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# Business and Human Rights in Indonesia's Nickel Industrialization: Legal Accountability at Weda Bay Industrial Park

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## Abstract

*Indonesia's nickel downstreaming policy has produced large integrated industrial estates, of which the Weda Bay Industrial Park in Central Halmahera is the most prominent, yet the legal duties owed to the communities beside such estates remain dispersed across mining, environmental, industrial-estate, coastal, corporate, and human rights statutes administered by different authorities. This article asks how Indonesian law allocates and enforces duties to protect environmental and human rights in nickel industrial estates, and how far community-level evidence can discharge the evidentiary requirements of those duties. The study uses normative legal research combining statutory, conceptual, case, and comparative approaches, supported by a survey of 250 residents of Lelilef, Sagea, and Kobe analysed through partial least squares structural equation modelling. Protection proves normatively available but institutionally indeterminate: licensing centralization under Law No. 3 of 2020 and the Job Creation Law separated permitting from field supervision; the narrowing of public involvement and the deletion of the no-fault wording from strict liability weakened two principal accountability routes; social and environmental responsibility is substituted for human rights due diligence; and consent has no statutory procedure comparable to that of the Philippines. Perception evidence corroborates salience, environmental quality being the strongest correlate of public assessment, but cannot establish breach. The article recommends anchoring due diligence in the licensing instruments, restoring the no-fault formula with express joint responsibility for estate operators, enacting a certified consent procedure, establishing a joint central and provincial supervisory unit with mandatory publication of inspection results, and recognizing a layered grievance architecture.*

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## Introduction

Indonesia has converted its control over the world's largest nickel reserves into an industrial strategy. Article 102 and Article 103 of Law No. 4 of 2009 on Mineral and Coal Mining, as amended by Law No. 3 of 2020 and most recently by Law No. 2 of 2025, oblige permit holders to increase the added value of minerals through domestic processing and refining[1]. The resulting restriction on ore exports was found inconsistent with Article XI:1 of the General Agreement on Tariffs and Trade 1994 by a World Trade Organization panel, a ruling that remains unresolved because appellate review is unavailable[2]. Domestically the policy has produced integrated industrial estates that combine mining, smelting, power generation, and port operations in a single spatial unit. The Weda Bay Industrial Park (IWIP) in Central Halmahera, North Maluku, is the most prominent of these estates, and the communities of Lelilef, Sagea, and Kobe now live immediately beside an industrial complex whose legal governance is distributed across several statutes and several levels of government[3].

The normative vocabulary for assessing such a situation is now well settled. The United Nations Guiding Principles on Business and Human Rights organize the field around the State duty to protect, the corporate responsibility to respect human rights through ongoing due diligence, and access to effective remedy[4]. Indonesia has adopted that architecture through Presidential Regulation No. 60 of 2023 on the National Strategy for Business and Human Rights[5]. Adoption at the level of a presidential regulation, however, raises a question of legal character rather than of policy intent. A presidential regulation occupies a defined place in the hierarchy of norms under Article 7 of Law No. 12 of 2011, but it cannot create criminal liability, displace a statutory licensing regime, or furnish an independent cause of action for an individual whose rights have been affected. The literature on the Guiding Principles has long warned that their domestic reception tends to be absorbed into pre-existing corporate social responsibility practice, which converts a duty of conduct into a programme of expenditure[6].

Indonesian law does supply substantive protection. Article 28H(1) of the 1945 Constitution guarantees the right to a good and healthy environment, Article 28A protects life, Article 28D(1) guarantees legal certainty, and Article 33(3) places natural resources

[1] Republic of Indonesia, Law No. 4 of 2009 on Mineral and Coal Mining, arts. 102–103, as amended by Law No. 3 of 2020 and Law No. 2 of 2025.
[2] World Trade Organization, Panel Report, *Indonesia — Measures Relating to Raw Materials*, WT/DS592/R (circulated November 30, 2022), paras. 7.37–7.59.
[3] Desi Angraini Salauwe, August E. Pattiselano, and Junianita F. Sopamena, "The Impact of IWIP Company on the Socio-Economic Community in Lelilef Village, Weda Tengah District, Central Halmahera Regency, North Maluku Province," *International Journal of Integrative Sciences* 4, no. 6 (2025): 1273–1306, https://doi.org/10.55927/ijis.v4i6.345.
[4] United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (New York and Geneva: United Nations, 2011), HR/PUB/11/04, principles 1, 11–24, and 25–31.
[5] Republic of Indonesia, Presidential Regulation No. 60 of 2023 on the National Strategy for Business and Human Rights.
[6] Florian Wettstein, "Betting on the Wrong (Trojan) Horse: CSR and the Implementation of the UN Guiding Principles on Business and Human Rights," *Business and Human Rights Journal* 6, no. 2 (2021): 312–25, https://doi.org/10.1017/bhj.2021.6.

under state control for the greatest benefit of the people[7]. Article 65(1) of Law No. 32 of 2009 on Environmental Protection and Management restates the environmental right as a human right, and the statute supplies environmental approval, supervision, administrative sanction, strict liability, and standing provisions[8]. Transparency is governed by Law No. 14 of 2008 on Public Information Disclosure, corporate obligations by Article 74 of Law No. 40 of 2007 on Limited Liability Companies and Government Regulation No. 47 of 2012, the industrial estate itself by Law No. 3 of 2014 on Industry and Government Regulation No. 142 of 2015, and the adjoining marine space by Law No. 27 of 2007 as amended by Law No. 1 of 2014[9]. The difficulty is not an absence of norms. It is that the norms are dispersed, their duty-bearers are differently identified, and their enforcement is divided between authorities whose competences were rearranged by recent reform.

That rearrangement is the subject of a developing body of Indonesian legal scholarship. Comparative work on mining regulation in Indonesia and Malaysia shows that legal certainty in the sector depends less on the density of rules than on the predictability of the institution that applies them[10]. Analysis of the constitutional consistency of the Job Creation Law demonstrates how the recentralization of licensing altered the relationship between national policy and regional autonomy without a corresponding reallocation of supervisory capacity[11], and work on jurisdictional disputes between central and local government in coal mining shows that the resulting ambiguity is operational rather than merely theoretical[12]. Earlier scholarship on the norming of environmental permit supervision anticipated the point, arguing that a permit without an enforced supervisory duty transfers risk to the surrounding population[13].

