

State's Role in Ensuring Human Rights Due Diligence in Indonesian State-owned Enterprises

Bunga Dita Rahma Cesaria^{1*}, Zalfa Rabbani²

¹Faculty of Law, President University, 17550, Indonesia

²Faculty of Law, President University, 17550, Indonesia

Corresponding author's email: bunga.rahma@president.ac.id; zalfa.rabbani@student.president.ac.id

Abstract

One of the principles of the 2011 UN Guiding Principles on Business and Human Rights (UNGPR) is that the state shall take additional steps in ensuring that the state-controlled or state-owned enterprises conduct human rights due diligence. In Indonesia, the state takes two different roles: as regulator and as Series A Dwiwarna shareholder of a state-owned enterprise (SOE). This paper intends to analyse how the existing Indonesian regulations regulate the state's role as regulator and as shareholder of Indonesian SOEs in connection with ensuring the implementation of human rights due diligence. This research uses normative legal methodology by analysing primary sources, such as Indonesian laws and regulations and UNGPR, and secondary sources from books and journals. The research finds that, aligned with the UNGPR principle, the government as regulator aims for SOEs to conduct human rights due diligence by the enactment of the 2023 Presidential Regulation. However, there have been no specific rules that regulate the state's role as the holder of Series A Dwiwarna in SOE in regards to the implementation of human rights due diligence. This study is useful in informing policy-makers on the gaps in regulation regarding Indonesia's commitment to the UNGPR, noting that the business and human rights actions under the 2023 Presidential Regulation will terminate in 2025. The outcome of this study should also inform business actors in Indonesia regarding their new human rights compliance.

Keywords: Business and Human Rights; State-Owned Enterprise; Human Rights Due Diligence Report; United Nations General Principle on Business and Human Rights.

1. Introduction

Business activities, while they boost the economic growth of the state that hosts them, may involve activities that violate human rights. This has recently taken global attention, where in October 2025, the Office of the United Nations High Commissioner for Human Rights (OHCHR) named 158 business enterprises that are involved in the activities relating to the Israeli settlements in the Palestinian Territory[1]. Prior to this, the concern on human rights violations resulting from business activities was addressed in 2011 as the OHCHR issued the Guiding Principles on Business and Human Rights (UNGPR). UNGPR contains principles which aim to guide both states and businesses to create a tangible impact for individuals and communities while making a socially sustainable for globalization despite the size, sector, location, and structure.

One of the highlights of the first pillar, the “State Duty to Protect Human Rights”, is Principle 4, which concerns the state’s involvement with business activities. Principle 4 specifically calls out the state to take additional steps to protect human rights by way of, if appropriate, requiring human rights due diligence (HRDD). HRDD refers to a process of assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed[2]. The particular address to the state in HRDD is not without reason, if it is connected with how states control the global economy. According to the data of the Organisation for Economic Co-operation and Development (OECD) in 2024, public sectors (e.g., central and local government, state-owned companies, and sovereign wealth funds) are the second largest category of investors in listed companies worldwide[3]. Per 2023, OECD also reported that 126 state-owned enterprises are listed as companies in the Fortune 500[3]. Given the presence of state-owned or state-controlled enterprises in the economy, there needs to be a particular attention on their respect for human rights, as any violation of human rights conducted by these enterprises may be attributed to the state.

UNGP receives positive response from countries around the world[4] including Indonesia, which, in 2023, enacted Presidential Regulation No. 60 2023 on National Strategy on Business and Human Rights (PR 60/2023). This regulation contains the national strategy on business and human rights (Stranas BHAM), accompanied by action points (BHAM Actions) and the implementation through the National and Regional Business and Human Rights Task Force (GTN/D BHAM). Particularly in regards to the matter of state-controlled or state-owned enterprises under Principle 4 of the UNGP, PR 60/2023 addresses this by targeting Indonesian state-owned companies to receive training and further conduct HRDD. As intended by the PR 60/2023, the HRDD shall be done through a website called *Penilaian Risiko Bisnis dan Hak Asasi Manusia* (PRISMA).

