ACCESS TO NON-JUDICIAL REMEDY FOR PALM OIL WORKERS UNDER POOR WORKING CONDITIONS IN INDONESIA:

A study of the Role of NHRIs and MSIs.

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To those workers at the palm oil plantations who keep seeking for justice;
this piece is written for you.
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Be proud of yourself.

Jakarta, 23 November 2020

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<table>
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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>BHR</td>
<td>Business and Human Rights</td>
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<tr>
<td>ICCPR</td>
<td>United Nations International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICESCR</td>
<td>United Nations International Covenant on Economic, Social, and Cultural Rights</td>
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<tr>
<td>ICC</td>
<td>International Coordinating Committee</td>
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<tr>
<td>IHRL</td>
<td>International Human Rights Law</td>
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<tr>
<td>ILO</td>
<td>International Labor Organization</td>
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<td>ILRF</td>
<td>International Labor Rights Forum</td>
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<td>MSIs</td>
<td>Multi-Stakeholder Initiatives</td>
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<tr>
<td>NCP</td>
<td>National Contact Point</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organizations</td>
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<td>NHRIs</td>
<td>National Human Rights Institutions</td>
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<td>NJGM</td>
<td>Non-Judicial Grievance Mechanism</td>
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<tr>
<td>NSBGM</td>
<td>Non-State Based Grievance Mechanism</td>
</tr>
<tr>
<td>OPPUK</td>
<td>Organisasi Penguatan dan Pengembangan Usaha-Usaha Kerakyatan (Indonesian Labour Rights Association)</td>
</tr>
<tr>
<td>PP</td>
<td>The Paris Principles</td>
</tr>
<tr>
<td>P&amp;C</td>
<td>RSPO Principles and Criteria</td>
</tr>
<tr>
<td>RAN</td>
<td>Rainforest Action Network</td>
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<tr>
<td>RSPO</td>
<td>Round Table on Sustainable Palm Oil</td>
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<tr>
<td>SERBUNDO</td>
<td>Serikat Buruh Pertiian Indonesia - Indonesian Plantation Trade Union</td>
</tr>
<tr>
<td>SRSG</td>
<td>Secretary-General's Special Representative</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programmed</td>
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<tr>
<td>UNGPs</td>
<td>United Nations Guiding Principles</td>
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ABSTRACT

Most palm oil workers in Indonesia are employed as temporary daily workers. Consisting mostly of women, they have to work under precarious working conditions, unequal treatment based on gender, excessive working hours, and earn less than the minimum wage. Moreover, they do not have adequate access to health and right to unionize with other workers. Their situations are prone to human rights violations ranging from the right to fair working conditions until the freedom of associations. Under international law, they should have the right to remedy as a result of those human rights violations. Unfortunately, those workers do not have adequate access to a judicial remedy in Indonesia. Alternatively, this thesis aims to study the possibility of non-judicial mechanisms for those workers, such as National Human Rights Institutions (NHRIs) and Multi-Stakeholder Initiatives (MSIs). This thesis will first discuss the workers’ situation to grasp a better understanding of the palm oil workers in Indonesia. Subsequently, the author will provide a literature review on NHRIs and MSIs under the evolving business and human rights (BHR) framework. Lastly, the role of NHRIs and MSIs (Roundtable of Sustainable Palm Oil) in providing remedies for palm oil workers in Indonesia will further be analyzed. The author will use the effectiveness criteria in the UNGPs as a tool to analyze the mechanisms.
Chapter I
INTRODUCTION

A. Problem Statement

Indonesia has the largest tropical forest in the world.\(^1\) According to UNDP, Indonesia is the world’s largest palm oil producer.\(^2\) It is estimated Indonesia produces 43,500,000 metric tons of palm oil in 2020 with 51.3% shares in the world market.\(^3\) Besides being the largest producer, Indonesia also serves as the biggest palm oil exporter in the world.\(^4\) The United States Development Agency estimated planted areas producing mature palm oil Indonesia had reached 11.75 million ha in 2019, which amount to 49.5% of the total world area of 23.74 ha.\(^5\) The expansion of palm oil in Indonesia plays an essential role in the country’s economic development.\(^6\) Those expansions generate positive impacts on poverty reduction and job creation for the local communities.\(^7\) However, the expansion of palm oil plantations can result in negative

\(^4\) Green Palm, Where is Palm Oil Grown, https://greenpalm.org/about-palm-oil/where-is-palm-oil-grown-2#-_text=Country%20facts,-Since%201980%2C%20palm&text=Indonesia%20is%20the%20largest%20producer%2C%20via%20Colombia%20%26%20Ecuador%20%26%20Guatemala.
\(^7\) Tania Murray Li, Social Impacts of Oil Palm in Indonesia (A gendered perspective from West Kalimantan), University of Toronto, 1.
impacts on the environment and society. This includes deforestation, climate change, habitat destruction, indigenous people’s conflicts, and employment issues.

According to Li, there has been less attention given to the employment issues in the literature than other issues. Palm oil is a business sector which requires intensive labors. In 2002, the number of people employed within the palm oil industry only 2.1 million. According to the Directorate General of Plantation data, the number of workers in the palm oil sector in Indonesia in 2018 amounted to 7.1 million. This number had increased by 1.93 percent over the previous year. Since 2013, the number of people employed in the palm oil industry in Indonesia keeps growing. These data are served to illustrate that palm oil is a labor-intensive field.

In Indonesia, most palm oil plantations are located in the island of Sumatra and Kalimantan. Unfortunately, 70 percent of palm oil workers in those locations are employed as temporary daily workers or buruh harian lepas (BHL) in precarious employment status. These precarious worker conditions are prone to poor working conditions such as lack of protection from termination of employment, overtime work, underpaid wages, inadequate health

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8 Susanto, et al., “Driving Factors of Deforestation in Indonesia”.
12 Ibid.
14 Tania Murray Li, “Social Impacts of Oil Palm in Indonesia (A gendered perspective from West Kalimantan)”, University of Toronto, 5.
15 Ibid.
17 Ibid.
18 Ibid.
21 David Kinley, “Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan.”, University of Sydney, 2015.
protection\textsuperscript{24}, being denied from freedom of associations\textsuperscript{25}, and gender discrimination.\textsuperscript{26} As a result, the workers in Indonesia’s palm oil plantations are vulnerable to being exposed to poor working conditions.\textsuperscript{27}

These poor working conditions could amount to some labor and human rights violations.\textsuperscript{28} The issues mentioned above serve as examples of rights violations as provided under International Labor Organization (ILO) core conventions and human rights violations as provided in the International Covenant on Civil and Political Rights (ICCPR)\textsuperscript{29} and International Covenant on Economic, Social, and Cultural Rights (ICESCR).\textsuperscript{30} As Indonesia is a ratifying party to those conventions, Indonesia has an obligation to implement the obligations stipulated.

According to the ICCPR, States have the duty to provide remedies to individuals or people who suffer harm due to human rights violations.\textsuperscript{31} Thus, when a business entity violates its workers’ rights, the government has the duty to provide access to remedy to those workers. Indonesia is no exception to that rule. Remedies can be pursued through judicial and non-judicial means. Nonetheless, the judicial system in Indonesia in dealing with human rights issues against corporations is significantly impaired.\textsuperscript{32} The victims tend to have limited capacity to file lawsuits or to pursue other avenues.\textsuperscript{33} Seeking justice through courts regarding human rights violations by the corporations remains difficult.\textsuperscript{34} It is not uncommon that the claimants had to go through a long process with multiple challenges.\textsuperscript{35} As a result, plaintiffs such as the palm oil workers encounter difficulties in finding adequate access to judicial remedies under Indonesian Law.

As an alternative, non-judicial remedies possibly play an important role in providing remediation.\textsuperscript{36} Principle 27 of The UN Guiding Principles (UNGPs) stipulate States should provide

\textsuperscript{24} David Kinley, “Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan”, 2015.
\textsuperscript{25} Tania Murray Li, “Social Impacts of Oil Palm in Indonesia”, 46.
\textsuperscript{26} Ibid., 6.
\textsuperscript{27} Hariati Sinaga, “Employment and Income of Workers on Indonesian Oil Palm Plantations”, 64.
\textsuperscript{28} Peter Dauvergne, “The Global Politics of the Business of “Sustainable” Palm Oil”.
\textsuperscript{30} According to Indonesian Law No. 11 of 2005 regarding Ratification of International Covenant on Civil and Political Rights, Indonesia is a party to the ICESCR.
\textsuperscript{33} Ibid.
\textsuperscript{34} Ibid.
\textsuperscript{35} UNGPs, Principle 25.
non-judicial grievance mechanism (NJGM) in obtaining “comprehensive access to remedy”.NJGMs play an important role to complement and supplement judicial mechanisms. Compared to the judicial remedies, NJGMs may be quicker, cheaper, and easier to access.

There are several NJGM remedies available to address labor issues in Indonesia. Those remedies include mediation under the Industrial Relations Court, National Human Rights Institutions (NHRI), National Contact Point (NCP) of the Organization for Economic Co-operation and Development, Ombudsman Offices, and Multi-Stakeholder Initiatives (MSIs). This thesis focuses on National Human Rights Institutions (NHRIs) and Multi-Stakeholder Initiatives (MSIs) as non-judicial remedies because NHRIs are the most prominent state-based NJGM and MSIs are considered the most accessible non-state based grievance mechanism (NSBGM) in the palm oil industry by the participants using it.

MSIs are a public-private regulatory initiative to improve human rights in the business sector. They are considered as an early warning system regarding grievances and providing a feedback loop for management to prevent future escalation. Although the outcome is not binding like judicial decision, the outcome of MSIs has been proven effective and socially binding. Within the palm oil industry, the MSIs have established an industry certification scheme, known as the Round Table on Sustainable Palm Oil (RSPO).

Indonesia has the most significant number of complaints registered in the RSPO. Several parties considered the RSPO’s Complaints-System as a much more accessible mechanism rather than the judicial ones.

37 Ibid, Principle 27.
41 Ibid.
43 Ibid.
Thus, this research aims to map the possibility of access to non-judicial remedies for palm oil workers in Indonesia, specifically NHRI and MSIs. This thesis will analyze the advantages and disadvantages of these two mechanisms in general and discuss the implementation of these two mechanisms to the palm oil workers in Indonesia. The goal of this thesis is to make a contribution to the palm oil workers in Indonesia.

B. Research Questions and Objectives

To what extent do palm oil workers that suffer from poor working conditions in Indonesia have access to non-judicial remedies? A study into the effectiveness as understood in the UNGPs 31 of the Indonesian NHRI and the RSPO.

The following sub-questions based on the research question above are examined:

1. What is the situation of Indonesian workers in the palm oil industry?
2. To what extent are non-judicial remedies such as NHRIs and MSIs seen as providing an alternative to judicial means?
3. To what extent do the NHRI in Indonesia and the MSI RSPO provide access to effective remedy as understood by the UNGP 31 for palm oil workers suffering poor working conditions in Indonesia?

C. Research Methodology, Sources, Limitations, and Overview of Chapters

A desk study was conducted using primary and secondary legal materials such as books, academic journals, and other relevant documents to support the arguments. Qualitative data and Small-N case studies from National Human Rights Commission (Komnas HAM), RSPO, and NGOs reports are used to illustrate certain labor rights violations to palm oil workers in Indonesia to answer the first sub-question. As this is a sensitive issue, several workers did not want to be interviewed because they are afraid of the intimidation from the employer. Literatures from scholars such as journals and books are applied to answer the second sub-question.

There is limited formal data and scholarly writing on the situations of palm oil workers in Indonesia. Therefore, several interviews were conducted to illustrate the findings regarding the third sub-question. Interviews with several NGOs and several Indonesian trade unions were

conducted to illustrate the workers’ situations in practice. Moreover, interview with the Komnas HAM and RSPO were done to obtain information from the internal perspective. Lastly, the effectiveness criteria under Principle 31 of UNGPs will be used as a tool for assessing the effectiveness of the two remedy mechanisms (NHRI and RSPO) in chapter IV because it provides a framework to assess whether a non-judicial mechanism can be considered effective.

Chapter II describes palm oil workers' situations under poor working conditions in Indonesia and the human rights violations that occur. International conventions such as ICCPR, ICESCR, and ILO conventions are referred to in this chapter. Accordingly, facts about those workers’ lack of access to judicial remedy are discussed in this chapter.

Chapter III focuses on access to non-judicial remedies as an alternative remedy. This chapter presents the remedies provided under NHRI and MSIs based on scholarly writing and reports. The advantages as well as critiques of these mechanisms are elaborated upon.

Chapter IV analyzes the remedy mechanisms provided by the Komnas HAM and MSIs (RSPO) for the palm oil workers under poor working conditions in Indonesia from the perspective of UNGP 31. The effectiveness criteria provided there such as legitimacy, accessibility, consistency, predictability, equitability, transparency, rights-compatibly, and source of continues learning are used in this chapter.

Chapter V presents the conclusions and recommendations drawn from the thesis.
Chapter II

SITUATIONS OF PALM OIL WORKERS IN INDONESIA

The allegations regarding human rights violations in palm oil industry are not novel.\(^{51}\) Palm oil conflicts in Indonesia have been taking place for more than a decade.\(^{52}\) The said allegations range from violations of the right to health as a result of deforestation\(^{53}\) and climate change\(^{54}\), violations of adequate standard of living as a result of habitat destruction\(^{55}\), to labor rights violations as a result of workers exploitation.\(^{56}\) These human rights allegations are increasing because the expansion of palm oil.