A second strand concerns the rights of the communities themselves. The recognition of customary forest as distinct from state forest, and the constitutional protection of traditional communities, establish that community interests in a resource landscape are

[7] Republic of Indonesia, Constitution of 1945, arts. 28A, 28D(1), 28H(1), and 33(3)–(4).
[8] Republic of Indonesia, Law No. 32 of 2009 on Environmental Protection and Management, arts. 22–24, 65, 71–72, 76–83, 87–88, and 91–92, as amended by Law No. 6 of 2023; and Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management.
[9] Republic of Indonesia, Law No. 14 of 2008 on Public Information Disclosure; Law No. 40 of 2007 on Limited Liability Companies, art. 74; Government Regulation No. 47 of 2012 on Corporate Social and Environmental Responsibility; Law No. 3 of 2014 on Industry; Government Regulation No. 142 of 2015 on Industrial Estates; and Law No. 27 of 2007 on the Management of Coastal Zones and Small Islands, as amended by Law No. 1 of 2014.
[10] Nabilla Desyalika Putri, Ellectrananda Anugerah Ash-shidiqqi, and Mutiara Dwi Sari, "Legal Certainty in Mining Regulation: A Comparative Study of Indonesia and Malaysia," *Administrative and Environmental Law Review* 7, no. 2 (2026): 139–54, https://doi.org/10.25041/aelr.v7i2.4589.
[11] Ade Yuliasih, I Gde Pantja Astawa, Sarifuddin Suding, and Chami Yassine, "Constitutional Consistency of Indonesia's Job Creation Law and Its Impact on Regional Autonomy," *Jambura Law Review* 8, no. 1 (2026): 190–209, https://doi.org/10.33756/jlr.v1i1.34262.
[12] Hartati and Zainal Amin Ayub, "Jurisdictional Disputes between Central and Local Governments in the Management of Coal Mining," *Sriwijaya Law Review* 8, no. 2 (2024): 269–85, https://doi.org/10.28946/slrev.Vol8.Iss2.3003.pp269-285.
[13] Nurul Listiyani, Muzahid Akbar Hayat, and Subianta Mandala, "Penormaan Pengawasan Izin Lingkungan dalam Pencegahan Pencemaran dan Kerusakan Lingkungan Hidup dalam Eksploitasi Sumber Daya Alam," *Jurnal Media Hukum* 25, no. 2 (2018): 217–27, https://doi.org/10.18196/jmh.2018.0116.217-227.

legal interests rather than social considerations[14]. Scholarship on licensing principles grounded in social sensitivity, on the effect of mining regulation upon indigenous peoples, and on the coexistence of state and customary law in resource governance converges on the conclusion that participation and consent operate as conditions of lawful decision-making[15]. A parallel literature on the integrity of the licensing process shows why that condition is fragile, documenting corruption risk in the allocation of mining permits and the conflict between mining law and anti-corruption law in the extractive sector[16].

What this scholarship has not yet produced is a framework that connects evidence of experienced harm to legally determinate duties in the specific setting of an integrated industrial estate. The estate form matters legally because it superimposes an industrial-estate licence on mining permits held by separate legal persons, so that the question of who owes which duty to whom cannot be answered by reference to a single permit holder. The aim of this article is therefore to establish, for each protected interest implicated by nickel industrialization at Weda Bay, the governing norm, the identifiable duty-bearer, the evidence that would discharge or breach the duty, and the institutional response available when it is breached; and to test that framework against comparable regimes in Southeast Asia and in the downstream markets that now impose their own due diligence requirements. The significance of the exercise is that it replaces an indeterminate contest between economic benefit and social grievance with a set of verifiable legal propositions, and in doing so it specifies what regulators, companies, and courts would each have to establish before any conclusion about compliance or violation at IWIP could properly be drawn.

## Problem Statement

The problem is not that nickel industrialization generates both benefit and grievance. It is that Indonesian law responds to that situation through duties whose allocation has become indeterminate. Three developments produced the indeterminacy. First, Law No. 3 of 2020 transferred mineral licensing to the central government while leaving environmental field supervision substantially with provincial authorities, separating the authority that grants an approval from the authority that observes its performance.

[14] Constitutional Court of the Republic of Indonesia, Decision No. 35/PUU-X/2012 (May 16, 2013).

[15] Zaka Firma Aditya and Sholahuddin Al-Fatih, "Legal Protection of Indigenous People's Rights through Strengthening the Licensing Principles Based on Social Sensitivity," *Journal of Indonesian Legal Studies* 6, no. 1 (2021): 1–34, https://doi.org/10.15294/jils.v6i1.44671; Mohammad Jamin, Abdul Kadir Jaelani, Mulyanto Mulyanto, Reza Octavia Kusumaningtyas, and Duc Quang Ly, "The Impact of Indonesia's Mining Industry Regulation on the Protection of Indigenous Peoples," *Hasanuddin Law Review* 9, no. 1 (2023): 88–105, https://doi.org/10.20956/halrev.v9i1.4033; and I Gusti Agung Mas Rwa Jayantiari, I Nyoman Prabu Buana Rumiartha, I Gst Pt Bagus Suka Arjawa, I Gusti Ngurah Dharma Laksana, and Anak Agung Sagung Ngurah Indradewi, "The Rights of Customary Law Communities to Resources: The Relationship of Coexistence of State Law and Customary Law," *Jurnal IUS Kajian Hukum dan Keadilan* 13, no. 1 (2025): 187–98, https://doi.org/10.29303/ius.v13i1.1329.

[16] Erma Rusdiana, Lindra Darnela, Muwaffiq Jufri, Paul Atagamen Aidonojie, and Souad Ezzerouali, "The Potential for Corporate Corruption in Mining Licensing Policies for Religious Organizations in Indonesia," *Lex Scientia Law Review* 9, no. 2 (2025): 1587–1636, https://doi.org/10.15294/lslr.v9i2.21551; and Marolop Pandiangan, Harkristuti Harkrisnowo, and Febby Mutiara Nelson, "The Conflict between Mining Law and Anti-Corruption Law in Indonesia's Extractive Sector: A Study of Legal Justification and Judicial Reasoning," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 9, no. 1 (2026): 111–26, https://doi.org/10.24090/volksgeist.v9i1.14411.

Second, Law No. 11 of 2020 on Job Creation, the substance of which was carried forward by Law No. 6 of 2023, narrowed public involvement in environmental assessment to directly affected communities and removed from the strict liability provision the words that had excused claimants from proving fault. Third, the industrial estate form distributes operational conduct among an estate manager and multiple tenant companies, each a separate legal subject, while the population experiences their effects as a single aggregate. The result is that a community can describe a harm with precision and still be unable to identify the norm, the duty-bearer, and the forum through which it may be addressed.

Existing research approaches this gap from one side or the other. Empirical studies measure social and environmental impact without attributing it to a legal duty, while doctrinal studies analyse mining and environmental law without evidence of how the governed population experiences the regime. Neither produces the intermediate step that legal practice requires: a statement of what must be proved, by whom, and before which institution. Nor has the literature examined how the transnational due diligence obligations now attached to battery supply chains interact with Indonesian licensing, although those obligations have become a practical condition of market access for processed nickel.

This article accordingly addresses a single question: how does Indonesian law allocate and enforce duties to protect environmental and human rights in nickel industrial estates, and to what extent can community-level evidence discharge the evidentiary requirements of those duties? The question is pursued through three subsidiary inquiries. The first asks which duties the constitutional, environmental, mineral, industrial-estate, corporate, and human rights instruments impose, and upon whom. The second asks how the recentralization of licensing, the narrowing of participation, and the amendment of strict liability have altered the enforceability of those duties. The third asks what evidentiary weight perception-based community evidence can bear in supervisory, civil, and non-judicial proceedings. The novelty of the study lies in combining these inquiries into an accountability matrix, benchmarking that matrix against consent and due diligence regimes in the Philippines, Malaysia, Thailand, and the European Union, and testing its salience against primary survey evidence from the affected villages.