After two years of the enactment of PR 60/2023, however, the implementing regulations on HRDD are still lagging and the current Stranas BHAM will expire at the end of 2025[5]. A close attention on the implementation of HRDD shall be directed to the state-owned enterprises because of the risk and the violation of human rights these entities might or have done. Ministry of Human Rights (previously Ministry of Law and Human Rights) in 2023 reported that there were 118 cases of human rights violations that involved Indonesian SOEs which varies in the form of discrimination against the employees, the denial of employees’ normative rights and the lack of transparency during the company’s restructuring process[6]. We believe that there is an urgency to clarify how HRDD shall be carried out by state-owned enterprises under the PR 60/2023 to avoid any human rights violations in these state-controlled entities.

Under Law No. 19 of 2003 on State-owned Enterprise (as amended) (SOE Law), state-owned enterprise (SOE) is a business entity where (i) its capital is all or majority owned by the state or (ii) where there is special rights held by the state[7], [8]. We place the state in two positions: the ‘regulator’ that creates the law applicable to the Indonesian SOE, and the ‘shareholder’ who holds shares or any type of ‘ownership’ in Indonesian SOE[7], [8]. To such an end, this paper shall answer the question of *what is the role of the state as regulator and shareholder in regards to human rights due diligence in Indonesian SOEs?* The first section will

explain the significance of UNGP as the international framework on business and human rights. Furthermore, the paper will be followed by a section analyzing the state's role as regulator of SOE and another section analyzing the state's role as shareholder of SOE, both from the perspective of ensuring HRDD is implemented by the SOE. The last section concludes.

2. Method

This research uses juridical normative methods with a qualitative study as its approach. To respond to the research question, this research uses primary and secondary sources of law. The primary source of law analyzed for this research includes, but is not limited to:

- United Nations General Principles on Business and Human Rights (UNGPR)
- Law No. 19 of 2003 on State-owned Enterprise, as lastly amended by Law No. 16 of 2025 (SOE Law)
- Ministerial Regulation of Marine Affairs and Fisheries No. 35 of 2015 on Human Rights System and Certification in Fisheries Business
- Presidential Regulation No. 16 of 2025 on The Indonesian Sustainable Palm Oil Certification System
- Financial Services Authority No. 51/2017 on The Implementation of Sustainable Finance for Financial Services Institutions
- Law No. 40 of 2007 on Limited Liability Company as lastly amended by Law No. 6 of 2023 (Company Law)
- Presidential Regulation No. 60 2023 on National Strategy on Business and Human Rights

Meanwhile, the secondary source of law used to analyze the research question are books, journals, scientific articles, and reports by reputable bodies (such as Komnas HAM) that are relevant to the topic.

3. Result and Discussion

3.1. The Significance of UNGP

The United Nations Special Representative of the Secretary-General (SRSG) began their work by looking back at the Draft Norms (1998-2004), which focus on corporate accountability, international treaties, monitoring systems, and national regulations. Unlike the Draft Norms, the SRSG approach is centralized on responsibilities that are not only for the corporate but also for various social actors that rely on legal obligations. In 2004, John Ruggie was appointed as UN Secretary-General's Special Representative and by 2005, Ruggie decided that he instead of limiting a framework to an international conduct containing corporate responsibilities, he wanted to make a broader framework to actually solve the issues of business and human rights issues. To achieve this, he held consultations with the firm, discussions in a seminar to understand what would actually work best in practice. Finally, in 2008, Ruggie presented the "Protect, Respect, Remedy" framework, that a state duty to protect, corporate responsibilities to respect human rights through due diligence, and the need for access to remedy, which later became the foundation of the 31 Guiding Principles adopted in 2011 within the UNGP Business and Human Rights.[9]

UNGP contains principles that are grounded in the recognition that these three pillars were each divided into foundational and operational principles.

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

Principle 4 of the UNGP belongs to Pillar 1, i.e. state’s obligation to protect human rights. Principle 4 emphasizes the need for the state to take ‘additional steps’ to protect against human rights abuses by enterprises that are owned or controlled by them. The commentary to the principle explains that abuse of human rights by state-owned or state-controlled enterprises may be attributed to the state’s own violation of human rights. It also highlights that when the state controls or owns an enterprise, the state has the greatest means to regulate and oversee whether such an enterprise respect human rights. Hence, Principle 4 mandates the state to encourage and, if appropriate, require HRDD for these enterprises.

