 1–25.
- Mulyana, A. (2012). Mengintegrasikan Ham Ke Dalam Kebijakan Dan Praktik Perusahaan. *Jurnal HAM Komisi Nasional Hak Asasi Manusia*, 8(8), 265–284.  
<https://doi.org/10.58823/jham.v8i8.77>
- Rohmah, M., Basyir, T., Abror, D., & Masitoh, F. N. (2024). Dampak Globalisasi, Kemiskinan, dan Kebijakan Mikroekonomi terhadap Stabilitas Ekonomi Nasional. *Jurnal Ilmiah Pendidikan Dan Ekonomi*, 9(1), 1–24.  
<https://doi.org/10.30599/egxqdp09>
- Samanha, R. A., & Hayati, T. (2023). Upaya Pencegahan Pelanggaran HAM oleh Korporasi dalam Perspektif HAM dan Bisnis. *Jurnal Hukum Dan Pranata Sosial Islam*, 5(2), 1663–1676. <https://doi.org/10.37680/almanhaj.v5i2.2860>
- Stewart, J. G. (2015). COMPLICITY IN BUSINESS AND HUMAN RIGHTS. *American Society of International Law*, 109, 181–184.  
<https://doi.org/10.5305/procannmeetasil.109.2015.0181>
- Vorng, P. (2025). THE EVOLUTION OF BUSINESS AND HUMAN RIGHTS: FROM VOLUNTARY COMMITMENTS TO MANDATORY DUE DILIGENCE. *Global Jurist*, 2025(101). <https://doi.org/10.1234/2025-VP-101>
- Willets, L., Fleming, L. E., & Morgera, E. (2025). Biodiversity, health science, and the human right to a healthy environment. *The Lancet Planetary Health*, 9(6), e553–e565. [https://doi.org/10.1016/S2542-5196\(25\)00092-0](https://doi.org/10.1016/S2542-5196(25)00092-0)
- Yuliani, & Ramadana, S. (2025). *Pelanggaran HAM Masih Marak di Perkebunan Sawit Indonesia, Ancam ISPO dan RSPO*. Elaeis.

<https://www.elaeis.co/berita/baca/pelanggaran-ham-masih-marak-di-perkebunan-sawit-indonesia-ancam-ispo-dan-rspo>

Ziegler, A. R., Canapa, D., & Cardozo, M. I. (Eds.). (2025). *Business and human rights: Emerging challenges, issues, and trends*. Brill/Nijhoff.