## Methods

This study is normative legal research. Its object is the positive law governing environmental and human rights protection in nickel industrial estates, and its purpose is prescriptive: to determine what the law requires and where it fails to supply a determinate requirement. Four approaches are combined. The statutory approach examines the constitutional provisions, statutes, and implementing regulations that constitute the governing regime. The conceptual approach works with the doctrines of due diligence, strict liability, legal standing, free, prior and informed consent, and corporate legal personality. The case approach examines Constitutional Court and Supreme Court decisions that have settled the meaning of the relevant provisions. The comparative approach places the Indonesian regime beside the consent and due diligence

regimes of selected Southeast Asian jurisdictions and of the European Union, which is the principal downstream market for processed nickel.

Primary legal materials comprise the 1945 Constitution; Law No. 32 of 2009 as amended by Law No. 6 of 2023; Law No. 4 of 2009 as amended by Law No. 3 of 2020 and Law No. 2 of 2025; Law No. 3 of 2014; Law No. 40 of 2007; Law No. 39 of 1999 on Human Rights; Law No. 14 of 2008; Law No. 27 of 2007 as amended by Law No. 1 of 2014; Government Regulations No. 22 of 2021, No. 47 of 2012, and No. 142 of 2015; Presidential Regulation No. 60 of 2023; Supreme Court Regulation No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases; and the decisions of the Constitutional Court and the Supreme Court cited in the analysis. Secondary materials comprise peer-reviewed legal scholarship, the Guiding Principles and their interpretive guidance, the United Nations Declaration on the Rights of Indigenous Peoples, the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises, and the European instruments on corporate sustainability due diligence and batteries. Legal materials were analysed through grammatical, systematic, and teleological interpretation, and the results were organized as an accountability matrix linking each protected interest to its norm, duty-bearer, evidentiary requirement, and institutional response.

A secondary empirical component supports the doctrinal analysis. A cross-sectional survey was administered to 250 adult residents of Lelilef, Sagea, Kobe, and immediately surrounding settlements in Central Halmahera Regency. Respondents assessed socio-economic quality, socio-cultural change, environmental quality, and corporate human rights compliance, together with their overall perception of the industrial park, on five-point scales. Responses were analysed descriptively and through partial least squares structural equation modelling (PLS-SEM), an approach suited to perception constructs and modest samples[17]. Sampling followed a stratified design across the settlements, with the limitations inherent in such designs in dispersed rural populations[18].

The function of the empirical component is strictly defined, and the limits of that function are part of the method rather than a concession made after the fact. Perception data identify which protected interests are most salient to rights-holders and therefore which legal duties warrant examination first. They do not establish that an environmental quality standard has been exceeded, that a consultation was procedurally defective, that due diligence was inadequate, or that a particular legal person caused a particular harm. Each of those conclusions requires a different class of evidence: ambient and effluent measurements referenced to the applicable standard, the environmental approval and its conditions, records of consultation and disclosure, internal due diligence documentation, and the outcomes of complaints. Because the survey is cross-sectional, it supports statements of association rather than causation, and because it measures perception it cannot be substituted for measurement of the environment itself. Studies comparing public perception with monitored environmental data report systematic divergence in both directions, which is a reason to treat perception as a trigger for verification rather

[17] Joseph F. Hair Jr., G. Tomas M. Hult, Christian M. Ringle, and Marko Sarstedt, *A Primer on Partial Least Squares Structural Equation Modeling (PLS-SEM)*, 3rd ed. (Thousand Oaks, CA: SAGE, 2022), 15–32.
[18] Hardik Chudasama, "Sampling Methods in Research: A Review," *International Journal of Trend in Scientific Research and Development* 7, no. 3 (2023): 762–68.

than as its substitute[19]. Participation was voluntary and anonymous, informed consent was obtained before administration, no individually identifying information was recorded, and the heightened sensitivity of research conducted beside a major industrial installation was addressed by ensuring that no respondent could be identified from reported data.

## Constitutional Foundations and the Architecture of Protection

The constitutional basis of protection is independent of aggregate benefit. Article 28H(1) of the 1945 Constitution confers on every person the right to a good and healthy environment, and Article 28I(4) assigns responsibility for the protection, advancement, enforcement, and fulfilment of human rights to the State. Article 33(3) places land, water, and natural resources under state control to be used for the greatest benefit of the people, and Article 33(4) subjects the national economy to the principles of environmental sustainability. Read together, these provisions do not create a balance to be struck between industrial development and environmental protection at the discretion of the executive. They establish sustainability as a constraint upon the manner in which resources may lawfully be exploited, which is why the Constitutional Court has repeatedly treated the commodification of a resource as a constitutional question rather than a policy choice. Comparative study of environmental constitutionalism elsewhere in the Global South points to the corollary: constitutional recognition of environmental rights supplies only a foundation, and its protective value depends on enforcement, institutional coordination, and public engagement[20]. The invalidation of the Water Resources Law for permitting arrangements that subordinated the public interest to private control, and the annulment of coastal exploitation rights that excluded traditional users from the marine space on which they depended[21], both proceed from the same premise: a resource regime that eliminates the population's access to the means of its own subsistence is constitutionally defective however efficiently it operates.

That premise has particular force in a coastal industrial setting. Weda Bay is simultaneously a mineral province and a marine and coastal zone governed by Law No. 27 of 2007 as amended by Law No. 1 of 2014, under which spatial planning for coastal areas must accommodate traditional access and community use. The annulment of the coastal rights regime established that such access is a protected interest and not a residual one. Where smelting, port operation, and tailings or effluent management occur at the shoreline, the constitutional right under Article 28H(1) and the statutory coastal regime operate concurrently, and neither is discharged by compliance with the other. Scholarship on environmental principles in the management of mining resources makes the same point from the direction of legal theory, arguing that principles of prevention

[19] B. Liu, H. Du, J. Fan, B. Huang, K. Zhou, and J. Gong, "The Gap between Public Perceptions and Monitoring Data on Environmental Quality," *Environmental Science and Pollution Research* 28 (2021): 1–14.
[20] Paul Atagamen Aidonojie, Esther Chetachukwu Aidonojie, Godswill Owoche Antai, Collins Ekpenisi, and David Ayuba, "Constitutional and Legislative Frameworks for Green and Sustainable Environmental Governance in Uganda," *International Journal of Constitutional and Administrative Law* 1, no. 1 (2025): 1–20, https://doi.org/10.66502/n8sg2j47.
[21] Constitutional Court of the Republic of Indonesia, Decision No. 85/PUU-XI/2013 (February 18, 2015); and Decision No. 3/PUU-VIII/2010 (June 16, 2011).

and sustainability function as interpretive constraints on permit conditions rather than as aspirational language[22].