The implementation of HRDD by state-controlled or state-owned enterprises is addressed in Pillar 2, corporate responsibility to respect human rights. Essentially, business enterprise, regardless of its size, sector, operational context, ownership, and structure[2], shall respect human rights[2]. Respecting human rights includes the act of avoiding the infringement and addressing the adverse impact on human rights[2]. Practically, the act of respecting human rights by business enterprises shall be done through policy commitment [2] and HRDD. Focusing on HRDD, Principle 17 explains that HRDD refers to the process of assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. The commentary to Principle 17 further suggests that HRDD should be a part of the broader risk-management system of an enterprise.

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

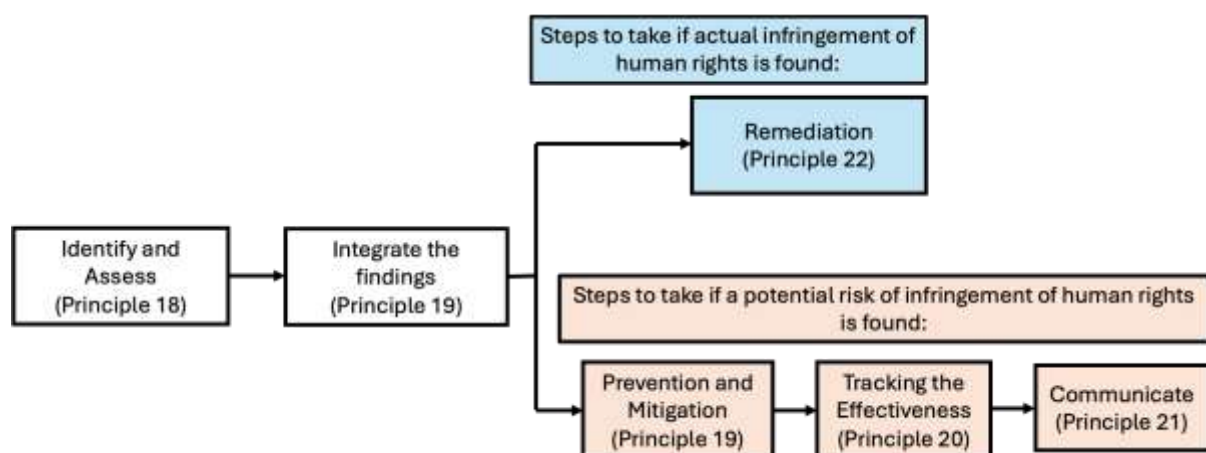


Figure 1

Source: Author

In summary, the first step that every enterprise shall take in the HRDD process is identifying and assessing the potential infringement and the actual violation of human rights from their own activities or as a result of their business relationship. The enterprise shall then integrate such findings into the next step. If an actual impact on human rights has been found, the enterprise shall launch the remediation process outside of the HRDD processes. Meanwhile, if the enterprise finds that they contribute or may contribute to adverse human rights impact, they shall take the prevention and mitigation measures. This is where the enterprise shall use its 'leverage' or its ability to make a change, should the potential impact be caused by a relationship with third parties, e.g. by terminating the relationship, finding another alternative party, or offering capacity building to such party. Following this, business enterprises shall track the effectiveness of the measures taken so far, which could be in the form of internal reporting, performance contracts and reviews, surveys, and audits. Lastly, the enterprise shall provide transparency to external parties, which can be in the form of in-person meeting, online dialogue, consultation with affected stakeholders, and a formal public report.

3.2. State's Role as Regulator of Indonesian SOE in HRDD
a. State's role in regulating HRDD

Indonesia became one of the states that created a national action plan on business and human rights in 2023 through the PR 60/2023, following a long journey. The effort to align with UNGP was initially preceded by the Indonesian National Commission for Human Rights (*Komisi Nasional Hak Asasi Manusia* or Komnas HAM), which, in 2017, issued a national strategy of business and human rights that later became the basis for the formulation of PR 60/2023. Following PR 60/2023, Komnas HAM issued the 2023 Standard Norm and Rules on Business and Human Rights (Komnas HAM SNR) that assists the interpretation of international norms on business and human rights and fills legal gaps in national-level regulations. The regulation also formed a Task Force to enforce the implementation of HRDD. The Task Force shall then monitor and collect reports from business actors and submit them annually to the Ministry of Human Rights. Later, the Ministry will report to the President and disclose such reports to the public.[5]

Alignment of PR 60/2023 with Principle 4 UNGP regarding the state's additional step to ensure HRDD can be found in the Stranas BHAM, which is the Schedule of the regulation. One of the actions in the Stranas BHAM is increasing the capacity of SOE and its supply chain in business and human rights. The action is considered successful when the number of SOEs and their supply chains that have received training on business and human rights and use PRISMA, for the purpose of HRDD, increases. PR 60/2023, however, does not explain further how this shall be implemented.