The expansion of palm oil industry can be found in 22 out of 33 provinces in Indonesia and the production is concentrated in the provinces of Sumatera and Kalimantan.\(^{57}\) The total production of palm oil in Sumatera accounts for 70% while in Kalimantan comes up to 30%.\(^{58}\) Unfortunately, the allegations of human rights violations have been occurring in Sumatera and Kalimantan for years.\(^{59}\)

According to several reports, palm oil workers in Sumatera and Kalimantan were facing poor working conditions.\(^{60}\) No exact definition can be found in the literature or scholarly discourse regarding poor working conditions.\(^{61}\) Therefore, in this chapter, the author will describe the situations of palm oil workers in Sumatera and Kalimantan, which illustrate these poor working

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\(^{53}\) Susanto, et al., “Driving Factors of Deforestation In Indonesia.”

\(^{54}\) Peter Dauvergne, “The Global Politics of the Business of “Sustainable” Palm Oil.”


\(^{56}\) Hariati Sinaga, “Employment and Income of Workers on Indonesian Oil Palm Plantations”, 64.


\(^{58}\) Ibid.


\(^{60}\) RAN, OPPUK & ILRF, *The Human Cost of Conflict Palm Oil Revisited*. See Also: Schleicher, et al. “Production of Palm Oil in Indonesia”, 64.

\(^{61}\) In this journal, the author uses the term “poor working conditions” but provide no exact definition.
To this end, the situation of two companies—One in Sumatera and the other in Kalimantan—shall be discussed, to illustrate the alleged human rights violations. The author has chosen these two cases since they are well documented and serve as the most illustrative cases of the said conditions. The author retrieved the data from published material such as news articles, NGO reports, scholarly writings, and the RSPO website.

The company in Sumatera, referred to as Company A, is a palm oil company located in the province of North Sumatra. In 2016, Rainforest Action Network (RAN), Indonesian Labor Rights Association (OPPUK), and the International Labor Rights Forum (ILRF) made a report and filed a complaint to the RSPO concerning exploitation of labor against this company. According to Dauvergne, this report describes modern-day slavery in palm oil plantation in Indonesia. The report was processed by the RSPO in 2018 and closed in 2019 and the information pertaining to this case has been presented on the RSPO website. The company in Central Kalimantan will be refer to as Company B. This company is also a member of RSPO. This company has polluted the environment and did not take responsibility for its workers. The company was allegedly violating ILO conventions and national law. Also, the company did not respect the right of the local citizen in that area. The author has taken this as the example case from Kalimantan as the NGO report for this case has been confirmed by a scholarly article.

A. Palm Oil Workers under Poor Working Conditions in Sumatera and Kalimantan

1. Precarious working conditions

There are three types of workers within the palm oil industry; temporary daily workers or *buruh harian lepas* (BHL), permanent daily workers, and permanent monthly workers (staff). The main subjects of these poor working conditions are BHL, considering their status as precarious workers. The Cambridge Dictionary defines a precarious worker as someone who works under a temporary working agreement. According to the ILO, precarious work is

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63 RSPO, Complaints Panel’s Decision, [https://rspo.my.salesforce.com/sfc/p/900000000YoJi/a/900000000PYaf/6mJ.T1HSMNNHdk8dh8OT8z3ldAHk8eJ6fHGuelpz9jB0](https://rspo.my.salesforce.com/sfc/p/900000000YoJi/a/900000000PYaf/6mJ.T1HSMNNHdk8dh8OT8z3ldAHk8eJ6fHGuelpz9jB0) accessed 20 May 2020.
64 David Kinley, “Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan”.
65 Ibid.
66 Ibid.
67 Ibid.
defined as work that amounts to low wages, insufficient protection from employment termination, limited access to social protection, and lack of access to exercise their rights at work.\textsuperscript{69}

It is a common practice for palm oil companies in Indonesia to extend the duration of temporary workers indefinitely. In several Indonesian palm oil plantations, the workers are employed as temporary workers for years without any employment agreement. This situation of precarious workers can be illustrated with reference to the situation in the abovementioned Company A. The BHL did not get any permanent employment agreement after work for more than three months for Company A.\textsuperscript{70} As BHL, their employment rights were not guaranteed due to the absence of an employment agreement.\textsuperscript{71}

2. Unequal treatment based on gender

According to Li, the casual labor working in palm oil plantations tends to be made up of women.\textsuperscript{72} There is a trend to employ women as casual workers with low job quality.\textsuperscript{73} These women workers are usually recruited as maintenance workers.\textsuperscript{74} In most palm oil plantations, there is a gender-based division where most female maintenance workers are employed in seasonally, while most of the male laborers dominantly work in the mill as permanently.\textsuperscript{75} Those women who work as seasonal workers are not entitled to paid maternity leaves and menstrual leaves despite having worked there for years.\textsuperscript{76} According to Pye, the palm oil plantations workforce is highly gendered which cause women workers trapped in precarious


\textsuperscript{70} RSPO, Complaints Panel’s Decision, \url{https://ap8.salesforce.com/sf/c/p/#90000000YoJi/a/90000000PYaf/6mJ_T1HSMNHdkSdhiOT8z3IdAHk8eJ6fHGUelpz9jB0} accessed 20 May 2020.

\textsuperscript{71} Ibid

\textsuperscript{72} Tania Murray Li, “Social Impacts of Oil Palm in Indonesia”, 6.


\textsuperscript{74} Tania Murray Li, “Social Impacts of Oil Palm in Indonesia”, 29.


and badly paid positions.\textsuperscript{77} These situations of gender-based unequal treatment can also be found in Company A. Based on the findings stated above, it can be concluded that women are at risk of human rights violations in the palm oil industry.

3. Excessive working hours

It is reported that the workers in Indonesian palm oil plantations have to work longer than the normal working hours stipulated under Indonesian Law.\textsuperscript{78} This happens because instead of definitely being paid by hour, they are paid based on the daily target achievements.\textsuperscript{79} If the workers have not met their target, they have to continue working.\textsuperscript{80} Unfortunately, those workers did not receive any overtime pay.\textsuperscript{81} This situation of excessive working hours can be illustrated with reference to the situation in Company A, and Company B. In Company A, the overtime reaches 3 hours a day or 14 hours per week during the peak crop season.\textsuperscript{82} Unfortunately, those workers did not receive any overtime pay.\textsuperscript{83} In Company B, the workers had to work longer than the regular hours if the pickup truck transporting them was late or if they were unable to work due to heavy rain.\textsuperscript{84} Those workers had to work overtime to compensate for their missed targets, and this practice can potentially lead to forced labor.\textsuperscript{85}

4. Underpaid wages

Casual workers in Indonesian palm oil plantations are mostly paid below the normal minimum wages because they are considered unskilled labor.\textsuperscript{86} This situation can be

\textsuperscript{77} Oliver Pye, “A Plantation Precariat: Fragmentation and Organizing Potential in the Palm Oil Global Production Network” Institute of Social Studies the Hague, 948.

\textsuperscript{78} Indonesian Law No. 13 (2003) regarding Labor Law, Article 77. It is stipulated under Labor Law that the maximum working hours are 40 hours per week.

\textsuperscript{79} Oeko Institute and Padjadjaran University, Schleicher, et al. “Production of Palm Oil in Indonesia. Country-Focused Commodity Analysis in the Context of the Bio-Macht Project,” 64.

\textsuperscript{80} Ibid.

\textsuperscript{81} Ibid.

\textsuperscript{82} RSPO, Complaints, Panel’s Decision, https://ap8.salesforce.com/sf/p/#900000000Yolj/a/900000000PYaf/6mJ_T1HSMNHdkSdhiOFOR8z3idAHk8eJ6fHGUelp/9IB0 accessed 20 May 2020.

\textsuperscript{83} Ibid.

\textsuperscript{84} David Kinley, “Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan.”


illustrated with reference to the situations in Company A and Company B. Their average income is not sufficient to fulfill their daily needs.\textsuperscript{87}

\section*{5. Lack of access to health}

As provided in ILO Convention No. 187, companies are responsible for giving health and safety protections to the workers. Unfortunately, palm oil workers in Indonesia lack sufficient health protection.\textsuperscript{88} Some companies do not provide any healthcare facilities for the workers.\textsuperscript{89} This situation of lack of access to health can be illustrated with reference to the situation in Company A and Company B. It is found in Company A that almost all casual daily workers did not receive health insurance from the company.\textsuperscript{90} Similarly, Company B does not provide any healthcare facilities for the workers.\textsuperscript{91} Without proper protection, workers might develop Musculoskeletal Disorders and other infectious diseases.\textsuperscript{92} Thus, those companies have neglected their obligation to give health and safety protections to the workers under international law.\textsuperscript{93}

\section*{6. Denial of freedom of association}

ILO Convention No. 87 regulates that employees have the right to form a union without the employer’s organization. Since Indonesia is a party to ILO Convention No. 87, Indonesia has an obligation to protect the workers’ right to organize or join a trade union.\textsuperscript{94} Nevertheless, many cases in Indonesia have testified the fact that palm workers’ freedom of associations are denied because their right to form a trade union is limited.\textsuperscript{95} Some labor union leaders in

\begin{thebibliography}{99}
\bibitem{87} Ibid.
\bibitem{89} David Kinley, “Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan.,” 93.
\bibitem{91} David Kinley, “Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan.,” 93.
\bibitem{92} Nurully Myzabella, “Occupational Health and Safety in the Palm Oil Industry: A Systematic Review”.
\bibitem{93} ILO C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).
\bibitem{94} C087 - Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Article 11.
\end{thebibliography}
Indonesia were allegedly penalized because they joined the trade union.\textsuperscript{96} Moreover, the workers are afraid of intimidation and employment termination.\textsuperscript{97} This situation can be illustrated with reference to the situation in Company A and Company B. Hence, their freedom of association is denied.

**B. Access to Remedy Palm Oil Workers in Indonesia under International Law\textsuperscript{98}**

The above-mentioned issues could possibly amount to several labor rights violations such as the right to fair working conditions and wages,\textsuperscript{99} occupational safety and health,\textsuperscript{100} and equal employment opportunities.\textsuperscript{101} Also, human rights violations as provided in ICCPR and ICESCR such as the right to favorable and just conditions of work\textsuperscript{102}, the right to freedom of association\textsuperscript{103}, the right to health and safety\textsuperscript{104}, the right to be free from discrimination\textsuperscript{105}, and the right to be free from forced labor.\textsuperscript{106}

Under international law, any persons whose rights are being violated have the right to obtain a remedy. The obligation to provide remedy is found in several international law instruments.\textsuperscript{107} ICCPR stipulates that any persons whose rights are being violated should have access to remedy.\textsuperscript{108} Remedies can be found in a form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.\textsuperscript{109} Since Indonesia is a party to ICCPR, Indonesia must implement access to remedy into its national legislation and law.\textsuperscript{110} Further, the UNGPs also contend that corporations have the responsibility to provide access to the remedies for the violated

\textsuperscript{97}Vincent Kiezebrink (SOMO), Palming Off Responsibility.
\textsuperscript{98} International conventions which have been ratified by Indonesia such as ICCPR and ICESCR.
\textsuperscript{100} UDHR, Art. 25, ILO C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).
\textsuperscript{101} UDHR, Article 2.
\textsuperscript{102} Ibid, Article 7.
\textsuperscript{103} UDHR, Art. 20, ICCPR, Art. 22, ICESCR, Art. 8, C087 - Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).
\textsuperscript{104} ICESCR, Art. 7 (b)
\textsuperscript{105} CEDAW, UDHR, Art. 2.
\textsuperscript{106} ICCPR, Art. 8 (a), ILO C029 - Forced Labor Convention, 1930 (No. 29).
\textsuperscript{107} Universal Declaration of Human Rights, United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation (UN Basic Principles), ICCPR, Ruggie’s Protect, Respect and Remedy Framework, and the UN Guiding Principles.
\textsuperscript{108} ICCPR, Art. 2.
parties.\textsuperscript{111} In conclusion, those palm oil workers under poor working conditions should have access to remedy.

Under international human rights law (IHRL), States shall provide effective remedies through judicial, administrative, legislative authorities, or any other means. Under the ICCPR, when human rights violations occur within the jurisdiction of a State, that State should ensure the victims which rights are being violated shall have an effective remedy by accessing judicial, administrative, legislative, or other competent authorities available in that State.\textsuperscript{112} Although the obligation to provide remedy cannot be found explicitly in the ICESCR, the general comment explains that appropriate remedies shall be given to the aggrieved parties using legal, administrative, or other appropriate means.\textsuperscript{113}

Judicial mechanisms are the core of accessing remedy.\textsuperscript{114} Unfortunately, judicial remedy in Indonesia suffers from several shortcomings.\textsuperscript{115} In a developing country like Indonesia, judicial remedies are costly, prolonged and complicated.\textsuperscript{116} The costs for bringing witness and the enforcement of the court’s decision to get compensation are also costly.\textsuperscript{117} Although the legal fee for cases below IDR 150,000,000 is free in the Industrial Relations Court\textsuperscript{118}, there are other essential fees for witness, seal, and administrative matters.\textsuperscript{119} Due to geographical limitation, there are enormous transportation expenses to reach the court which is located in the Capital Province.\textsuperscript{120} Considering their underpaid wages and their difficulty to fulfil their daily needs, the plaintiffs do not have adequate financial resources. In a country with ineffective courts, the judicial cases are

\textsuperscript{111} United Nations, Guiding Principles on Business and Human Rights.
\textsuperscript{112} Ibid.
\textsuperscript{117} Rudi M Rizki, Tanggung Jawab Korporasi Transnasional dalam Pelanggaran Berat HAM, (Jakarta: Fikahati Aneska, 2012), 220
\textsuperscript{118} Industrial Relations Law, Article 58.
\textsuperscript{119} Interview with Andriko Otang, Director of TURC, Tilburg, 5th of March 2020, (Online Interview).
\textsuperscript{120} Interview with Herwin Nasution, Director of Indonesian Plantations Trade Union (SERBUNDO), Utrecht, 7th of March 2020.
unduly prolonged. In Indonesia, the legal enforcement mechanism is complex and significantly impaired.