Law No. 32 of 2009 converts the constitutional right into operative instruments. Article 65(1) restates the right to a good and healthy environment as part of human rights, and Article 65(2) to (5) confer rights to environmental information, to participation in decision-making, to object, and to lodge complaints concerning environmental pollution and damage. Articles 22 to 24 require an environmental impact assessment for business activities having significant impact, and the assessment is the basis on which the environmental approval introduced by the Job Creation Law is issued. Articles 71 and 72 impose a duty of supervision on the minister, governor, or regent according to competence, and Articles 76 to 83 provide the administrative sanctions through which non-compliance is to be corrected: written warning, government coercion, suspension, and revocation of the approval. Articles 87 and 88 supply the civil routes, the first a general tort liability for environmental harm and the second a strict liability for activities using hazardous materials or presenting a serious threat. Articles 91 and 92 confer standing on groups of persons and on environmental organizations, and Article 90 permits the responsible authority to claim restoration costs. The statute, in other words, already contains a complete accountability chain from assessment through supervision to sanction and remedy.

The weakness lies in the connection between the links in that chain rather than in any single link. An environmental approval is issued centrally on the basis of an assessment prepared by the proponent and appraised by a commission; supervision is exercised by officials whose authority derives from a different provision and whose institutional location may be different again; and the sanctions depend upon a prior finding by those officials. If inspection results are not produced, or are produced but not disclosed, the later links cannot operate, and the civil and criminal routes are then required to perform work for which they are poorly suited because they presuppose evidence that only supervision generates. Indonesian scholarship on environmental enforcement in the mining sector identified this dependency long before the recent reforms, observing that enforcement failure is characteristically evidentiary rather than normative[23]. Work on substantive legal protection in environmental management reaches the same conclusion through the concept of protective adequacy, arguing that a right whose vindication depends on evidence the claimant cannot lawfully obtain is protected only formally[24].

Table 1 sets out the resulting accountability matrix. Each row states a protected interest, the norm that governs it, the actor on whom the duty falls, the evidence that would establish performance or breach, and the institutional response available. The matrix is the analytical instrument used in the remainder of this article, and its principal function

[22] Ahdiyatul Hidayah, Faturrahman Fahrozi, and Ahmad Rifani, "The Role of Environmental Principles in Mining Resources: A Discourse of Islamic and Indonesian National Law," *Jambe Law Journal* 6, no. 1 (2023): 23–45, https://doi.org/10.22437/jlj.6.1.23-45.

[23] Franky Butar Butar, "Penegakan Hukum Lingkungan di Bidang Pertambangan," *Yuridika* 25, no. 2 (2010): 151–68, https://doi.org/10.20473/ydk.v25i2.252.

[24] F. U. Najicha, I. G. A. K. R. Handayani, and N. Hartiwiningsih, "Legal Protection 'Substantive Rights for Environmental Quality' in Environmental Management," *International Journal of Criminology and Sociology* 10 (2021): 234–39.

is to prevent the substitution of one duty for another, which is the characteristic failure in disputes of this kind.

***Table 1.*** *Accountability Matrix for Protected Interests in Nickel Industrial Estates*

| Protected Interest | Governing Norm | Duty-Bearer | Evidence Required | Institutional Response |
|---|---|---|---|---|
| Good and healthy environment | Constitution 1945, art. 28H(1); Law 32/2009, arts. 20, 65(1) | Licensing authority; supervisory officials; operator | Ambient and effluent measurement against the applicable standard | Administrative sanction; government coercion; civil claim |
| Assessment and environmental approval | Law 32/2009, arts. 22–24; PP 22/2021 | Proponent; appraisal commission; central licensing authority | Assessment document; appraisal record; approval conditions | Annulment of approval; administrative court review |
| Public participation | Law 32/2009, art. 26; PP 22/2021, art. 29 | Proponent; appraising authority | Notification, consultation and response records; delineation of affected community | Administrative court review; re-appraisal |
| Access to information | Law 14/2008, arts. 9, 11, 17 | Public bodies holding the information | Request and response record; published inspection results | Information Commission dispute resolution |
| Free, prior and informed consent | Constitution 1945, art. 18B(2); UNDRIP, arts. 19, 32(2); MK 35/PUU-X/2012 | State; licensing authority; enterprise | Recognition instrument; consultation and consent record | Judicial review; invalidation of the permit |
| Corporate responsibility to respect | UNGPs 11–24; Perpres 60/2023 | Estate operator; each tenant company | Impact identification, severity assessment, mitigation and tracking records | Supervisory response; market exclusion; proposed permit condition |
| Social and environmental responsibility | Law 40/2007, art. 74; PP 47/2012 | Companies in natural-resource business | Budget allocation and programme implementation record | Sanction under the applicable statute |
| Supervision of compliance | Law 32/2009, arts. 71–72; PP 22/2021 | Minister; governor; appointed supervisory officials | Inspection reports; monitoring data; follow-up record | Ombudsman; administrative court; State liability |
| Access to remedy | Law 32/2009, arts. 87–88, 91–92; Law 39/1999, arts. 89, 96–99 | State; courts; National Commission on Human Rights; enterprise | Causation and harm evidence; complaint outcomes; grievance records | Civil judgment; mediation; restoration order |

*Source: Authors' construction from the cited statutes, regulations, and decisions.*

*Abbreviations: MK = Constitutional Court (Mahkamah Konstitusi); PP = Government Regulation (Peraturan Pemerintah); Perpres = Presidential Regulation (Peraturan Presiden); UNDRIP = United Nations Declaration*

*on the Rights of Indigenous Peoples; UNGPs = United Nations Guiding Principles on Business and Human Rights.*

Two features of the matrix deserve emphasis. First, the duty-bearers differ. The duty to assess and to approve rests on the licensing authority; the duty to supervise rests on designated environmental supervisory officials; the duty to disclose rests on public bodies holding the information; the duty to respect rests on each company as a separate legal subject; and the duty to provide remedy is shared between the State and the enterprise in different forms. Second, the evidentiary requirements differ in kind and cannot be met interchangeably. Measurement establishes exceedance; documents establish procedure; conduct records establish diligence; and outcomes establish remedy. A company that publishes expenditure on community programmes has produced evidence relevant to Article 74 of Law No. 40 of 2007 and to nothing else. Recognition of this point is what distinguishes a legal assessment from an impact assessment, and it is the reason the analysis below proceeds duty by duty rather than issue by issue.

## Licensing Centralization, the Industrial Estate, and the Supervisory Gap

The first duty in the chain is the duty to decide lawfully whether and on what conditions the activity may proceed. Law No. 3 of 2020 relocated that duty. Mineral licensing authority previously exercised by governors and regents was transferred to the central government, and the Job Creation Law completed the movement by converting licensing into a risk-based system administered through an electronically integrated single submission process. The reform was designed to remove inconsistency between levels of government, and in that respect it succeeded. Its unintended consequence is structural: the authority that defines the conditions of an environmental approval is now institutionally remote from the territory in which those conditions must be observed, while the officials who are physically able to observe them derive their authority from a provision that was not correspondingly amended. Analysis of the constitutional implications of the Job Creation Law for regional autonomy identifies precisely this asymmetry, noting that the recentralization of authority was not accompanied by a reallocation of the supervisory capacity that gives authority practical content[25]. The Constitutional Court's declaration that the Job Creation Law was conditionally unconstitutional, and its direction that the law be corrected, confirmed that the process by which this architecture was created was itself defective[26]. The episode also exemplifies a wider pattern in Indonesian constitutional practice, in which constitutionally significant change is effected through ordinary legislation and judicial decisions rather than through formal amendment, in which Constitutional Court decisions can erode as well as protect constitutional guarantees, and in which safeguards against such change remain institutionally underdeveloped[27].