That said, a further explanation can be found in the Komnas HAM SNR. Paragraph 52 of the Komnas HAM SNR provides that SOE shall ensure that their business partner, including individuals and those that are categorized as micro, small, and medium enterprises, respects human rights and avoids potential human rights violations. Furthermore, as paragraph 70 of the Komnas HAM SNR further explains, due diligence in this case means the actions of business actors identifying human rights risks that their business activities pose. [10]

Neither PR 60/2023 nor Komnas HAM SNR suggests that the implementation of HRDD is mandatory. HRDD obligation for business actors, including SOEs; the HRDD continues to be a voluntary compliance. In the midst of the restructuring of the Ministry of Law and Human Rights under the new elected President of Indonesia,[11] The commitment of the Indonesian government in issuing a new regulation renewing the Stranas BHAM that expires in 2025 and implementing regulations for SOE remains unclear.

b. Sectoral regulations on HRDD

Despite the absence of direct references to the PR 60/2023, there are certain sectoral regulations that already impose a mandatory compliance with HRDD obligations. Firstly, a prominent example is the Ministerial Regulation of Marine Affairs and Fisheries No. 35 of 2015 on Human Rights System and Certification in Fisheries Business, which obligates fisheries businesses to conduct mandatory HRDD. HRDD acts as an assessment of human rights impact and imposes administrative sanctions such as suspension and revocation of business licenses on companies that lack a human rights compliance certificate.[12] Although the regulation applies generally to fisheries businesses, it applies as well to SOEs that operate in the fisheries business.

Other sectors, on the other hand, do not refer to HRDD specifically but do regulate obligations relating to Environment, Social, and Governance (ESG). For example, in the agricultural business, the Presidential Regulation No. 16 of 2025 on The Indonesian Sustainable Palm Oil Certification System requires palm oil businesses to obtain Indonesian Sustainable Palm-Oil Certification for Palm Oil Plantation, whereby these businesses shall uphold the management of the environment, natural resources, and biodiversity, and the manpower.[13] Furthermore, Indonesia's Financial Services Authority No. 51/2017 on The Implementation of Sustainable Finance for Financial Services Institutions, Issuers, and Public Companies highlights financial sustainability, which also focuses on ESG reporting for financial services institutions, issuers, and public companies.[14]

Nevertheless, these regulations show that, while the Indonesian government has been keeping up with ESG-related compliance, we argue that UNGP's pillar for corporations to respect human rights should be treated separately from the ESG-related or corporate social responsibility (CSR) reporting. HRDD is motivated by the responsibility to respect human rights, and it focuses on the obligation to "do no violations" by identifying, preventing, mitigating, and addressing adverse human rights impacts. This means that the approach should be centered on risks to people, not risks to the business. [2] CSR and ESG compliance, on the other hand, is where the companies themselves act to increase their reputation, long-term interest, and commitments to ethical things by voluntary actions. The scope of CSR or ESG-related obligations is also very broad, covering economic, social, and environmental aspects. Notwithstanding this, absence of reference to HRDD, it is unclear if, in practice, any elements of HRDD suggested by Principle 4 of the UNGP are implemented as part of these compliance.

Compared to other countries, the absence of mandatory HRDD for the SOEs is still a significant gap that weakens the state's role as regulator. Other countries have enacted mandatory HRDD standards, such as the European Union's Corporate Sustainability Due Diligence Directive (CSDDD). CSDD requires both SOEs and private companies' business and

their chain activities, specifically those that engage in trade cooperation and partnerships with European Union companies to conduct human rights and environmental due diligence to manage adverse human rights impacts[15]. This compliance strengthens the UNGP framework by reinforcing its core steps: integrating due diligence, identifying and assessing risks, preventing and mitigating harms, monitoring the effectiveness of the responses, communicating the process, and lastly providing remediation. CSDD demonstrates a clear compliance with mandatory HRDD. This compliance also requires that such companies must point supervisory functions from Companies established in the EU to supervise the HRDD compliance; failure to comply results in administrative sanctions, penalties, and even civil liability.[15]

3.3. State's Role as Shareholder of Indonesian SOE in HRDD

From a corporate governance perspective, the state's role in SOE has been discussed among scholars due to the state's dual role as shareholder and regulator. The comparative corporate governance literature has discussed that having the government as shareholder can raise various corporate governance issues. For example, having an SOE to fulfill the political interest of the regime in power[16], or stripping the directors and commissioners of their independency when carrying out their duties[17]. This has, consequently, resulted in underperformance of SOE compared to private entities.