Plantation fields are located far from the central government, which causes a lack of supervision from the government. The President created the National Action Plan for Sustainable Oil Palm Plantation which instructed the Ministry of Labor to disseminate government’s supervision in the plantations. Yet, there is no significant role performed by the government to resolve this issue.

The lack of access to information also amplifies this situation. Living in remote areas, most workers do not have sufficient information regarding where to complain and how to restore their rights. The government does not provide proper compensation for those palm oil workers, and when they do have access to bring complaints to the government, they did not get adequate response. In light of these shortcomings, it can be concluded that workers in palm oil plantations have difficulty in finding adequate access to judicial remedy.

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123 Sumondang, S.H.M.H, Disnaker Sumatera Utara (Regional Labor Office), Online Social Dialogue, Palm Oil Workers Coalition in Sumatera Region, COVID-19 Impact to Palm Oil Workers, OPNUK, SERBUNDO, Palm Oil Workers Coalition.
125 David Kinley, “Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan.”, University of Sydney, 2015, 139.
128 Ibid.
The palm oil workers in Indonesia suffer from poor working conditions since they work under the situations of precarious working conditions, risk of gender discrimination, overtime unpaid work, underpaid wages, inadequate health protection, and lack of freedom of association. These poor working conditions could possibly amount to several labor and human rights violations as provided under international conventions such as ICCPR, ICESCR and ILO Conventions.

Under international law, those workers should have access to judicial remedy. However, access to the judicial remedy in Indonesia is significantly impaired because it is costly, prolonged and having complex mechanism. The geographical condition of the palm oil workers which are located in the remote areas also worsens the situation. There is a lack of supervision from the government and lack of access to information which create obstacles for them to access judicial remedy. Thus, non-judicial remedies as alternative dispute resolution will be discussed in the next chapter.
Chapter III
The Role of NHRIs and MSIs in Providing Remedy

This chapter will discuss to what extent palm oil workers have effective access to NJGM by applying the effectiveness criteria laid down in UNGP 31. The chapter draws from a literature review of NHRIs and MSIs under the evolving body of scholarly work on business and human rights (BHR). NJGM play a vital role in providing remediation to the victims of business-related human rights abuses. UNGPs Principle 27 stipulates that “non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms.”

Principle 27 suggests that judicial remedies are not always required. Even if they are effective, they are not always successful in solving most alleged abuses because they cannot carry the burden of addressing all alleged abuses. Also, judicial mechanisms are not always favored by the claimants because they are costly, prolonged, and inflexible. Therefore, avenues to judicial enforcement are not always accessible for victims of human rights abuses done by the corporations in weak governance zones, making NJGM the only available option for them.

In practice, NJGM may be considered as the attractive alternative to settling a dispute through judicial mechanism. Considering that there is a flexibility to design resolutions based on the parties’ needs, they prefer to file a claim through the NJGM. NJGM also offers a greater range of potential remedies. Unlike judicial remedy, NJGM aim to achieve a win-win solution for both parties. Although the outcome is not binding, naming and shaming the corporations can be effective in BHR cases.

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129 The Commentary of Principle 27 of UNGPs stipulates that “Non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. Even where judicial systems are effective and well-resourced, they cannot carry the burden of addressing all alleged abuses; judicial remedy is not always required; nor is it always the favored approach for all claimants.”


A. Access to NJGM Under NHRIs

1. NHRIs

An NHRI is defined as “an independent statutory body, established by a State to promote and protect human rights within its jurisdiction.”\(^{134}\) NHRIs have characteristics similar to public authorities, national courts, and human rights NGOs but have a special status. The status and function of NHRIs are established in the Paris Principles (PP).\(^{135}\)

PP are a set of non-binding standards which provide minimum requirements that an NHRI must meet to receive “A” accreditation status.\(^{136}\) Every five years, the International Coordinating Committee (ICC) performs a peer review of NHRIs, to see whether they meet PP’ minimum requirements.\(^{137}\) Under PP, NHRIs are required to play a part in human rights protection, such as by receiving complaints, conducting investigation, mediating conflicts, and monitoring activities.\(^{138}\) They also have to promote human rights through education and community outreach.\(^{139}\) There are six main criteria that NHRIs should have under PP, including a broad and clear mandate, institutional independence, autonomy from the government, pluralistic staffs, sufficient resources, adequate powers of investigation.\(^{140}\) There are also the Additional Principles concerning the quasi-jurisdictional competence of the NHRIs.\(^{141}\) This competence authorizes the NHRIs to hear individual complaints and petitions by providing amicable settlements through binding decision, informing the parties regarding access to remedies, receiving complaints, and making recommendations.\(^{142}\)

However, The PP are silent on which kinds of cases that can be reviewed through an NHRI’s complaint system.\(^{143}\) They do not clearly stipulate that the institutions have to bear


\(^{136}\) Ibid.


\(^{139}\) Ibid.


\(^{141}\) Ibid.

\(^{142}\) Ibid.

\(^{143}\) Humberto Cantú Rivera, “National human rights institutions and their (extended) role in the business and human rights”, 497
the mandate whether NHRI can deal with BHR violations. If an NHRI has fulfilled PP requirements, there is no guarantee it can deal with such cases. Whether an NHRI has the mandate to deal with BHR cases or not depends on each countries’ domestic laws.

2. The Role of NHRI in Providing Remedy

NHRIs have an essential role in maintaining a State’s human rights standards and complementing State efforts in implementing their international obligations because of NHRI’s independence from the government. NHRIs’ role in providing remedy is stressed under the UNGPs and the Edinburgh Declaration, which includes complaints handling, investigative, and mediation function. The NHRI’s complaint system serves to facilitate amicable settlements, promotes access to remedy, and provides recommendations to relevant authorities.

The mandate of NHRI should be broad and explicitly include the ability to address issue of possible violations committed by corporations. Nevertheless, Rivera argues that NHRI still have an essential role in promoting human rights in the private sphere, whether they have a specific mandate to deal with BHR abuses or not. Because of their independence, NHRI can still address a broad range of human rights violations, including BHR cases. PP also do not limit those cases which can be processed by the NHRI. However, the SRSG contends that not all NHRI are technically and financially capable doing so. Hence, the ability to deal with BHR cases depends on whether the State provides that mandate or not.

Furthermore, the role of NHRI in providing remediation is considered important, as they are often deemed as the primary state-based NJGM in BHR framework. If the NHRI are

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144 Meg Brodie, “Pushing the Boundaries: The Role of NHRI in the Operationalizing the “Protect, Respect, and Remedy” Framework”, 260.
145 Ibid.
150 Ibid.
151 Ibid.
152 Ibid.
153 Ibid.
154 Veronika Haász,”The Role of NHRI in the Implementation of the UN Guiding Principles”, 169.
mandated by the state to deal with BHR cases, they can provide access to an effective remedy to victims of BHR violations.\textsuperscript{155} As an NJGM, they have a role in complementing and supplementing judicial mechanisms such as courts and labor tribunals.\textsuperscript{156} They are established to fill the governance gap to complement the other existing mechanism.\textsuperscript{157} These institutions also have the authority to become a mediator for other State-based nonjudicial mechanisms, such as NCP, ombudsman offices, government complaints offices, NSBGM, and regional as well as international human rights bodies.\textsuperscript{158} The following paragraphs will discuss some literature regarding NHRIs and draw some conclusions on their, advantages and challenges in providing remedy.

3. The Advantages of NHRIs in Providing Remedy

NHRIs play an essential role in providing remediation because NHRIs have many advantages. Indeed, Rivera contends that NHRIs can contribute to de-escalating human rights abuses.\textsuperscript{159} If mandated to deal with BHR cases, they can provide remedies for victims of corporate human rights abuses in two ways: directly by providing recommendations and resolutions as the output of a complaint mechanism, and indirectly through adopting recommendations for the State to regulate, investigate, or give sanctions on corporations that perpetuate human rights violations.\textsuperscript{160}

Furthermore, Haász reports that NHRIs may provide an alternative dispute resolution (ADR) and human rights dialogue.\textsuperscript{161} By conducting ADR like mediation and conciliation, they can provide remediation to human rights abuse directly. They can establish human rights dialogue between civil society and public authorities and cooperate with international networks in contributing to the development of the evolving BHR framework.\textsuperscript{162} They can also contribute to the UNGPs’ development by making several submissions and attending the

\begin{footnotesize}
\begin{enumerate}
\item Humberto Cantú Rivera, “National human rights institutions and their (extended) role in the business and human rights”, 493. \textsuperscript{155}
\item United Nations, Guiding Principles on Business and Human Rights. \textsuperscript{156}
\item Benjamin Thompson, \textit{Impacts of businesses on human rights: Part one - knowing your rights}. \textsuperscript{157}
\item Veronika Haász,"The Role of NHRI in the Implementation of the UN Guiding Principles", 177. \textsuperscript{158}
\item Humberto Cantú Rivera, “National human rights institutions and their (extended) role in the business and human rights”, 492. \textsuperscript{159}
\item Ibid. \textsuperscript{160}
\item Veronika Haász,"The Role of NHRI in the Implementation of the UN Guiding Principles”, 169. \textsuperscript{161}
\item Ibid. \textsuperscript{162}
\end{enumerate}
\end{footnotesize}
presentations of the UN Working Group on the issue of BHR and the Human Rights Council reports to engage in the dialogue.\textsuperscript{163}

Through their monitoring and dissemination functions, NHRIs can examine other grievance mechanisms’ and advise victims on accessing their remedy through awareness-raising activities.\textsuperscript{164} Also, according to PP, NHRIs should have sufficient means to perform thematic inquiries and propose legal reforms to improve the national legal system.\textsuperscript{165} Lastly, the NHRIs can help victims with their complaints and locally follow up locally on their cases.\textsuperscript{166}

4. Challenges Limiting NHRIs in Providing Remedy

This section addresses possible limitations for NHRIs in addressing both general and BHR cases. As a State-based mechanism, NHRIs face many challenges in providing remediation, in general. Firstly, the nature of certain NHRIs’ recommendations are not binding. There are two types of NHRIs with complaints handling functions\textsuperscript{167}, namely those which can impose binding decision and those which have to refer the cases to a tribunal or court in order to obtain a binding decision, as applies to most NHRIs. Many NHRIs cannot provide legally binding decisions or have limited power to order binding remedies in providing remediation for human rights violations that have occurred.\textsuperscript{168} When NHRIs’ recommendations are not binding, they tend to result in low compliance and ignorance among the relevant stakeholders.\textsuperscript{169} Thus, it arises a public perception that the recommendations are not effective.\textsuperscript{170}

Secondly, some NHRIs have weak enforcement capacity.\textsuperscript{171} In contrast with the other public institutions, NHRIs cannot take enforcement measures after an investigation.\textsuperscript{172} This

\textsuperscript{163} Ibid.
\textsuperscript{164} Ibid., 176.
\textsuperscript{165} Ibid.
\textsuperscript{166} Humberto Cantú Rivera, “National human rights institutions and their (extended) role in the business and human rights”, 492.
\textsuperscript{168} Meg Brodie, “Pushing the Boundaries: The Role of NHRIs in the Operationalizing the “Protect, Respect, and Remedy” Framework”, 247.
\textsuperscript{169} Veronika Haász, ”The Role of NHRI in the Implementation of the UN Guiding Principles”, 176173.
\textsuperscript{170} Humberto Cantú Rivera, “National human rights institutions and their (extended) role in the business and human rights”, 498.
\textsuperscript{171} Meg Brodie, “Pushing the Boundaries: The Role of NHRIs in the Operationalizing the “Protect, Respect, and Remedy” Framework”, 267.
\textsuperscript{172} Veronika Haász, ”The Role of NHRI in the Implementation of the UN Guiding Principles”, 172.
limited enforcement creates a problem because the victims of human rights abuses need an immediate measure from the NHRI.

Thirdly, the diverse forms of NHRI may take. PP do not provide requirements regarding the form of NHRI.\textsuperscript{173} There are three types of NHRI: human rights commission, ombudsman, and hybrid institutions which with advisory and research functions. Some NHRI have the mandate to handle individual complaints, but some do not.\textsuperscript{174} This happens because the quasi-judicial competency to receive complaints is stipulated in the Additional Principles. If NHRI do have complaint mechanisms, they might not have the mandate to deal with BHR cases because PP do not clearly stipulate that the institutions have to bear the mandate to handle BHR abuses.\textsuperscript{175} Brodie argues that if an NHRI does not have the mandate to deal with BHR cases, it might not be able give remedy regarding a breach of that right.\textsuperscript{176}

Fourthly, financial and technical capacities can also be a challenge for NHRI in addressing BHR issues.\textsuperscript{177} The expansion of their mandates depends on the availability of the State’s funding.\textsuperscript{178} Subsequently, in some NHRI, the internal staff expertise on BHR cases is lacking.\textsuperscript{179} Without adequate technical and financial resources, NHRI might have to face significant barriers in addressing BHR issues.\textsuperscript{180} This lack of expertise can be addressed by conducting training regarding BHR to raise staff awareness.\textsuperscript{181}

Lastly, maintaining their independence is a challenge NHRI face in providing remediation. Brodie contends that the NHRI have a dual position alongside the business actors. On the one hand, the NHRI should cooperate with the corporate sector as “potential allies and partners”.\textsuperscript{182} On the other hand, these institutions play an essential role in holding business entities accountable for human rights violations.\textsuperscript{183} Thus, balancing these dual positions could be a risk to the NHRI’s independence when providing remedy to BHR cases.