[25] Yuliasih et al., "Constitutional Consistency," 8–12.
[26] Constitutional Court of the Republic of Indonesia, Decision No. 91/PUU-XVIII/2020 (November 25, 2021).
[27] Marten Bunga, "Amendment by Other Means: Informal Change and the Replacement Boundary in Indonesia, Colombia, and India," *Journal of Constitutional Change* 1, no. 1 (2026): 24–47, https://doi.org/10.66502/vr91d068; Novendri M. Nggilu, Ahmad, Moh. Rivaldi Moha, Apripari, and Moh.

The industrial estate form compounds the asymmetry. Under Law No. 3 of 2014 and Government Regulation No. 142 of 2015, an industrial estate is itself a licensed undertaking: the estate company holds an industrial estate business licence, provides infrastructure and environmental facilities, and is responsible for the estate's own environmental approval. The tenants operating within it hold their own permits and their own approvals. Legally these are distinct subjects of rights and obligations, and the distinction is not a technicality but the foundation of attribution: liability attaches to the legal person whose activity caused the harm. Comparative analysis of the subject element in contract and obligation explains why the identification of the bearer of a duty is logically prior to any question of breach[28]. The practical difficulty is that an affected resident experiences the estate as one installation. Ambient air quality beside a complex containing several smelters and a captive power plant is the product of aggregate emissions; sediment load in a river crossing the estate is the product of aggregate land disturbance. Neither can be apportioned among tenants by a claimant, and neither is attributable to the estate company merely because it manages the land.

Indonesian law has not resolved this attribution problem. Government Regulation No. 142 of 2015 obliges the estate company to provide environmental infrastructure and to ensure that tenants comply with environmental requirements, which creates a duty of control without stating the consequence of its breach. Article 88 of Law No. 32 of 2009 attaches strict liability to the person whose activity uses hazardous materials or poses a serious threat, which addresses the tenant rather than the manager. The result is a gap through which responsibility may pass: the estate company answers that it does not conduct the operations, and each tenant answers that its own contribution cannot be shown to have exceeded a standard. The doctrinal solution is available and well established in comparative mining governance, which treats the operator of a shared facility as jointly responsible for aggregate effects that its control makes it able to prevent[29]. Indonesian law would have to adopt that solution expressly, because the general rule of attribution to the causing subject does not supply it.

Supervision is the second point of failure. Articles 71 and 72 of Law No. 32 of 2009 require the competent authority to supervise compliance with environmental approvals and to appoint environmental supervisory officials, and Government Regulation No. 22 of 2021 elaborates the procedure. Where licensing is central and the installation is remote, the practical exercise of that duty depends on arrangements for delegation or joint action that the statute does not prescribe. The literature on jurisdictional disputes in mining shows that such arrangements tend to be negotiated case by case, with the consequence that no authority is demonstrably in default when supervision does not occur[30].

Hidayat Muhtar, "Abusive Constitutional Court: Dysplasia and the Destructive Power of Constitutional Court Decisions," *Estudios Constitucionales* 22, no. 2 (2024), https://estudiosconstitucionales.utalca.cl/index.php/home/article/view/188; and Novendri M. Nggilu, Zulkifli Zulkifli, Yassine Chami, Indra Perwira, and Ali Abdurahman, "The Absence of Judicial Review on Constitutional Amendments in Indonesia: Urgency and Legal Reform for Constitutional Safeguards," *Journal of Law and Legal Reform* 6, no. 2 (2025): 659–92, https://doi.org/10.15294/jllr.v6i2.20888.

[28] Abdullah Mukhlif Tarrad, "The Subject Element in Contract and Obligation: A Comparative Analytical Legal Study," *Indonesia Private Law Review* 6, no. 1 (2025): 1–18.

[29] Sara K. Phillips, *Mining Law and Governance: Structures and Challenges*, Comparative Environmental Law Series (London: Routledge, 2020), 112–38.

[30] Hartati and Ayub, "Jurisdictional Disputes," 276–81.

Comparative work on legal certainty in Indonesian and Malaysian mining regulation suggests that the Malaysian allocation of state-level competence over land and mineral matters, whatever its other difficulties, at least produces an identifiable respondent for a supervisory failure[31]. Comparative analysis of forest governance in Indonesia and Brazil characterizes the same phenomenon as a duty–capacity gap, in which protective mandates are assigned to an administrative level that lacks the enforcement powers and resources needed to discharge them[32]. Identifiability is the quality that Indonesian supervision in centralized sectors currently lacks, and it is a precondition of administrative review, of a citizen suit, and of any claim that the State has failed in its duty to protect.

A third consideration concerns the integrity of the licensing decision itself. The accountability matrix assumes that an approval reflects an appraisal of the assessment on its merits. Where that assumption fails, every subsequent duty is corrupted at its source, because supervision is then measured against conditions that should not have been set. Research on corruption risk in the allocation of mining permits documents the mechanisms through which appraisal is displaced by accommodation[33], and analysis of the relationship between mining law and anti-corruption law shows that the two bodies of law frequently reach incompatible characterizations of the same licensing conduct[34]. Work on the treatment of community and religious organizations as corporate permit holders demonstrates how the legal form of the applicant can obscure the identity of the beneficial operator, which is a licensing-integrity problem before it is a liability problem[35]. Scholarship on judicial integrity and anticorruption education indicates that the remedy for these failures depends on adjudicative capacity as much as on substantive rules[36], and the Supreme Court's adoption of guidelines for adjudicating environmental cases is a direct response to that requirement[37]. Finally, the spatial dimension should not be overlooked: the legal politics of mining spatial planning determine which land may lawfully be allocated to the estate at all, and defects at that stage are not curable by later environmental conditions[38].

[31] Putri, Ash-shidiqqi, and Sari, "Legal Certainty in Mining Regulation," 145–50.
[32] Tri Delvi GM Nggilu, Fenty Puluhulawa, and Apripari, "The Constitutional Duty–Administrative Capacity Gap in Forest Governance: Indonesia and Brazil Compared," *International Journal of Constitutional and Administrative Law* 2, no. 2 (2026): 183–217, https://doi.org/10.66502/05ybef09.
[33] Rusdiana et al., "The Potential for Corporate Corruption," 1601–18.
[34] Pandiangan, Harkrisnowo, and Nelson, "The Conflict between Mining Law and Anti-Corruption Law," 116–22.
[35] Wahyu Nugroho, Erwin Syahruddin, Saiful Anam, and Aris Yulia, "Religious Community Organization as Corporation: Legal Politics at the Edge of the Mine," *LITIGASI* 26, no. 1 (2025), https://doi.org/10.23969/litigasi.v26i1.20375.
[36] Kiki Kristanto, Zico Junius Fernando, and Papontee Teeraphan, "Anticorruption School: A Solution to Building the Integrity of Judges," *IJCLS (Indonesian Journal of Criminal Law Studies)* 8, no. 2 (2023): 193–220, https://doi.org/10.15294/ijcls.v8i2.45473.
[37] Supreme Court of the Republic of Indonesia, Regulation No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases.
[38] Muhammad Shohibul Itmam, Sirajul Munir, Lukman Santoso, Taufikin, and Abdelmalek Aouich, "Legal Politics of Mining Spatial Planning in Sumenep District: Maqāṣid Sharīʻah Overview," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 25, no. 1 (2025): 1–27, https://doi.org/10.18326/ijtihad.v25i1.1-27.