Furthermore, the state's dual role as regulator and shareholder will result in conflict of interest between these two powers. Firstly, the state may issue a regulation where SOE is not mandatory to comply. Secondly, even if the SOE shall comply with such regulation, enforcement upon noncompliance may be reluctant given the government themselves are the ones who have to impose sanctions.

Recently, the complication of state's dual role in SOE has been demonstrated by several literatures on SOE's performance relating to ESG and climate change compliance[18]. As theoretically shareholders do not hold duties to the company, to avoid shareholders vote for short-term success i.e. shareholders value instead of stakeholders value some jurisdictions put shareholders as 'steward' through a stewardship code to prompt shareholders to be more active in monitoring the companies' fulfillment of long-term success[19]. ESG and climate change matters are only examples of challenges in ensuring shareholders play a role in pursuing a company's objective that is not related to shareholder value maximization, similar to HRDD. The following sections describe the state's role as a shareholder of Indonesian SOE in regards to the HRDD.

a. State as a shareholder in Indonesian SOE

SOE is founded, among others, by separated state assets. Under the SOE Law, the President of Indonesia has two powers over it: managing the SOE and claiming ownership over the separated state assets. These two powers are authorized to the SOE Regulatory Body (*Badan Pengaturan BUMN* or BP BUMN[8]) and the state's sovereign wealth fund, Danantara. BP BUMN and Danantara exercise such power by being shareholders in Indonesian SOEs in the form of *Persero* or capital owners in the SOEs in the form of *Perum*, as regulated in Article 2(3) of the SOE Law, which stipulates that the state holds 1% Series A Dwiwarna shares through the SOE Regulatory Body and 99% Series B Dwiwarna shares through Danantara. Both BP BUMN and Danantara are responsible to the President.