\textsuperscript{173} \textit{Ibid}, 261.
\textsuperscript{175} \textit{Ibid}.
\textsuperscript{176} Meg Brodie, “Pushing the Boundaries: The Role of NHRI in the Operationalizing the “Protect, Respect, and Remedy” Framework”, 260
\textsuperscript{177} \textit{Ibid}.
\textsuperscript{178} Veronika Haasz, ”The Role of NHRI in the Implementation of the UN Guiding Principles”, 172
\textsuperscript{179} \textit{Ibid}.
\textsuperscript{180} \textit{Ibid}.
\textsuperscript{181} \textit{Ibid}.
\textsuperscript{182} Meg Brodie, “Pushing the Boundaries: The Role of NHRI in the Operationalizing the “Protect, Respect, and Remedy” Framework”, 249
\textsuperscript{183} \textit{Ibid}.
B. Access to NJGM under the MSIs

1. MSIs

The term MSIs tends to be used to define a voluntary initiative where several stakeholders cooperate in addressing sustainability, corporate social responsibility, and human rights problems.184 These stakeholders include, but not limited to companies, NGOs, trade unions. These initiatives are usually set up by multiple corporations under the same industry to develop standards that the members should voluntarily respect.185 Companies are involved in MSIs in order prevent and mitigate harm occurred by human rights violations in their supply chain, particularly labor issues.186

2. The Role of MSIs in Providing Remedy

MSIs are considered the most popular NSBGM by the participants using it.187 These initiatives usually have established their own complaint handling facility. Some MSIs have created grievance mechanisms for the affected stakeholders in said industry. For example, the communities affected by the business can file a complaint handling should there be any violations to the MSIs’ standards.188 However, these procedures can merely address complaints related to the actions of its members.

UNGP Principle 28 provides that, alongside the State-based mechanism, States should provide access to effective NSBGM for victims of human rights violations by corporations. The commentary further stipulates that MSIs are considered an NJGM that can be created in the form of adjudicative, dialogue-based, or others.189 This mechanism can offer faster and more affordable remediation than other mechanisms.190 UNGPs Principle 30 stipulates MSIs and other collaborative initiatives that offer human rights-related standards should guarantee that effective remedy mechanisms are available.

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184 Baumann-Pauly Dorothée, and Justine Nolan. Business and Human Rights: from Principles to Practice, 381.
185 Ibid.
186 Benjamin Thompson, Impacts of businesses on human rights: Part one - knowing your rights.
187 Baumann-Pauly Dorothée, and Justine Nolan. Business and Human Rights: from Principles to Practice, 381.
188 Ibid.
189 UNGPs Principle 28 Commentary.
190 Ibid.
3. The Advantages of MSIs in Providing Remedy

MSIs have several advantages in providing remediation since they are considered the most accessible avenue to remedy. According to Ruggie, MSIs are an emerging form of soft law, considering it is driven by social pressure.\textsuperscript{191} They aim to fill the regulatory gaps existed in BHR framework.\textsuperscript{192} Moreover, MSIs offer collaborations of host and home states, corporations, civil society actors, industry associations, international institutions, and investors group.\textsuperscript{193}

Similar to NHRIs, MSIs have the potential to de-escalate abuses. MSIs are considered as an early warning system to prevent future escalation.\textsuperscript{194} As it is an NSBGM involving relevant stakeholders in a particular industry, it is seen as a method to prevent escalation to occur.\textsuperscript{195} Once the problems have been resolved, the problems may not escalate into any of state-based mechanism.\textsuperscript{196} As Ruggie said, MSIs have a central role in providing an effective remedy when the other systems fail to provide the remedy.\textsuperscript{197}

Another advantage is MSIs have a transformative role in dealing with business-related human rights cases.\textsuperscript{198} MSIs have a significant role in having a dialogue with governments, individual companies, and national business associations to address the regulatory gaps in BHR framework.\textsuperscript{199} When domestic law is absent in providing proper remediation for the affected communities, the governance gaps could be addressed by conducting the dialogue under the MSIs. MSIs’ cooperation with influential international institutions, government, organizations and the inclusion of the UNGPs proves that MSIs have significant influence to the BHR field in solving the governance gaps that existed.\textsuperscript{200}

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{192}] Ibid.
\item[\textsuperscript{194}] Manchester Study, “Non-state based non-judicial grievance mechanisms (NSBGM)”, 35.
\item[\textsuperscript{195}] Ibid.
\item[\textsuperscript{196}] Ibid.
\item[\textsuperscript{198}] Ibid.
\item[\textsuperscript{199}] United Nations General Assembly, A/71/291, Human rights and transnational corporations and other business enterprises, 4 August 2016.
\item[\textsuperscript{200}] Citation information: MSI Integrity, Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance, July 2020, 29
\end{itemize}
\end{footnotesize}
As argued by Scott, MSIs are considered as better alternatives avenue to remedy since they could invoke the gate-keeping capacity of clients, insurers, and other stakeholders to require compliance.\footnote{Nicola Jägers, “Will transnational private regulation close the governance gap?”, Cambridge University Press, 2013, \url{https://doi.org.tilburguniversity.idm.oclc.org/10.1017/CBO9781139568333.018} accessed 19 September 2020, 303. See Also: Colin Scott, Regulating in Global Regimes.” Handbook on the Politics of Regulation, no. 25 (2011): 563–75. \url{https://doi.org/10.4337/9780857936110.00060}.} MSIs offer the opportunity for the affected communities or other critical stakeholders to engage in the regulation's preparation and enforcement.\footnote{Ibid.} It is expected there will be a sense of ownership of the policies, which could improve compliance.\footnote{Ibid.}

Similar to NHRIs, MSIs are considered as a complementary or supplementary means of state regulations. It is believed that MSIs could enforce their human rights standards better than state-regulations.\footnote{Ibid.} The norms quality in MSIs standards is better since professionals from the particular sectors are involved in the making process.\footnote{Ibid.} The professionals who act as private regulators offer great expertise and a greater possibility to adjust to the uncertain conditions.\footnote{Ibid.}

These initiatives are essential in providing a source of knowledge sharing, peer learning and peer pressure.\footnote{Ibid.} If the stakeholders come from diverse countries, there will be a multicultural environment which can serve as a source of knowledge and peer learning between the stakeholders.\footnote{Ibid.} Peer pressure in the MSIs serves as a great tool in holding the corporations to be accountable.\footnote{Ibid.} Although MSIs' nature is voluntary, its compliance can be considered “more real than the non-voluntary ones because it allows greater leverage in enforcing corporate accountability”.\footnote{Ibid.} MSIs offer a fair-conduct in providing the remediation. The stakeholder groups have equal voting rights in the governing body, which ensures equal-decision making power.\footnote{Ibid.} By involving all the stakeholders and giving them an equal power, some participants felt that MSIs allowed them to use their experiences directly into the market.\footnote{Radu Mares, Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress, Martinus Nijhoff Publishers, Leiden-Boston 2012, 30.} In this sense, it is expected there will be no power imbalances between the parties.

\begin{thebibliography}{10}
\footnote{Ibid.}{\citeyear{Ibid.}}
\footnote{Ibid.}{\citeyear{Ibid.}}
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\footnote{Manchester Study, “Non-state based non-judicial grievance mechanisms (NSBGM)”, 35.}{\citeyear{Manchester Study, “Non-state based non-judicial grievance mechanisms (NSBGM)”}}
\footnote{Ibid.}{\citeyear{Ibid.}}
\footnote{Ibid.}{\citeyear{Ibid.}}
\footnote{Baumann-Pauly Dorothée, and Justine Nolan, Business and Human Rights: from Principles to Practice, 186.}{\citeyear{Baumann-Pauly Dorothée, and Justine Nolan, Business and Human Rights: from Principles to Practice}}
\footnote{Ibid.}{\citeyear{Ibid.}}
\footnote{210 Radu Mares, Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress, Martinus Nijhoff Publishers, Leiden-Boston 2012, 30.}{\citeyear{Radu Mares, Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress}}
\end{thebibliography}
4. Critiques of MSIs

There are many critiques on MSIs in regard to its voluntary character. Critics argue that voluntary participation and compliance will not create a lasting change. If the companies do not comply with the standards, there is no serious enforcement that they have to bear. Critics often argue that there is a tendency that the parties will chose MSIs’ voluntary standards to escape from the binding regulations. This voluntary character creates a possibility for the companies to withdraw their membership if they are involved in a complaint. Several NGOs have withdrawn from the MSIs because of their inaction, ineffectiveness, and lengthy procedure, which are not equitable compared to their advantages. This weak enforcement has been caused by the voluntary nature of the MSIs, which do not have binding legal enforcement. Although, as discussed before, MSIs’ influence can be more apparent than the non-voluntary ones.

Subsequently, several MSIs’ regulatory interfaces are much more complicated than the binding one. According to the Secretary-General's Special Representative (SRSG), some people think that the aim of MSIs is integrating those stakeholders which do not have other incentives to join, while others think that the aim is to push the government to implement the regulations which have already existed, making this framework more complex than the state regulations. These complexities make the grievance not equitable for both parties, which can hinder the complainant from filing a complaint. Therefore, these initiatives are considered unattractive by several people because of its complexities.

214 Ibid.
215 Baumann-Pauly Dorothée, and Justine Nolan, Business and Human Rights: from Principles to Practice, 186.
218 MSI Integrity, Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance, July 2020, 29
219 Ibid.
220 Ibid.
221 United Nations General Assembly, A/HRC/8/5/Add.1, Summary of five multi-stakeholder consultations, Addendum 1 to the Report, 23 April 2008, pp. 257–259. “Some seek eventual public policy integration as a way of achieving scale, bringing in smaller firms, producers of commodities and other unbranded products, and companies and Governments from emerging markets which do not have other incentives to join. For others, the whole point is to get Governments to implement regulation they already have on the books.”
Furthermore, there is a possibility that power imbalances exist between the stakeholders. There is skepticism about the effectiveness of MSIs because they might allow corporations to dominate the field. Corporations that usually provide a large amount of funding in the MSIs have a greater engagement in designing the standard and monitoring mechanism. Meanwhile, the NGOs sometimes do not have the resources to participate fully in MSIs. As a result, the number of stakeholders representing the affected communities in the governing body is lacking in many MSIs; the affected communities are often only represented in the advisory body, or sometimes not represented at all.

Critiques also often focus on MSIs’ organizational capacity and resources. For example it is argued that MSIs’ capability in addressing the complaints possess several shortcomings. Regarding its the monitoring mechanism, the fact that several MSIs have soft monitoring mechanisms makes its their credibility questionable and unreliable. Several MSIs’ monitoring and compliance system do not have an adequate method to detect and provide remediation to the human rights abuses that existed. Their failures have been well-documented. One example is the documentation of their inability to audit several labor rights violations in farms or factories certified by MSIs. This failure has been caused by the fact that many monitoring systems only took a portrait of several situations at one location at a particular time. The commercial auditor’s rates are high and creates a pressure to complete the audit as soon as possible, with small number of people, it may set aside the in-depth audit technique such as interviews or repeated visits. There are no independent on-site investigations done by the MSIs making that the investigations are presumably not reliable. For example, if a human rights violation occurred, at certain times the MSIs do not have the information regarding the incident because there is no such "on-site" investigation.

223 MSI Integrity, Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance, July 2020, 29
224 Baumann-Pauly Dorothée, and Justine Nolan, Business and Human Rights: from Principles to Practice, 186
225 Ibid.
227 Ibid.
228 MSI Integrity, Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability.
229 Ibid, 126.
230 Ibid, 134.
231 Ibid, 136.
232 Ibid.
234 MSI Integrity, Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability.
Fortunately, the investigations are conducted by a professional team and the companies have hired accredited auditors which have a professional credibility.

Participants state three reasons why MSIs’ social monitoring and auditing can at times be considered limited. First, they frequently fail to find the root problem that may cause human rights violations to occur and without knowing the grounds, it is unlikely for the complainants to receive adequate remedy. Second, the capacity building for change is lacking and without sufficient capacity and awareness, the workers will not be able to escalate the issues, and the managers will not be as responsive as they should be when problems occurred.

In regards to financial resources, the MSIs highly rely on its members’ funding. However, several companies do not have adequate financial resources to retain membership and achieve certification. The unavailability of funds of those companies results in not all the companies in the industry being certified by the MSIs, making them untouchable from complaints brought under said MSIs mechanism.

MSI Integrity conducted a study regarding the effectiveness of 40 MSIs through the lens of UNGPs Principle 31 and revealed those MSIs’ general shortcomings. In terms of remediation, many MSIs do not offer the complainants access to an effective remedy, proven by the fact that nearly all of the 40 MSIs studied by the MSI Integrity fail to meet the effectiveness criteria provided by the UNGPs. Some MSIs do not provide a remedy mechanism, and if one exists, the grievance procedure does not meet the internationally accepted minimum practices which fail to deliver adequate remedies to the victims of human rights violations. Only 10 MSIs provide limited information in non-English language. There are only a few MSIs which offer translation, making them inaccessible to all of the complainants. Also, most MSIs do not provide a clear timeframe for the compliant process which makes them unpredictable. Subsequently, many grievance procedures are complex, which cannot easily be understood by the complainants which makes them not equitable.