## Participation, Information, and Free, Prior and Informed Consent

Participation is a legal condition of the validity of an environmental decision, not a measure of its popularity. Article 26 of Law No. 32 of 2009 originally required that the preparation of an environmental impact assessment involve the affected community, environmental observers, and those affected by any form of decision in the assessment process. The Job Creation Law replaced that formula with involvement of the community directly affected by the planned activity, and Government Regulation No. 22 of 2021 implements the narrower version. The amendment has a precise legal effect. It removes from the process the actors most likely to possess independent technical capacity, and it leaves the determination of who is directly affected to the proponent and the appraising authority. Where the activity is an industrial estate whose effects are transmitted through air, rivers, and coastal water across several villages, the boundary of direct effect is itself the contested question, and the narrowed provision commits that question to the parties with the least interest in drawing the boundary widely.

The right to information is governed by a different statute and bears on a different duty-bearer. Law No. 14 of 2008 obliges public bodies to provide information under their control, distinguishes information that must be published periodically and immediately from information available on request, and exempts defined categories under Article 17. Environmental approval documents, assessment reports, monitoring obligations, and the results of supervisory inspection are information held by public bodies and are not within the exemptions in any obvious way. The practical consequence is important for the framework developed here: a community that cannot obtain measurement evidence from a company may be able to obtain it from the authority that holds it, and a refusal is itself reviewable before the Information Commission. Corporate publication of sustainability material is not a substitute, because it is neither compelled nor verifiable through that route. Conflating the two is a recurrent error, and the literature on the presentation of mining-sector corporate responsibility as an instrument of reputational management explains why the error is attractive to the enterprise[39].

Consent raises a further question. The Declaration on the Rights of Indigenous Peoples requires States to consult and cooperate in good faith with indigenous peoples in order to obtain their free, prior and informed consent before adopting measures that may affect them, and specifically before approving any project affecting their lands or resources[40]. Indonesia voted in favour of the Declaration but has not enacted a general consent procedure, and it is not a party to the International Labour Organization Convention concerning Indigenous and Tribal Peoples. The domestic route to protection runs instead through the constitutional recognition of traditional communities[41], the separation of

[39] Basrawi, M. Said Karim, and Aminuddin Ilmar, "The Politics of Criminal Law behind the Mining Industry's Image: Uncovering CSR Scandals in Indonesia," *Journal of Law and Legal Reform* 6, no. 1 (2025): 179–208, https://doi.org/10.15294/jllr.v6i1.14464.

[40] United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 (September 13, 2007), arts. 19 and 32(2).

[41] On the gap between the constitutional protection of the cultural identity of traditional communities and its implementation in regional law, see Novendri Nggilu, Lisnawaty Wadju Badu, and Suwitno Yutye Imran, "Legal Protection Bonda and Bulango Languange: In Reality and Prospect," *Jambura Law Review* 3, no. 1 (2021): 19–36, https://doi.org/10.33756/jlr.v3i1.6947.

customary forest from state forest, and the recognition procedures operated under regional regulation, with the consequence that the existence of the right depends upon an administrative act of recognition that many communities have not obtained. The statute that would give general effect to the constitutional recognition of customary law communities has itself never been enacted, leaving the matter to delegated and regional instruments[42]. The analytical literature on consent describes this configuration as consent in form without consent in function, because the holder of the right must first persuade the State that it is a holder[43]. Land acquisition for the new national capital, Nusantara, illustrates the consequence: a legal framework that is robust on paper has left the recognition of customary land ownership, compensation, and relocation contested in practice[44].

Scholarship on the inclusion of customary communities in village autonomy policy shows that the recognition pathway can be strengthened without constitutional amendment, by converting recognition from a discretionary act into a procedure with criteria, time limits, and review[45]. Work on licensing principles grounded in social sensitivity proposes the complementary reform on the licensing side, requiring the authority to demonstrate that community interests were identified and addressed before an approval issues[46], and analysis of state liability for violations of constitutional rights against traditional communities establishes that failure to do so engages the State's own responsibility rather than only the enterprise's[47]. Research on the coexistence of state and customary law in resource governance supplies the doctrinal basis for treating customary entitlement as operative law rather than as a social fact to be accommodated[48].

The comparative position is instructive because a workable model exists within the Association of Southeast Asian Nations (ASEAN). The Philippine Indigenous Peoples' Rights Act makes free, prior and informed consent a precondition of any project affecting ancestral domain, assigns the verification function to a dedicated commission, and requires the issue of a certificate before other permits may be granted, so that consent operates as a gate rather than as a consultation to be recorded[49]. Malaysian law has reached a comparable result through adjudication rather than legislation, with the courts recognizing native customary title as a proprietary interest attracting compensation and

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[42] Ciputra Sigit Suleman, "The Delegated Constitution: Organic Statutes, Desuetude, and Constitutional Change in Indonesia," *Journal of Constitutional Change* 1, no. 1 (2026): 93–121, https://doi.org/10.66502/ytwvjr95.

[43] A. MacInnes, M. Colchester, and A. Whitmore, "Free, Prior and Informed Consent: How to Rectify the Devastating Consequences of Harmful Mining for Indigenous Peoples," *Perspectives in Ecology and Conservation* 15, no. 3 (2017): 152–58, https://doi.org/10.1016/j.pecon.2017.05.007.

[44] Iwan Permadi, Weny Almoravid Dungga, and Azhani Arshad, "Ensuring Indigenous People's Rights Protection through Normative Law in Land Acquisition for Indonesia's New National Capital City, Nusantara," *Jambura Law Review* 7, no. 1 (2025): 30–54, https://doi.org/10.33756/jlr.v7i1.24930.

[45] Bagio Kadaryanto, Ardian Kurniawan, and Burhanuddin Burhanuddin, "Reconstruction of Indigenous Community Inclusion in Village Autonomy Policy: Towards a Substantive Autonomy Model in Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 25, no. 1 (2025): 1–19.

[46] Aditya and Al-Fatih, "Legal Protection of Indigenous People's Rights," 18–27.

[47] Zaka Firma Aditya and Sholahuddin Al-Fatih, "State Liability for Violation of Constitutional Rights against Indigenous People in Freedom of Religion and Belief," *Brawijaya Law Journal* 4, no. 1 (2017): 29–58, https://doi.org/10.21776/ub.blj.2017.004.01.02.

[48] Jayantiari et al., "The Rights of Customary Law Communities to Resources," 191–95.

[49] Republic of the Philippines, Indigenous Peoples' Rights Act of 1997, Republic Act No. 8371, secs. 59–65.

protection[50]. Neither model requires Indonesia to depart from its constitutional structure. Both show that the decisive variable is procedural: whether consent is verified by an independent body before the licensing decision, or asserted by the proponent afterwards.