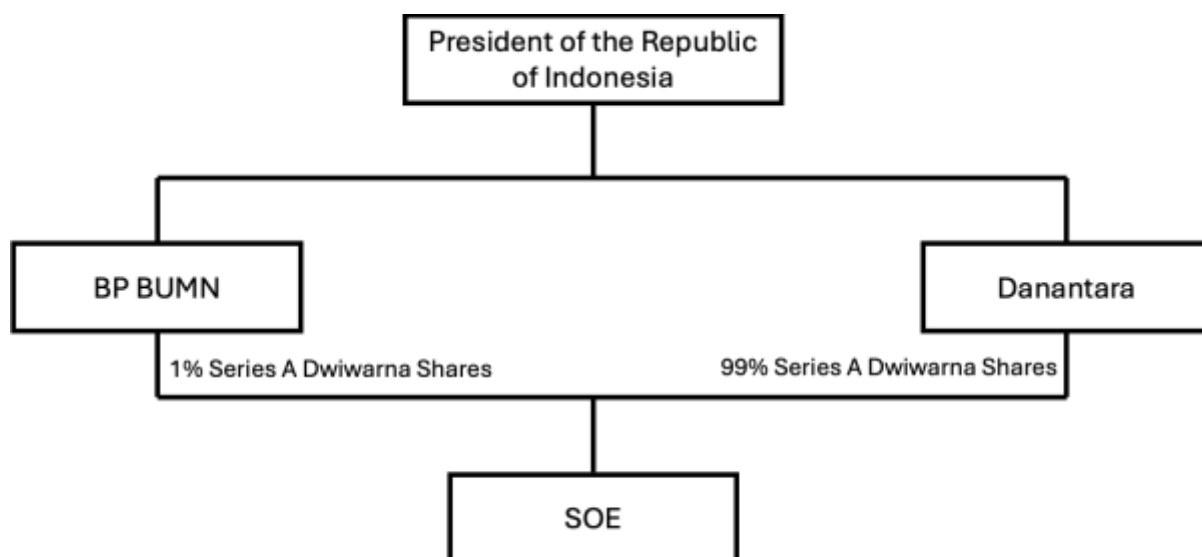


Figure 2

Source: Author

As shareholders of SOE, BP BUMN, and Danantara hold different functions. Distinct from non-SOE entities, shareholders do not necessarily have duties under company law - rather, shareholders, acting as the General Meeting of Shareholders, hold authorities that are not given to the board of directors and board of commissioners. In the Indonesian SOE, however, BP BUMN holds a regulatory duty for each SOE. In its role as holder of Series A Dwiwarna shares, BP BUMN may, among others, determine general policies and corporate governance policies of the SOE, conduct an investigation on the SOE, and supervise the implementation of the SOE's compliance with such policies. On the other hand, Danantara holds the function to manage the SOE with the purpose of optimizing the investment and operations of such SOE. Within this function, one of the authorities that Danantara holds is determining guidance or strategic policies for the SOE in several aspects, such as law and compliance, social and environmental responsibility program, and environment, social, and governance (ESG) program.

b. The state's responsibility in ensuring HRDD by Indonesian SOEs

Although the execution of BP BUMN's and Danantara's roles is still to be seen, given that SOE Law reform was very recent, from the text of the regulation alone, SOE Law does not suggest that both shareholders' role covers supervision on SOE's respect for human rights. One can argue that HRDD may become part of SOE's corporate governance, whose implementation is supervised by BP BUMN within its function[8]. Another argument is that HRDD becomes part of Danantara's guidance or policies on social responsibility or ESG programs that it issues to the SOE[8]. That said, until this paper is made, there has not been an updated corporate governance code or rules that address the roles of BP BUMN and Danantara as stipulated in the newly reformed SOE Law. Hence, it is unclear whether BP BUMN and Danantara will supervise the implementation of HRDD as part of their shareholders' responsibility.

The current regulatory framework, unfortunately, does not support the involvement of the state (be it through BP BUMN or Danantara) in ensuring HRDD by SOEs. The applicable corporate governance rule, Minister of SOE Regulation No. PER-2/MBU/03/2023 on Guidance

on Corporate Governance and Significant Transaction of SOE (SOE GCG Rule) does not specifically include protection of human rights as a part of the corporate governance scope. One of the principles of good corporate governance, responsibility, refers to the management of SOEs that aligns with all prevailing regulations. Hence, SOE should, by principle, comply with PR 60/2023, i.e., conduct HRDD. Social responsibility, on the other hand, is not defined in the SOE GCG Rule, but it is defined in Law No. 40 of 2007 on Limited Liability Company [20] as a company's responsibility to increase the quality of people and the environment [20]. As defined, a company's social responsibility also does not specifically include human rights protection. Therefore, in the absence of implementing regulations of HRDD and clear consequences of noncompliance, the implementation of HRDD itself will be left with each SOE.

Notwithstanding this, under the current regulation, should HRDD become part of SOE's corporate governance, the government would indeed have a significant role. As noted in the above section, Principle 17 of the UNGP suggests that HRDD be incorporated as a part of the risk-management policy. The SOE GCG Rule mentions that the risk management system consists of an internal control system conducted by the board of directors and an integrated corporate governance system for SOE that is categorized as a conglomerate, performed by the board of directors and the board of commissioners. The official in the Minister of State-owned Enterprise, which, prior to the SOE Law reform, held the shares in SOE on behalf of the government, has the authority to supervise and evaluate the risk management implementation. Furthermore, the board of directors shall submit the risk management report to the official in the Minister of State-owned Enterprises, and sanctions may be imposed should there be any noncompliance. That being said, human rights risk is also not specifically included in the definition of "risk" under the SOE GCG Rule.

4. Conclusion

In conclusion, Indonesia as a state has a role in HRDD as regulator and as shareholder of SOE. As regulator, the government has enacted PR 60/2023 but so far as this paper is written, the implementing regulations on HRDD is still lagging. Meanwhile, as shareholder of SOE BP BUMN and Danantara, by the newly reformed SOE Law, shall have the role in requiring and monitoring HRDD. That said, it remains to be seen whether BP BUMN and Danantara will practically do so given absence of implementing regulations and inclusion of HRDD in SOE GCG Rule.

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