236 Ibid.
237 Ibid.
238 Ibid.
239 MSI Integrity, Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability.
240 Ibid.
241 Ibid., 159.
242 Ibid.
243 Ibid.
244 Ibid.
Some MSIs are also not transparent in handling the complaints they received.\textsuperscript{245} Lastly, only a few MSIs succeeded in providing adequate remedies directly to the rights holders and providing a report analysis of the MSIs, acknowledging the fact that not all MSIs are rights-compatible and serve as a source of continuous learning.\textsuperscript{246} In sum, the MSIs observed by the MSI Integrity do not comply with all the criteria provided by the UNGPs Principle 31.

\textsuperscript{245} Ibid.
\textsuperscript{246} Ibid.
Sub-Conclusion

It can be concluded that MSIs and NHRIs can play an important role in providing access to remedy in BHR cases. However, those remedy mechanisms have some advantages and shortcomings. NHRIs are independent from the state, pluralistic and they can contribute to de-escalating human rights abuses. They can have a complaint handling system which can provide a mediation for the complainants and give recommendations for the relevant stakeholders. Moreover, they can help establish a human rights dialogue, conduct thematic inquiries, and enact advance proposals for legal reform. Nevertheless, there are some challenges limiting the NHRIs and MSIs in providing remediation in BHR cases.

Both MSIs and NHRIs mechanisms are considered as complementary and supplementary means to the judicial mechanisms and they can de-escalate human rights abuses. Nonetheless, many NHRIs do not have the mandate to issue legally binding decisions as they only provide non-binding recommendations to the relevant stakeholders. This fact demonstrates the lack of NHRIs' enforcement capacity. Subsequently, not all of NHRIs are in compliance with PP which is a problem for addressing BHR cases because some do not have the capacity to handle complaints or some others do not refer to corporate related human rights abuses directly in their mandates. Subsequently, the technical and financial capacities can also be an obstacle for NHRIs in providing remedy for the complainants of business-related human rights abuses.

In providing remediation, many MSIs have a complaint system, yet they will only apply to the companies serve as the members of the MSIs. The advantages of MSIs in the context of BHR cases are these initiatives are often considered as an early system to prevent future escalation. The peer pressure that exists in MSIs can be a powerful urge that drive the corporations to comply with the standards provided by the MSIs. Critiques of MSIs usually focus on its voluntary membership, causing many companies choose to withdraw from the membership if they are entangled in a complaint. Not to mention their lack of organizational capacity and power imbalances between corporations and the complainants. The funding aspect of MSIs is also criticized given that being a member requires a financial capability. To what extent the Indonesian NHRIs and the MSI RSPO provide effective access to remedy in the sense of UNGP 31 for palm oil workers in Indonesia will be further discussed in the next chapter.
Chapter IV
ACCESS TO NON-JUDICIAL REMEDY FOR PALM OIL WORKERS IN INDONESIA

In this chapter, the author will provide an exploration of the degree of remedy provided by the Indonesian NHRI Komnas HAM and the MSI RSPO for the palm oil workers in Indonesia by analyzing to what extent these mechanisms comply with the criteria provided under UNGPs Principle 31.

A. Effectiveness Criteria of NJGM

Determining what constitutes an effective remedy depends on the subjective elements, including personal preferences, the victims’ circumstances, and the local culture. A remedy should be considered effective if it is considered sufficient by those affected, and the outcome is agreed by both parties.

UNGPs Principle 31 provides seven effectiveness criteria of NJGM, both State-based and non-State-based. These criteria will serve as a tool to analyze the effectiveness of NHRIs and MSIs in addressing human rights abuses inflicted upon palm oil workers conditions in Indonesia in the next chapter. The criteria provided are as follows:

1. Legitimate

A legitimate NJGM means the mechanism is trusted and considered fair by the stakeholders. The stakeholder in this principle stands for the parties using that mechanism or the complainant. In order to be legitimate, an effective grievance mechanism should be able to gain trust from the stakeholder. Also, the mechanism should have the accountability to ensure the parties at stake do not interfere with the grievance procedure's fair conduct. The grievance mechanism should be independent of the state or other bodies’ influences.

248 Ibid.
251 Ibid.
2. Accessible

An effective NJGM should be easily accessed by the stakeholder. Being accessible means being known to all stakeholders and ensuring that all the barriers to remedy are tackled. These barriers include language, lack of literacy, expensive costs, remote physical location, and fear of reprisals. For instance, providing adequate legal assistance for the aggrieved parties, community outreach to raise people’s awareness, and allowing collective redress.

3. Predictable

Predictable means providing a clear type of procedure, timeline and outcome of the mechanism, to avoid unduly prolonged process. Also, the outcome has to be clear. There should be a monitoring procedure to ensure that the implementation of the outcome runs well. The procedure should be available as public information to be used as self-help guides for the complainants. Predictability shows that there is legal certainty in the due process of law.

4. Equitable

A grievance mechanism should ensure that equal access to information, advice and expertise are provided for both parties. It seems that being equitable with accessible require adequate legal assistance. The difference is, being equitable aims to create a fair, informed, and respectful grievance process for both parties. The complainants should also be provided with financial resources and more community outreach. In this manner, it is expected there will be no power imbalance between the aggrieved parties and the parties being complained.

5. Transparent

Transparency includes keeping parties informed about the dispute's progress and the mechanism's performance online or offline. The relevant information can be published using statistics and case studies with detailed information its handling process, yet the

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254 Ibid.
256 Ibid.
257 Ibid.
260 Ibid.
261 Ibid. Online through the website and offline through the pamphlets form.
dialogue's confidentiality and anonymity should be offered to the persons at risk if considered necessary.\textsuperscript{262}

6. Rights-compatible

A grievance that is providing rights compatible should provide the remedy outcomes that compatible with the existing national and IHRL.\textsuperscript{263}

7. A Source of Continuous Learning

In order to prevent harms from occurring in the future, the grievance mechanism body or institution should provide a source of continuous learning to improve the mechanism itself.\textsuperscript{264} The institution should provide regular analysis on the grounds of the grievances to improve previous influence policies and procedures, and transform the existing practices.\textsuperscript{265}

B. Access to Remedy: the Indonesian NHRI

In Indonesia, the NHRI is called Komnas HAM. Komnas HAM’s head office is located in the capital city and the branches are located in Aceh, West Sumatera, West Kalimantan, Central Sulawesi, Maluku, and Papua. Until the end of 2019, there are 407 people employed at Komnas HAM, consisting seven commissioners. The statutory basis of Komnas HAM is regulated under Law No. 39 of 1999 regarding Human Rights (The Human Rights Act). Komnas HAM is an independent commission that monitors human rights implementation in Indonesia.\textsuperscript{266} It has several functions, ranging from research and development, observation, investigation, to mediation.\textsuperscript{267} The Human Rights Act also empowers the NHRI to receive complaints, conduct investigation, and provide recommendations.\textsuperscript{268} In the subsequent section, it will be examined to what extent the palm oil worker can access their remedy through Komnas HAM.

1. Remedy Mechanism Under Komnas HAM

Remedies for the palm oil workers can be obtained through the Komnas HAM. In complementing the judicial mechanism, Komnas HAM provides access to remedy for the palm oil workers. Komnas HAM does not only deal with cases of human rights abuses

\textsuperscript{262} Ibid.
\textsuperscript{263} Ibid.
\textsuperscript{264} Ibid.
\textsuperscript{265} Ibid.
\textsuperscript{266} Patricia Waagstein, \textit{Business and Human Rights in ASEAN: A Baseline Study}, Human Rights Resource Centre, 2013, 125.
\textsuperscript{267} Ibid. Article 90.
\textsuperscript{268} Ibid. Article 89(4).
committed by individuals, but it also deals with human rights abuses committed by corporations.\textsuperscript{269} It handles the issue of BHR in two ways. First, through developing and creating discussions, such as seminars, and workshops between the relevant stakeholders, namely: the affected communities, NGOs and the corporations.\textsuperscript{270} Second, Komnas HAM has a role to observe and investigate human rights violations through its Complaint and Investigation Department. Complaints can be settled through monitoring, mediation or through the creation of ad hoc team.

Mediation is conducted to make peace between two parties.\textsuperscript{271} Komnas HAM can act as a mediator or facilitate the mediation by conducting an observation.\textsuperscript{272} Recently, Komnas HAM established a pre-mediation mechanism, which focuses on exploring the intention of the parties in order to better accommodate both parties.\textsuperscript{273} After the mediation is conducted, Komnas HAM can make a recommendation to the parties or the relevant stakeholder such as the government or corporations.\textsuperscript{274}

In order to file a complaint through the Komnas HAM, a complainant can submit an oral or written complaint individually or collectively as a group. In response to the complaint, Komnas HAM can refer the parties to the court and make recommendations to the government or legislative bodies to follow up on the existing case.\textsuperscript{275}

Every year, Komnas HAM handles more than 1,000 cases of business-related human rights abuses regarding land conflicts, labor and environmental cases.\textsuperscript{276} For instance, in 2018, the statistic shows there were 40 labor cases.\textsuperscript{277} In 2019, there were six palm oil workers cases which concern unilateral termination of employment, underpaid wages, union-busting, and lack of health protection tools.\textsuperscript{278}

\textsuperscript{269} Ibid, 123.
\textsuperscript{270} Patricia Rinwigati Waagstein, Business and Human Rights in Indonesia: From Principles to Practice, Human Rights Resource Centre, British Embassy Jakarta, 47.
\textsuperscript{271} Indonesian Law No. 39 of 1999 regarding Human, Article 89 (4).
\textsuperscript{272} Patricia Rinwigati Waagstein, Business and Human Rights in Indonesia: From Principles to Practice, Human Rights Resource Centre, British Embassy Jakarta, 47.
\textsuperscript{273} Ibid, Article 76.
\textsuperscript{274} Article 89 of Indonesian Human Rights Law.
\textsuperscript{275} Ibid, Article 89.
\textsuperscript{276} Ibid.
\textsuperscript{278} This data of palm oil workers cases was obtained formally from Human Rights Development Bureau, KOMNAS HAM. (See the Table in Appendix).
The complaints brought to Komnas HAM are made for human rights violations such as right to welfare, personal freedom, right to justice, and right to life. Referring to the Human Rights Act, right to welfare is related to right to work, right to have an adequate living, and right to health. The right to personal freedom is related to right to freedom of association or form a union, freedom of speech, etc. The complaints are made for poor working conditions such as union busting, unilateral termination of employment, underpaid wages, insufficient health protection tools. Complaints were made by individuals, trade unions NGOs, and legal aid organizations. In palm oil workers cases, the complaints are not only made to the corporations, both private or state-owned, but also made to the government and police. Detailed analysis concerning Komnas HAM’s performance in providing access to remedy for the palm oil workers will be elaborated in the subsequent paragraphs.

2. A Review of Komnas HAM’s Role in Providing Remedy to the Palm Oil Workers

In this chapter, the author will make a review of Komnas HAM’s Role in providing remediation to the palm oil workers, using the effectiveness criteria as provided in UNGPs Principle 31.

a. Legitimacy of Komnas HAM

Legitimacy in NHRI can be achieved if they can gain trust from the public and having an accountable fair conduct. They can be considered accountable because if they are established by law. Komnas HAM’s establishment is provided under the Indonesian Human Rights Act. However, it still has difficulty gaining public trust since there is no strong enforcement. Komnas HAM’s recommendation is not binding and the government has no obligation to follow up on the recommendation because there is no strong enforcement. In several cases, when Komnas HAM referred a case to the government, there was no follow up to the case, and the recommendation was being ignored. Komnas HAM’s commissioner confirmed that

281 Komnas HAM Submits Report on Recommendations to the Government, 12 December 2018

279 Indonesian Human Rights Law.
many parties have neglected Komnas HAM’s recommendation.\textsuperscript{282} In one BHR related case, the government has ignored 18 points recommendations by Komnas HAM.\textsuperscript{283} Komnas HAM has no enforcement power makes its recommendations have a little impact in addressing human rights abuses.\textsuperscript{284} In the case of palm oil workers, some workers claimed that there is a slow response, or even worse, no response from Komnas HAM when they file a complaint.\textsuperscript{285} As a result of slow response and the unbinding recommendations, there might be a public distrust towards NHRIs.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{complaints_graph.png}
\caption{Complaints regarding Palm Oil Workers to Komnas HAM}
\end{figure}

The figure shows the number of complaints regarding palm oil workers conditions from 2015 to 2019. From the data above, it can be concluded that in the past five years, the complaints brought to Komnas HAM decreased significantly. The detail information can be found in the appendix.\textsuperscript{286} Since there are public distrust and a decreasing number of complaints, it can be argued that Komnas HAM’s legitimacy is questionable.

\begin{itemize}
\item \textsuperscript{283}Ibid. In Lapindo Mudflow Disaster Case.
\item \textsuperscript{284}Iman Prihandono, Litigating FDI-Induced Human Rights Violations by TNCs: Opportunities and Challenges For Indonesia, Dissertation Thesis, McQuarie University, 2012.
\item \textsuperscript{285}Interview with Daniel Marbun, Metal Workers Trade Union Member which in charge with palm oil workers cases, Jakarta, 2 July 2020.
\item \textsuperscript{286}This data of palm oil workers cases was obtained formally from Human Rights Development Bureau, KOMNAS HAM. (See the Table in Appendix).
\end{itemize}
b. Accessibility of Komnas HAM

Accessibility means being known by the relevant stakeholders. An NHRI can be considered accessible if they have accessible geographical location, adequate awareness or access to information to the mechanism, sufficient legal assistance to file complaint and protection against intimidation.