## The Corporate Responsibility to Respect: Due Diligence Distinguished from Social Responsibility

The corporate pillar of the Guiding Principles imposes a responsibility to respect human rights that is discharged through a continuing process: a policy commitment, identification and assessment of actual and potential impacts, integration of findings into operations, tracking of effectiveness, and communication of how impacts are addressed[51]. Two characteristics of that process are legally significant. It is risk-based, so its adequacy is assessed against the severity and likelihood of harm to people rather than against the amount spent. And it is ongoing, so evidence of a single assessment does not establish compliance in a later period. The authority on the drafting and reception of the Guiding Principles emphasizes that they were constructed as a standard of conduct precisely to avoid the measurement problems of philanthropic models[52].

Indonesian law contains an obligation that is frequently treated as equivalent and is not. Article 74 of Law No. 40 of 2007 requires companies conducting business in or relating to natural resources to implement social and environmental responsibility, budgeted and accounted for as a cost of the company, and Government Regulation No. 47 of 2012 elaborates the obligation. The Constitutional Court upheld the provision against the argument that it unlawfully burdened private enterprise, reasoning that the State may require those who exploit natural resources to contribute to the sustainability of the environment and community in which they operate[53]. The obligation is therefore constitutionally secure, but its content is a duty to allocate and to implement a programme. It does not require the identification of adverse human rights impacts, it does not require the integration of findings into operational decisions, and it does not produce evidence capable of answering whether a specific impact was prevented or mitigated. Indonesian research on the implementation of corporate social responsibility in extractive settings consistently reports programmes delivered without reference to identified impacts, and comparative studies of stakeholder expectations in mining reach the same conclusion[54].

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[50] *Sagong bin Tasi and Others v. Kerajaan Negeri Selangor and Others* [2002] 2 MLJ 591 (High Court of Malaya, Shah Alam), affirmed [2005] 6 MLJ 289 (Court of Appeal).

[51] United Nations Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights, principles 15–21.

[52] J. G. Ruggie, "The Social Construction of the UN Guiding Principles on Business and Human Rights," in *Research Handbook on Human Rights and Business*, ed. S. Deva and D. Birchall (Cheltenham: Edward Elgar, 2020), 63–86.

[53] Constitutional Court of the Republic of Indonesia, Decision No. 53/PUU-VI/2008 (April 15, 2009).

[54] Diana Mutti, Natalia Yakovleva, Diego Vazquez-Brust, and Martín H. Di Marco, "Corporate Social Responsibility in the Mining Industry: Perspectives from Stakeholder Groups in Argentina," *Resources Policy* 37, no. 2 (2012): 212–22, https://doi.org/10.1016/j.resourpol.2011.05.001; and Deanna Kemp and John R. Owen, "Community Relations and Mining: Core to Business but Not 'Core Business,'" *Resources Policy* 38, no. 4 (2013): 523–31, https://doi.org/10.1016/j.resourpol.2013.08.003.

Presidential Regulation No. 60 of 2023 is the instrument through which Indonesia addresses the gap, and its legal character must be stated precisely. It is a binding regulation within the hierarchy established by Law No. 12 of 2011 and it validly directs the conduct of government institutions, establishes coordination arrangements, and provides for assessment of business conduct. What it cannot do is amend the licensing conditions set under Law No. 4 of 2009 or Law No. 32 of 2009, create an offence, or confer on an affected individual a right of action against an enterprise that fails to conduct due diligence. The consequence is that human rights due diligence in Indonesia is presently an expectation addressed to companies through policy rather than a condition of their licence. Comparative assessment of Indonesia's legal framework for human rights in corporate settings identifies this as the central structural weakness, because an expectation that is not attached to a permit condition cannot be enforced by the authority best placed to observe it[55]. Scholarship on the enforcement of investment law in environmental cases demonstrates the same point from the enforcement side, showing that where obligations sit outside the licensing instrument the regulator's available response is reduced to persuasion[56].

The reform direction is identifiable from Indonesian doctrine rather than imported. Work on strengthening green investment law proposes the reconceptualization of investment obligations through the green constitution and the public interest, so that environmental and social conditions become constitutive elements of the investment licence rather than collateral commitments[57]. Applied to nickel industrial estates, that approach would place human rights due diligence among the conditions of the environmental approval and the industrial estate licence, with the result that failure to conduct it becomes a supervisable breach attracting the administrative sanctions already available under Articles 76 to 83 of Law No. 32 of 2009. No new enforcement machinery would be required. The obligation would also acquire a determinate evidentiary content, because the documentation that due diligence generates—impact identification, severity assessment, mitigation decisions, and tracking—is exactly the material that supervision needs and that expenditure reporting does not supply.

The labour dimension of the estate should be included within the same framework rather than treated separately. An integrated estate concentrates a large workforce, much of it migrant, in a single location and under contractual arrangements that differ between the estate company, tenants, and labour suppliers. Analysis of the legal challenges arising from changing patterns of work shows that the allocation of employer obligations across layered corporate structures is a recurring source of protective failure, and that the resolution lies in identifying the entity with effective control over working conditions

[55] Soonpeel Chang, "Assessment of Indonesia's Legal Framework for Human Rights in Corporate Settings," *Indonesia Law Review* 11, no. 2 (2021): 145–68.
[56] Utji Sri Wulan Wuryandari, Anggi Dewinta Chairani, and Myrna Asnawati Safitri, "Weak Investment Law Enforcement in Land and Forest Fire Cases in Indonesia," *Substantive Justice International Journal of Law* 5, no. 2 (2022): 205–15.
[57] Aditya Prastian Supriyadi, Mustafa Lutfi, and Kurniasih Bahagiati, "Strengthening Indonesia's Green Investment Law: Legal Reconceptualisation toward Net-Zero Emissions under Green Constitution and Maslahah," *Jurisdictie: Jurnal Hukum dan Syariah* 16, no. 2 (2025): 417–57, https://doi.org/10.18860/j.v16i2.35169.

rather than the entity named in the contract[58]. The same analytical move from nominal to effective control resolves the attribution problem identified in the preceding section, and its adoption in the labour context supports its adoption in the environmental one.

## Access to Remedy: Administrative, Civil, Criminal, and Non-Judicial Routes

The third pillar requires that those affected have access to effective remedy, and Indonesian law supplies four routes whose conditions differ substantially. The administrative route is the most direct and the least used. Article 65(5) of Law No. 32 of 2009 confers a right to lodge complaints concerning pollution and damage, Articles 71 and 72 oblige the competent authority to supervise, and Articles 76 to 83 provide graduated sanctions culminating in revocation of the environmental approval. A complaint that triggers inspection generates the measurement evidence on which every other route depends, which is why the administrative route is logically first. Its weakness is that the statute does not impose a determinate duty to respond within a period, to disclose the result, or to give reasons for inaction, so the complainant has no reviewable decision from which to proceed. Government coercion under Article 80, which permits the authority to require remedial action at the expense of the responsible party, is powerful and correspondingly under-deployed.