1) Geographical Remoteness

Extraordinary attention must be given to vulnerable groups and other groups that experienced problems in accessing remedies because of their language abilities and geographical limitations, such as the workers in the palm oil plantations.287 The fact that palm oil plantations in Indonesia are located in distant areas serves as a barrier for the workers to readily access their remedy through Komnas HAM.

Filing a claim to Komnas HAM requires the workers to embark on a long journey with its related costs. Komnas HAM’s head office is located in the capital city of Indonesia and the branches are located at six central districts, requiring the workers to prepare transportation costs to reach the office. The expensive costs involved may discourage the workers from filing a case because there is no guarantee that they will win the case.288 Consequently, they prefer to lose the opportunity to file a claim and settle for less in the bipartite mechanism. Thus, the accessibility of Komnas HAM with regards to remote geographical condition of these workers has hindered them in accessing their remedy.

2) Access to Information concerning Komnas HAM

According to the UNGPs, public awareness and citizens’ understanding of grievance mechanisms should be facilitated by the State.289 Nonetheless, being located in the remote area also hinders the workers from access to information regarding remedy. Although the information regarding Komnas HAM’s complaint mechanism is accessible using the internet, the poor internet connectivity in the remote areas exacerbates the problem.290 Furthermore, the palm oil workers do not have sufficient advocacy about the available

287 KOMNAS HAM & ELSAM, National Action Plan on Business and Human Rights, Indonesia, May 2017, 68
288 Interview with Hotler, Sawit Watch’s Researcher, 28th February 2020 (Online Interview) Herwin Nasution, Director of Indonesian Plantations Trade Union (SERBUNDO), Utrecht, 7th of March 2020, and Interview with Andriko Otang, Director of TURC, Tilburg, 5th of March 2020, (Online Interview).
complaint mechanism due to their lack of literacy. Unlike the workers in manufacturing industries, the palm oil workers' literacy and levels of education level are low. Considering the low level of education and literacy in legal knowledge, most workers do not have any comprehension concerning the official procedure to file a claim. The existence of trade union would be beneficial for the workers, because it may serve as the representative of the workers and provide advocacy concerning the workers’ rights. Unfortunately, as provided in the first chapter, several palm oil workers’ right to freedom of association has been denied. Accordingly, the communities do not have sufficient information regarding where to lodge complains about the human rights violations they faced and how to restore their rights. Consequently, they are forced to accept that their quality of life is declining.

3) Legal Assistance for the Workers

Palm oil workers under poor working conditions do not have adequate financial support to hire legal assistance. Fortunately, the Legal Aid Law provides that legal aid should be given to the rightful recipient to face legal cases, both litigation and non-litigation. However, in practice, there have been difficulties in finding lawyers who are willing to represent them in human rights and business litigation in general. The availability of qualified and experienced lawyers is also limited. Finding attorneys who want to represent victims of human rights cases against big corporations is also difficult. Many attorneys are reluctant to take on human rights cases because there is no guarantee that they will win the case, and finding financial aid for covering costs is difficult. This uncertainty makes lawyers tend to be reluctant of...
accepting this kind of case. This could also happen in the case of palm oil workers because many of them are facing cases against big corporations.

There is a possibility to find a legal representation from the NGOs. Nevertheless, lawyers from the NGOs sometimes do not have sufficient funding to assist the workers. It is also challenging to find legal representation for the victims in the remote areas. Thus, the difficulties in terms of financial and finding legal representatives make the palm oil workers hesitant to bring their cases to Komnas HAM.

4) Intimidation to the Workers and Witnesses

Intimidation to the palm oil workers creates hesitation for them to file complaints to Komnas HAM. Some case studies demonstrate that the workers’ freedom to speak is lacking because they have a fear of getting into trouble with the company. Also, it is difficult to find a witness for the palm oil workers in Indonesia because they are vulnerable to being intimidated by the employer and, perhaps, dismissed by the corporation. In some cases, witnesses and human rights defenders encounter intimidation and fear of reprisals. In the years 2012 to 2016, human rights defenders across Indonesia were under attack. In preventing intimidation, the Komnas HAM offers confidentiality for the complainants, witnesses, and other parties which relate to the case, if needed.

c. Predictability of Komnas HAM

Predictability here implies that the NHRIs have a clear mandate, procedure, timeframe, and as well as monitoring system. Komnas HAM’s mandate was established in accordance with

302 Ibid, 82
303 Ibid, 81
304 Interview with Commissioner for Assessment and Research Assessment of KOMNAS HAM, Sandrayati Moniaga, Jakarta, 8th of June 2020, (Online Interview).
305 Institute for ECOSOC Rights, Palm Oil Industry and Human Rights, A Case Study on Oil Palm Corporations in Central Kalimantan, 86-87. See Also: Ratih Ananda Putri Goestoro, Dissertation Proposal
309 Indonesian Law No. 39 of 1999 regarding Human Rights, Article 92.
PP; encouraging amicable settlement through mediation and conciliation, and providing complaint system and recommendation to the relevant stakeholders.\(^{310}\)

Komnas HAM’s regulation provides a clear timeline regarding the mediation’s timeframe and this reflects the predictability criterion. The regulation stipulates that mediation shall be settled not more than 120 working days since the first meeting between the parties or the time agreed by both parties.\(^{311}\) If there is a breach of peace settlement after the mediation was conducted, the defaulting parties has to carry out Komnas HAM’s recommendation within 30 days after they received the letter from Komnas HAM.\(^{312}\)

It is difficult to obtain data regarding the mediation of palm oil workers because of its confidentiality. Nevertheless, several cases brought to Komnas HAM have remained unsettled, attesting to the fact that the consistency and predictability of Komnas HAM’s timeline in providing remediation is questionable.\(^{313}\) Fortunately, there is a positive development regarding Komnas HAM’s cooperation with the civil society regarding its monitoring committee to resolve the unsettled cases.\(^{314}\) A national conference was established to create a platform for Komnas HAM to cooperate with the civil society.\(^{315}\) It is expected that Komnas HAM’s networking with the civil society with regards to human rights issues will be more activated.\(^{316}\) Also, during the 2017-2022 leadership, Komnas HAM has been more approachable in receiving inputs from civil society regarding the cases, especially the unsettled cases.\(^{317}\)

d. Equitability between Both Parties

Equitability means there is no power imbalance between the parties in accessing their remedy through Komnas HAM. To ensure that there is no power imbalance, the complainants need adequate access to source of information, advice and expertise. This can be achieved through the assistance of NGOs or legal representative. Nevertheless, as

\(^{310}\) Ibid, Article 76.


\(^{314}\) GANHRI Sub-Committee on Accreditation Report, March 2017, 25.

\(^{315}\) Ibid.

\(^{316}\) Ibid.

\(^{317}\) Ibid.
discussed above, it is difficult to seek legal assistance in the remote area.

There is a need for adequate financial aid for the victims; yet, it is difficult to find the financial resources needed, especially for the vulnerable people like the palm oil workers living in the remote areas.

Equitability can also be ensured by gender equality represented in the NHRI’s members. Paris Principle stipulates that the composition of NHRIs members should ensure pluralist representation of the society. Haázs conferred that NHRIs can be regarded equitable if they have pluralistic composition. Subsequently, the Alliance of National Human Rights Institutions (GANHRI) in its Sub-Committee on Accreditation (SCA) report states that the institution shall ensure diversity in the context of gender, ethnicity, or minority status. This pluralistic composition means to avoid inequality as a result of nepotism or discrimination by political groups, race or any other interests. In 2014, the SCA distressed about the lack of pluralism in Komnas HAM because the representation of women was low. Even though the members of Komnas HAM for 2017-2022 period come from different professional backgrounds, there is only one representative of women currently in office.

e. Transparency of Komnas HAM

Transparency means keeping the complainants informed related to the mechanism, Komnas HAM is transparent regarding public information. In 2014, it issued a regulation regarding public information services within the Komnas HAM. This regulation aimed to increase public information service and reserve the citizens’ rights to obtain public information in manifesting Public Information Disclosure. Nevertheless, to protect the victims from the risk of intimidations, confidentiality is needed.

Komnas HAM has the mandate to conduct investigations for gross human rights violations with ad hoc pro justicia investigation team. The public who wants the information

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318 GANHRI Sub-Committee on Accreditation Report, March 2017, 25.
320 Ibid.
321 Ibid.
324 Law No. 14 of 2008 regarding Public Information Disclosure
325 In ANNI Report, pro justicia is defined as the name given to reports coming out of investigations carried out by Komnas HAM. In Iman Prihandono’s Dissertation, pro-justitia is a legal framework in which an institution that is mandated by Law with investigating powers can formally assert that a person has committed a violation.
326 Law No. 26/2000 regarding Human Rights Court.
regarding the progress of the investigations can access the executive summary in the Annual Report. Komnas HAM publishes its Annual Reports which should be launched annually every March or April. Yet, the reports have always been delayed until the end of the year, because of the lack of human resources who work on the report.

The full report of investigation and monitoring are not made public due to confidentiality matters. Most of the case data and information can only be accessible through Komnas HAM’s network. Often, the monitoring and investigation outcomes are not released to the media since the cases that were handled by Komnas HAM could risk people’s security. Due to confidentiality reasons, the result of Komnas HAM’s investigations may only be accessed by the Attorney General’s Office.

f. Rights Compatibility of Komnas HAM

Rights compatibly means ensuring that the outcomes and remedies are in accordance with IHRL. In 2017 SCA Report, GANHRI recommended Komnas HAM to be accredited with A status. Although Komnas HAM has a function in promoting human rights in accordance with international standards, Komnas HAM does not yet have a specific mandate to deal with human rights violations committed by the corporations. Komnas HAM’s mandate is limited to gross violations of human rights cases. Cases other than these are expected to be referred to the police for advance investigation. As discussed in the previous chapter, this happened because PP do not explicitly oblige the NHRI to have a mandate in dealing with business-related human rights cases.

As it is difficult to obtain the data regarding palm oil workers’ mediation cases, it is difficult to determine whether the palm oil workers have received proper remedies or not. However, due to the fact that there is no binding enforcement to the parties, many parties may neglect the institutions’ recommendation and as a result, there is no assurance that the rights-holder

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328 Ibid.
329 Ibid.
331 Ibid.
332 Ibid.
333 Ibid.
334 Indonesian Law No. 39 of 1999 regarding Human Rights, Article 104.
335 Ibid.
will get the compensation in accordance with the internationally recognized human rights. Even if they are entitled to obtain the remediation, there is no guarantee that the employer is willing to give the remediation to the palm oil workers.\footnote{Interview with Herwin Nasution, Director of Indonesian Plantations Trade Union (SERBUNDO), Utrecht, 7th of March 2020.}

g. **Komnas HAM as a Source of Continuous Learning**

A source of continuous learning means an institution should recognize lessons-learned to improve the mechanism. According to Haász, an NHRI can be considered as a source of continuous learning if they offer preventative actions to prevent future grievances.\footnote{Veronika Haász, "The Role of NHRI in the Implementation of the UN Guiding Principles", 177.} By conducting human rights dissemination and education, Komnas HAM has proved to do so. Komnas HAM has a dissemination function which is carried out through: first, disseminating insights about human rights to the public, second, increasing public awareness of human rights education; third, cooperation with other organizations, both national and international.\footnote{Indonesian Law No. 39 of 1999 regarding Human Rights, Article 89 paragraph (2).}

The function is formulated in four priority programs, namely Human Rights Friendly Schools, Human Right Cities, Human Rights-Based Police and Fulfillment of the Rights of Minority Groups.\footnote{Komnas HAM Annual Report, 2018, 48-49.} It is expected that these programs will contribute to policy changes and the changes of the policy-making officials’ behaviors.\footnote{Ibid.} Moreover, Komnas HAM also developed a National Action Plan on BHR.\footnote{KOMNAS HAM & ELSAM, National Action Plan on Business and Human Rights, Indonesia, https://globalnaps.org/wp-content/uploads/2017/11/nap-indonesia.pdf accessed 20 June 2020.} In this way, Komnas HAM will provide long-term and appropriate preventive outcomes as a source of continuous learning.

Considering its A status accreditation, Komnas HAM has fulfilled PP’s minimum requirements. It can be considered legitimate since it was established by law, but it still faces difficulty gaining public trust. Considering the palm oil workers’ remote area, Komnas HAM is not yet accessible. Its predictability and equitability are still questionable because some cases are not resolved promptly and it is difficult to find the legal experts. Its transparency is good, to the extent that it still protects the complainant with anonymity. Its mandate has in accordance with IHRL, although it has not provided a specific obligation to deal with
BHR cases. Also, there is no guarantee that the complainants will get adequate remedies. Lastly, Komnas HAM can also be considered as a source of continuous learning.

C. Access to Remedy: Multi-Stakeholder Initiatives in Indonesia

In the field of palm oil, the MSIs is the RSPO. RSPO is a nonprofit association that unites stakeholders from seven sectors to create a global standard for sustainable palm oil. In creating this global standard and ensuring the credibility of palm oil’s sustainability, RSPO offers a certification. This certification serves a guarantee to the customers to ensure that the palm oil products are sustainable. Although many palm oil companies have already been certified by the RSPO, some are still committing human rights violations against workers. In this chapter, the author discusses the role of RSPO in providing the remedies for palm oil workers in Indonesia and a review of the RSPO complaint system in providing access to remedy. There are currently, 21 group companies, hundreds of NGOs, and smallholders have joined the RSPO from Indonesia. Moreover, there are over 100 cases in the Indonesian palm oil industry have been discussed in the RSPO.

1. Remedy Mechanism under the RSPO

The obligation to provide access to remedy to palm oil workers can be found in RSPO Principles and Criteria (P&C) and Indicators and Guidance. RSPO P&C applies to certified mills and their supply base. In providing access to remedy, it established a Complaints-System and Appeal (Complaints-System) that provides remediation for the complainants. Created in 2006, this grievance mechanism is aimed at addressing complaints

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342 Article 4(1) of the RSPO Statutes further presents that: “The RSPO’s membership includes representatives from seven sectors of the palm oil industry: oil palm growers; palm oil processors or traders; consumer goods manufacturers; retailers; banks and investors; environmental or nature conservation NGOs; and social or developmental NGOs.”


347 Ibid.

348 Ibid.

349 Ibid.

350 Ibid.
against RSPO members.\footnote{Kate Macdonald and Samantha Balaton-Chrimes, “A Review of the Complaints System of the Roundtable on Sustainable Palm Oil.”, Corporate Accountability Research, 2016, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2880049 accessed 8 March 2020, 16.} The Complaints Panel’s tasks include: conducting an informal dialogue to create a mutual agreement between the parties, and investigating and determining the course of actions, such as termination of membership. RSPO is also considered to be more accessible alternative mechanism by the participants using it.\footnote{Ibid.} However, there are also critiques towards its grievance effectiveness which will be further discussed in the next subsection.

2. A Review of RSPO’s Complaints-System

a. Legitimacy of RSPO

Legitimacy means having trust from the relevant stakeholder to use the mechanism as an avenue to remedy. These subsequent paragraphs will explain whether the RSPO has legitimacy as required in the UNGPs by discussing its voluntary nature, organizational capacity, financial and human resources, monitoring system, and independence.

1) Voluntary Nature of the RSPO

Considering a lot of critiques in regards to the MSI’s voluntary character, the nature of RSPO’s membership is voluntary, causing the RSPO’s members’ compliance also voluntary.\footnote{Ibid.} The RSPO cannot provide a binding sanction and therefore there is no strong enforcement if non-compliance occurs.\footnote{Ibid.} Several sanctions such as termination of membership, stop-work orders and suspension of certification are available.\footnote{Ibid.} According to Radu Mares, this voluntary nature creates a concern that the members may choose to leave the RSPO if complaints are made towards them.\footnote{Ibid.} This is illustrated by the case of Company A, when the RSPO suspended its certification as a result of non-compliance of RSPO’s standard, the company withdrew its membership.\footnote{RSPO Secretariat’s Statement on Complaints Panel Decision Regarding PT Salim Ivomas Pratama Tbk https://rsopo.org/news-and-events/news/rsopo-secretariats-statement-on-complaints-panel-decision-regarding-pt-salim-ivomas-pratama-tbk See Also: Mongabay News, Lonsum Sustainability Certificate Suspended, Salim Ivomas Withdraws from RSPO, https://www.mongabay.co.id/2019/02/13/sertifikat-sawit-lonsum-ditangguhkan-salim-ivomas-cabut-dari-rsopo/ accessed 30 October 2020.} Although

\footnote{Ibid.}

\footnote{Radu Mares, Business and Human Rights After Ruggie: Foundations, the Art of Simplication and the Imperative of Cumulative Progress, Martinus Nijhoff Publishers, Leiden-Boston 2012, 30.}
the RSPO can suspend their members, this initiative cannot force its members to give compensation to the complainants.\(^{358}\) There is a concern that if the RSPO terminates a company from its membership, it will generate a loss of influence towards them.\(^{359}\) Moreover, since the RSPO’s funding rely on its members, there is a concern that the members would not get any severe sanction if they conduct violations, in order to maintain their RSPO membership.\(^{360}\) This fear has created hesitations for the civil society to bring their cases to the RSPO.

2) Organizational Capacity of the RSPO

There is a concern that the RSPO’s personnel and capacity are insufficient for dealing with the complaints received.\(^{361}\) Critiques argue that the Secretariat has failed to exhibit professionalism in their manner of handling complaints, and their response has been slow.\(^{362}\) It can also be indicated that there is a lack of proactivity and insufficient communication from the Complaints Coordinator.\(^{363}\) Some parties that have the experience of filing a complaint explained that the RSPO is unresponsive and defensive of the corporations.\(^{364}\) The heavy workload of the Complaints Coordinator, due to the high volume of cases and their level of complexities, might cause the RSPO Secretariat to be unresponsive and defensive in dealing with the cases.

There have been criticisms stating that the RSPO’s Complaints-System is not effective in handling resolutions due to the huge backlog of cases, very low success rate, and undue delays.\(^{365}\) The RSPO complaint procedure constitutes a prolong process.\(^{366}\) This backlog of unresolved complaints cause the long-standing cases in the RSPO Secretariat.\(^{367}\) One of the reasons for this is inefficient response of the RSPO Secretariat in resolving the complaints received. Additionally, the existence of the backlog of cases

\(^{358}\) Interview with Andriko Otang, Director of TURC, 5\(^{th}\) of March 2020, (Online Interview) and Interview with Hotler Parsaoran, Sawit Watch’s Labor Specialist, 28\(^{th}\) February 2020 (Online Interview).

\(^{359}\) Kate Macdonald and Samantha Balaton-Chrimes, “A Review of the Complaints System of the Roundtable on Sustainable Palm Oil.”

\(^{360}\) Ibid.


\(^{362}\) Ibid.

\(^{363}\) Ibid.

\(^{364}\) Ibid.

\(^{365}\) Grassroots, Beyond Certification: Reforming RSPO Complaints System to Meet Stakeholder Expectation, 2013.

\(^{366}\) Interview with Andriko Otang, Director of TURC, 5\(^{th}\) of March 2020, (Online Interview) and Interview with Herwin Nasution, Director of Indonesian Plantations Trade Union (SERBUNDO), Utrecht, 7\(^{th}\) of March 2020.

in the RSPO’s Complaint System has resulted in low trust and confidence among the community.\textsuperscript{368}

3) Financial and Human Resources of the RSPO

The Complaints Panel also lacks financial resources.\textsuperscript{369} The RSPO is funded by international governmental organizations, governmental and NGOs, and its membership funds.\textsuperscript{370} The nature of employment in RSPO is voluntary, and the funding is limited since it is gathered from RSPO’s members. It is challenging to provide full-time jobs for all of the employees.\textsuperscript{371} As a result, the number of Complaints Panel members depend on the voluntariness of the members’ organizations.\textsuperscript{372} Thus, human resources and capacity in the RSPO’s Secretariat and Complaints Panel is also considered as RSPO’s weakness.

Moreover, considering the fact that the RSPO require funding from its members, not all the companies have financial resources to retain membership and achieve the RSPO’s certification.\textsuperscript{373} Therefore, there will only be a limited number of companies against which a complaint can be lodged because they are not certified under the RSPO.

4) RSPO’s Investigation and Monitoring System

Critiques argue that the MSIs often have soft monitoring mechanism, and this happened to the RSPO.\textsuperscript{374} There has been criticism towards the RSPO's past performance in relation to prevention, regular monitoring, and due diligence mechanism.\textsuperscript{375} The RSPO’s monitoring activities for mediation or dispute resolution or post-settlement processes are considered passive and weak.\textsuperscript{376} This passiveness occurred since the RSPO did not have the resources to conduct “on-site investigations” which makes the role of RSPO in conducting independent investigation activities is relatively

\textsuperscript{368} Kate Macdonald and Samantha Balaton-Chrimes, “A Review of the Complaints System of the Roundtable on Sustainable Palm Oil.”
\textsuperscript{369} Ibid.
\textsuperscript{370} Ibid, 15.
\textsuperscript{371} Ibid.
\textsuperscript{372} Ibid.
\textsuperscript{373} Ibid.
\textsuperscript{374} Ibid.
\textsuperscript{375} Kate Macdonald and Samantha Balaton-Chrimes, “A Review of the Complaints System of the Roundtable on Sustainable Palm Oil.”
A group of labor and environmental rights coalition doubted whether the RSPO audit system was appropriate in finding out the occurrence of forced labor practice in some companies.\(^{378}\)

In 2018, RSPO Investigation and Monitoring Unit which aims to conduct investigation and facilitate risk mitigation was established.\(^{379}\) In accommodating the previous criticism towards RSPO’s past performance, this unit has implemented post-investigation and post-complaint monitoring mechanisms. Furthermore, the RSPO is currently developing an innovative “workers voice” technology, a mobile-based communication with the workers, to monitor labor conditions in companies and their supply chains.\(^{380}\)

5) The Complaints-System and RSPO Auditor’s Independence

By having an independent mechanism, an MSI can gain trust from the relevant stakeholders and considered to be legitimate. Nevertheless, the independence of RSPO’s complaint system is criticized. Kusumaningtyas argues that there is no separation between the Board of Governors and the Complaints Panel of the RSPO, which creates a possibility for the people who lead the RSPO to deal with complaints.\(^{381}\) For example, when a big company buyer is sitting on the Board while also dealing with complaints, it can undermine the impartiality of the Complaints Panel.\(^{382}\) Moreover, there is a possibility of a conflict of interest in the composition of the Complaints Panel which applies in circumstances where the producer companies is the defendant and the retailer is the panelist.\(^{383}\) This position could cause prejudice that the panelist will not be impartial to the defendant.\(^{384}\)

The RSPO has hired professional auditors that were paid by the companies. However, critiques argue independence of auditors and assessors was weak since the certification of a company might be assessed by the certification body that is paid by

\(^{377}\) Ibid.  
\(^{378}\) Ibid.  
\(^{379}\) RSPO Website, Investigation and Montoring Unit, [https://rspo.org/imu](https://rspo.org/imu) accessed 29 June 2020  
\(^{380}\) Roundtable on Sustainable Palm Oil, Impact Report 2019, 34, [https://rspo.org/key-documents/impact-reports](https://rspo.org/key-documents/impact-reports) accessed 1 July 2020. In 2019, RSPO then collaborated with Ulula and Wilmar International Limited (Wilmar) to initiate a pilot programmed using this technology.  
\(^{381}\) Ibid.  
\(^{382}\) Ibid.  
\(^{383}\) Ibid.  
\(^{384}\) Ibid.
the company itself.\textsuperscript{385} For instance, a Singaporean palm oil company was audited by the PT. TUV Rheinland, which the latter was paid by the former.\textsuperscript{386} In fact, although were paid by the companies, the auditors’ credibility has been examined because they have professional certification.\textsuperscript{387}

b. Accessibility of RSPO

1) Access to Information regarding RSPO

A grievance mechanism is only effective to the extent that its intended users know of its existence.\textsuperscript{388} Nevertheless, the palm oil workers' understanding of the RSPO’s Complaints-System is lacking. Some trade unions explained that they did not understand about the RSPO complaint and grievance mechanism because the procedures are too complicated for them to comprehend.\textsuperscript{389} There was a lack of socialization from RSPO's Secretariat regarding the complaint system because of the limited RSPO’s capacity in providing community outreach and capacity building.\textsuperscript{390}

Since palm oil plantations are located in remote areas, the workers have limited access to information regarding the complaint mechanism under the RSPO except for the fact that they have friendly relations with NGOs.\textsuperscript{391} The workers claimed that there were only few NGOs such that were able to assist them in filing complaints to the RSPO.\textsuperscript{392} Although the relationship with NGOs is beneficial for the workers or the affected communities, the communities have to confirm whether the organization has their own agenda or not considering that sometimes NGOs also have different expectations and perceptions towards the cases.\textsuperscript{393} In raising the workers’ awareness, the RSPO has made a Community Outreach Program.

\textsuperscript{385} Kate Macdonald and Samantha Balaton-Chrimes, “A Review of the Complaints System of the Roundtable on Sustainable Palm Oil.”
\textsuperscript{386} Ibid.
\textsuperscript{387} For example, see TUV Rheinland website: https://www.tuv.com/indonesia/en/accredited-personnel-certification.html They are Certified qualification according to ISO/IEC 17024 which confirms that they have been examined by a personnel certification body accredited in line with this standard.
\textsuperscript{388} MSI Integrity, \textit{Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance}, July 2020.
\textsuperscript{389} Kate Macdonald and Samantha Balaton-Chrimes, “A Review of the Complaints System of the Roundtable on Sustainable Palm Oil.”
\textsuperscript{390} Ibid.
\textsuperscript{391} Ibid.
\textsuperscript{392} Ibid.
\textsuperscript{393} Ibid.
2) Costs for Handling the Dispute

Similar to the other remedy mechanisms, a dispute needs a huge amount of funds for doing the research, making proper documentation, and managing of the process.394 Since the palm oil workers are suffering for poor working conditions, they do not have adequate funding, and they need assistance from the NGOs. Nevertheless, NGOs also need funding to conduct international campaigns to get the RSPO's attention, and NGO's funding depends on the donors.395 The RSPO has already established a Trust Fund committee to provide financial assistance, yet there is a requirement that the NGOs should be registered under the law.396 Hence, if the NGO is not registered—for example, if the NGO is new and small—it could not receive fund assistance from the RSPO.

3) Language Barriers for the Workers

Language barriers may hamper access to remedy because they may create an informal obstacle for Indonesian palm oil workers to access the remedy.397 The RSPO website is only available in English and Chinese while the correspondence with the Secretariat should be in English, with only some complaints-related documents being available in Indonesian version.398 This situation creates challenges for the workers to be informed about the complaints mechanism or the ongoing complaints and the complaints decisions.399 One of the complainants admitted that the English materials provided in the website undermined the active participation of the complainants in the RSPO.400 Fortunately, the RSPO offers a translation service for the complainants who need it.401

394 Ibid.
395 Ibid.
399 Ibid, 36.
401 Ibid.
4) Intimidation and Retaliation to the Complainants

As provided previously, threats, violence, and fear of reprisals to the complainants serve as a barrier when they intend to file a complaint through a grievance mechanism, including through RSPO.402 Many workers have to face the risk of employment termination, especially because they work under precarious working conditions.403 The fear of intimidation and retaliation have impaired their accessibility to file a complaint to the RSPO’s grievance mechanism.404 In preventing this issue, the RSPO has provided the guarantee of anonymity to the complainant explicitly through its policy, to protect the complainants against the risk of intimidation and retaliation.405

c. Predictability of the RSPO

Predictability of MSIs is often impaired when there is a lack of procedures setting forth specific steps, timeframes, and the available possible outcomes.406 Most MSIs do not provide a clear timeframe for the complaint process which makes them unpredictable.407 In RSPO, the timeline for the cases should to be resolved is clearly stipulated in the regulation.408 However, some complaints that were made to the RSPO several years ago still remained unresolved.409 Several cases have been postponed for years without any decision being reached.410 Subsequently, there is a lack of consistency and predictability in RSPO’s treatment within different cases and issues.411 In some cases where the RSPO choose to address only a few issues from the complaints, the RSPO provided no clear justification on such decision.412 There has been inconsistencies on

402 Ibid., 170.
403 Ibid.
404 Ibid.
405 RSPO Policy on Human Rights Defenders, Whistleblowers, Complainants and Community Spokespersons
406 Ibid.
408 RSPO Complaints and Appeal Procedure, Article 12.3.
412 Ibid.
RSPO’s decisions with similar complaints, in one case, the RSPO expelled the company from the membership, but in another case, the RSPO did not give the same sanctions.413

d. Equitability between Complainants and Corporations

Equitability means ensuring that power imbalances existed between the parties and the complainants. Many MSIs grievance procedures are not equitable because they are confusing, vague and complex. Yet, they offer little attention on access to information, advice and expertise.414 This phenomenon also happens in the RSPO’s complaint system.415 Considering the workers’ lack of literacy, it is difficult for them to understand about the complaint system through its website. Without a legal assistance, the complainant might be discouraged to file a complaint to the MSIs because is not easy for them to understand the guidance on how to file a complaint and represent their allegations.416 They have to know exactly which of the standards they violated, yet these standards are long and complex, which cannot be easily understood by the complainant.417

e. Transparency in the RSPO

In order to be legitimate, an MSI’s grievance mechanism should be transparent.418 Transparency aims to give the right holders the information on how to use the mechanism, handle the complaints, and receive the outcomes of the complaints.419 RSPO’s level of transparency is relatively high in comparison to the other MSIs since it has provided lists of the cases’ background information and the decisions of over 100 cases.420 The RSPO publishes the number of complaints filed and the number of complaints that have been resolved. Nevertheless, the RSPO has not provided information on whether the remedy has sufficiently been received by the complainants or not.421 To determine whether the

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413 Ibid.
414 Ibid.
415 Kate Macdonald and Samantha Balaton-Chrimes, “A Review of the Complaints System of the Roundtable on Sustainable Palm Oil”.
416 Ibid.
417 Ibid.
418 Ibid., 28.
419 MSI Integrity, Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance, July 2020, 159. According to the UNGPs, transparency is required to build confidence on the effectiveness of a grievance mechanism.
420 MSI Integrity, Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance, July 2020, 175.
421 Ibid
remedy has been sufficiently provided to the rights-holder or not is difficult because it every individual case has to be read.\textsuperscript{422}

\textbf{f. Rights-compatibility of the RSPO}

In order to fulfil the requirement of “rights-compatibility”, all the complaints shall be addressed by respecting the right to effective remedy.\textsuperscript{423} The RSPO’s standards are in accordance with international conventions such as ILO conventions. This means, the grievances shall provide the procedures that ensure that all the complaints have received adequate remedies.\textsuperscript{424} However, since the enforcement mechanism of the RSPO is weak and the information on whether the remedy has been sufficiently received by the rights-holder or not is absent, it is difficult to guarantee that all the rights holder are provided with sufficient remedy. In several cases, the workers did not get adequate remedies.\textsuperscript{425} Referring to MSI Integrity Report, only a few MSIs succeeded in providing adequate remedies directly to the rights holders and provide a report analysis as a source of continuous learning that will be discussed in the subsequent argument.\textsuperscript{426}

\textbf{g. RSPO as a Source of Continuous Learning}

As a source of continuous learning, a grievance mechanism should provide a procedure that requires analysis of complaints by identifying lessons to improve the mechanism.\textsuperscript{427} According to McDonald, the RSPO has taken some concrete measures to in providing a source of continuous learning.\textsuperscript{428} In preventing a future harm from occurring, the RSPO obliges the Impacts and Evaluation Division in cooperation with the Complaints Panel to create the RSPO Impact Reports.\textsuperscript{429} These documents are created to put lessons learned concerning dispute handling in a record and to prevent the occurrence of harms in the future.\textsuperscript{430}

\begin{thebibliography}{10}
\bibitem{422} Ibid.
\bibitem{423} Ibid.
\bibitem{424} Ibid.
\bibitem{425} David Kinley, “Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan”, 2015.
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\bibitem{427} Ibid.
\bibitem{428} Kate Macdonald and Samantha Balaton-Chrimes, “A Review of the Complaints System of the Roundtable on Sustainable Palm Oil”, 59.
\bibitem{429} Ibid.
\bibitem{430} Ibid.
\end{thebibliography}
Sub-Conclusion

In providing remediation, Komnas HAM as NHRI can receive complaints from the affected communities, including the palm oil workers. In terms of independency and its establishment by law, they can be considered as legitimate to a large extent. However, considering there is no strong enforcement by the institution, its recommendations are often being ignored. The geographically remote areas of those workers make their accessibility is limited. Their access to information is also inadequate because of the lack of literacy and legal assistance. There are also risks of termination of employment. Fortunately, Komnas HAM has stipulated a clear timeline for mediation. Nevertheless, the practice shows that some cases remained unsettled which makes its predictability is questionable. Considering its pluralistic composition, Komnas HAM can be considered equitable. However, it is difficult to find legal experts for the workers which creates power imbalance. Komnas HAM is transparent enough, to the extent that it still keeps the victims’ confidentiality to protect them, if needed. It has a mandate to promote human rights in accordance with international standards which shows rights-compatibility. Still, it does not have an explicit mandate to deal with corporate-related abuses yet. Subsequently, their unbinding recommendations makes it difficult to guarantee the remedies for the victims. Lastly, the institution can be considered as a source of continuous learning because they have dissemination and education functions. In sum, in light of the effectiveness criteria under UNGPs 31, it can be concluded that Komnas HAM’s legitimacy, accessibility, predictability, and equitability are still questionable, but its transparency is good. Its mandate is rights-compatible, although there is no guarantee that the remedies outcome is rights-compatible. It can be considered a source of continuous learning.

The RSPO has a Complaints-System and Appeal to provide remedy for the workers. However, its legitimacy is questionable because critiques are often made to its voluntary nature, creating trust issues in the affected communities. Critiques are also directed to its investigation and monitoring system. The independence of Complaints-System and the auditor are also doubted by the labor coalition. Considering their remote location, their accessibility to the RSPO is deemed as difficult. Lack of literacy, inadequate financial resources, and intimidation also hinder them in accessing the remedy. In addition, although there is a clear time-frame in the RSPO complaint system, the complaints can be processed for years. Equitability is difficult to reach because of their lack of literacy and difficulty in finding legal experts. The RSPO’s transparency is relatively high
that everything can be accessed online, yet there is no documentation on whether the remedy has been sufficiently received or not. The RSPO standards are rights compatible, but it is difficult to guarantee that the victims will get adequate remedy. Lastly, the RSPO provides an Annual Report and Impact report in providing a source of continuous learning. In sum, in light of the effectiveness criteria under UNGPs 31, it can be concluded that RSPO’s legitimacy, accessibility, predictability, and equitability are questionable, but its level of transparency is high. The RSPO’s P&C is rights-compatible with ILO conventions, yet there is no guarantee that complainants will get sufficient remedy. Lastly, the RSPO can be considered as a source of continuous learning.
Chapter V
Conclusion

Many palm oil workers in Indonesia are working under poor working conditions which have made them prone to experience labor and human rights violations. Under international law, these palm oil workers under poor working conditions shall have access to remedy. However, the judicial remedies in Indonesia have several shortcomings because they are expensive, prolonged, and having complex mechanisms. Thus, those workers experience difficulty in finding sufficient access to judicial remedy. As an alternative, non-judicial remedies, especially NHRIs and MSIs are considered as the most accessible grievance mechanism in the palm oil industry by the participants using it. In assessing whether or not those mechanisms are providing sufficient remedy for the palm oil workers, the author used the effectiveness criteria under the UNGPs Principle 31.

According to several articles and reports, NHRIs and MSIs play an essential role in providing remediation to the victims of business-related human rights abuses. Both of these mechanisms play an important role in supplementing and complementing the judicial mechanism. They have several advantages and disadvantages. NHRIs are independent institutions that contain pluralistic composition. In providing remediation, they offer a complaint system that can provide mediation for both parties under a dispute and provide recommendations to the stakeholders. NHRIs can contribute in de-escalating human rights abuses. However, there are some challenges that limit NHRI in providing the remedy. These challenges include weak enforcement mechanism and proliferation of institutions that do not comply with PP.

MSIs are considered the most accessible NSBGM because they create social pressure on the stakeholders. Furthermore, they have a significant role in filling the governance gaps that exist in the domestic law. Nevertheless, there are many criticisms in regards to its voluntary character. Similar to NHRIs, they also do not have binding legal enforcement. In addition, their Complaints-System mechanism is considered complicated and there is a skepticism that it will create a power imbalance between the corporations and the affected communities. Critiques also come to MSIs’ organizational capacity and financial resources.

Komnas HAM provides access to remedy for palm oil workers through its complaint system. It is legitimate because it is independent and established by law. Nevertheless, its recommendations are not binding and often being ignored by the parties receiving it. The number
of palm oil workers bringing their case to Komnas HAM are decreasing within the past five years. Considering the remote area of the palm oil workers, their accessibility to Komnas HAM is limited since their access to information is also limited. Moreover, there are risks of contracts being terminated by the corporations. Komnas HAM provides a clear timeline for mediation, yet practice shows that many cases remain unsettled for years. Komnas HAM’s composition is equitable, but there might be power imbalance between the parties considering its difficulty in finding legal assistance. Komnas HAM’s transparency is good, yet they still keep the victims’ anonymity to protect them. Its mandate is in accordance with PP, but there is no explicit mandate to deal with corporate abuses. Komnas HAM offers a source of continuous learning through its dissemination and education function.

The RSPO also offers a Complaint-System to provide remedy to the palm oil workers. Nevertheless, the RSPO’s legitimacy is often criticized because of its voluntary membership’s nature. Critiques also made to its organizational capacity because of the prolonged process due to the backlog of cases. Many parties doubt the independence of its complaint system and auditor. Complainants’ accessibility is difficult because the procedure is complicated and requires legal assistance. There is a clear timeline regarding the dispute which shows its predictability, but its equitability still difficult to reach. The RSPO’s transparency is high compared to other MSIs. Moreover, their standards are compatible with ILO conventions and the UNGPs but there is no guarantee that it provides rights-compatibility to the complainants. They also provide an annual and impact reports as a source of continuous learning.

As a recommendation, Indonesian government should entrust Komnas HAM more power in providing access to remedy for victims of corporate abuses such as the palm oil workers. For example, Indonesian government could amend the current Human Rights Act and offer Komnas HAM the mandate to deal with corporate-related abuses and the capability to give binding recommendations to the parties. The RSPO should review its complaint system so there will be no backlog of cases and trust issues towards its independency. The government should also encourage corporations, government, NGOs and the RSPO to conduct periodical meeting to exchange information regarding the current obstacles for the victims in accessing remedy and how to overcome those obstacles. Lastly, capacity building and awareness raising should be given to the palm oil workers in the remote areas so they can have adequate access to information to remedy.
## APPENDIX

### PALM OIL WORKERS CASES 2015-2019

**HUMAN RIGHTS DEVELOPMENT BUREAU, KOMNAS HAM**

<table>
<thead>
<tr>
<th>No.</th>
<th>Year</th>
<th>Total Complaints in Indonesia</th>
<th>Complaints in Sumatera and Kalimantan</th>
<th>Complainants</th>
<th>Parties Reported</th>
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<td></td>
<td></td>
<td></td>
<td>NGOs</td>
<td>Organizations</td>
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<tr>
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<td>10</td>
<td>7</td>
<td>5</td>
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<tr>
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<td>2019</td>
<td>6</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

**Notes:**
Complaints made for human rights violations such as right to welfare, right to personal freedom, right to justice, and right to life.
Complaints are made for acts such as union busting, unilateral termination of employment, underpaid wages, lack of health tools protection, criminalizations, intimidation, violence.
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