The civil route rests on Articles 87 and 88. Article 87 is a general liability for unlawful acts causing environmental pollution or damage, requiring proof of the act, the harm, causation, and fault. Article 88 originally imposed absolute liability on persons whose activities used hazardous and toxic materials or posed a serious threat to the environment, expressly relieving the claimant of the need to prove the element of fault. The Job Creation Law removed that phrase. The amended provision retains the term absolute liability while deleting the words that gave the term its distinctive operation, and the resulting uncertainty is the most consequential of the recent changes for communities beside industrial estates, because it is in precisely those settings that the claimant cannot reconstruct the internal conduct of the defendant. Before the amendment the Supreme Court had given strict liability substantive effect, holding in the Mandalawangi landslide litigation that the defendant bore liability for harm arising from its activity without the claimant being required to establish fault, and applying the precautionary principle to scientific uncertainty about causation[59]. The Court subsequently confirmed that restoration costs and environmental damages may be awarded on a substantial scale and enforced against corporate assets[60]. Articles 91 and 92 permit group claims and claims by environmental organizations, and the Supreme Court's guidelines for adjudicating environmental cases address the evidentiary and procedural difficulties these claims present[61]. The doctrinal position is therefore

[58] Weny Almoravid Dungga, Ahmad, Karem Aboelazm, Dewi Mulyanti, and Novendri M. Nggilu, "Ensuring Justice in the Trend of Remote Working: Legal Challenges and Implications for Companies and Workers," *Jurnal IUS Kajian Hukum dan Keadilan* 14, no. 1 (2026): 201–27, https://doi.org/10.29303/ius.v14i1.1721.
[59] Supreme Court of the Republic of Indonesia, Decision No. 1794 K/Pdt/2004 (Mandalawangi).
[60] Supreme Court of the Republic of Indonesia, Decision No. 651 K/Pdt/2015 (Ministry of Environment v. PT Kallista Alam).
[61] Supreme Court of the Republic of Indonesia, Regulation No. 1 of 2023.

favourable to claimants in everything except the statutory text that the amendment altered.

The criminal route is available but structurally ill-suited to the harms at issue. Articles 98 and 99 of Law No. 32 of 2009 criminalize acts resulting in the exceedance of ambient, effluent, or damage standards, and Articles 116 to 119 provide for corporate criminal liability and for sanctions including closure and the revocation of permits. These provisions require proof of exceedance attributable to an identified actor, which returns the analysis to the measurement and attribution problems already described. A further difficulty is that environmental offences are frequently processed as though they lacked identifiable victims, which affects both charging decisions and sentencing. Research on restorative justice in victimless crimes under the criminal procedure code shows that the victimless characterization is often an artefact of procedural categories rather than of the conduct itself, and that the availability of restorative mechanisms depends on correctly identifying the interests harmed[62]. Applied to environmental offences in an estate setting, the analysis indicates that the affected community should be recognized as a victim with procedural standing, which is a precondition both of restitution and of any restorative resolution that is not merely a settlement between the enterprise and the State. The transnational dimension reinforces the point, since the processing of minerals for export situates these offences within a cross-border chain in which victim-centred environmental justice has been identified as the principal deficit[63].

A constraint operating across all three routes requires separate notice. Article 162 of Law No. 4 of 2009 criminalizes obstruction of the activities of a mining permit holder that has satisfied the applicable requirements. The provision is intelligible as a protection of lawful operations, but in practice it is capable of application to community protest and to the physical presence of residents on contested land, and its existence alters the risk calculus of a community considering whether to press a complaint. Scholarship on dysfunctional factors in environmental law has analysed the use of litigation against public participation and proposed reconstruction of the criminal law framework to prevent it[64]. Article 66 of Law No. 32 of 2009 provides the counterweight, immunizing those who advocate for the right to a good and healthy environment from civil and criminal suit, and the relationship between that immunity and Article 162 has not been authoritatively resolved. A legislative clarification that Article 66 prevails would materially improve the accessibility of every remedial route.

The non-judicial routes are the least developed and the most immediately improvable. The National Commission on Human Rights may receive complaints, conduct inquiry, and

[62] Apripari, Dian Ekawaty Ismail, Ahmad, Vivi Oktaviani Pulukadang, and Novendri M. Nggilu, "Restorative Justice in Victimless Crimes under the Criminal Procedure Code: Problematics and Solutions," *Jurnal Hukum Novelty* 17, no. 1 (2026): 144–66, https://doi.org/10.26555/jhn.v17i1.31003.

[63] Zico Junius Fernando, Firdaus Arifin, Muhamad Adystia Sunggara, and Fardana Kusumah, "Transnational Environmental Crime in the Context of International Criminal Law and Victim-Centered Environmental Justice," *Lampung Journal of International Law* 7, no. 1 (2025): 15–30, https://doi.org/10.25041/lajil.v7i1.4338.

[64] Hartiwiningsih, Seno Wibowo Gumbira, and Jaco Barkhuizen, "Dysfunctional Factors of Environmental Law on Strategic Lawsuit against Public Participation and Developing Remedial Strategies through Reconstruction Criminal Law System Model in Indonesia," *Padjadjaran Journal of Law* 10, no. 3 (2023): 411–30, https://doi.org/10.22304/pjih.v10n3.a6.

offer mediation under Law No. 39 of 1999, and its recommendations, while not binding, create a documentary record of findings that supervisory and judicial bodies can use[65]. The Ombudsman may examine maladministration in the exercise of supervisory duties, and the Information Commission may compel disclosure. Indonesia, however, is not an adherent to the Organisation for Economic Co-operation and Development Declaration on International Investment and Multinational Enterprises and therefore operates no National Contact Point, so the principal transnational grievance mechanism available in respect of foreign-invested operations is not available domestically[66]. At operational level the Guiding Principles require effective company grievance mechanisms, assessed against legitimacy, accessibility, predictability, equitability, transparency, rights compatibility, and learning, and a mechanism that cannot demonstrate outcomes does not satisfy that standard however many complaints it records.

Community-level dispute resolution is the remaining component, and Indonesian scholarship has developed it specifically for the coastal and resource contexts in which Weda Bay sits. Research reconstructing alternative dispute resolution for land disputes on the basis of local wisdom in the coastal area of Tomini Bay shows that customary procedure can be integrated with formal process in a way that produces outcomes the parties accept and that the courts can recognize, provided the integration is given a legal basis rather than left to practice[67]. Research on village authority in environmental protection reaches a complementary finding: local ecological wisdom contributes substantially to ecosystem maintenance but remains weakly integrated with state policy[68]. Proposals for specialized agrarian adjudication address the same problem from the institutional side, arguing that disputes combining land, livelihood, and community entitlement require a forum with competence over all three[69]. Where restoration costs are recovered, their characterization also matters, and work reconceptualizing state financial loss indicates that sums recovered for environmental restoration should be ring-fenced for that purpose rather than absorbed into general revenue, since the loss being remedied is the community's and not only the State's[70].

[65] Republic of Indonesia, Law No. 39 of 1999 on Human Rights, arts. 89 and 96–99.
[66] Organisation for Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (Paris: OECD Publishing, 2023), part II, 48–54.
[67] Fence M. Wantu, Weny Almoravid Dungga, Yassine Chami, Ahmad Ahmad, and Muhammad Mukhtar, "Reconstructing Alternative Dispute Resolution for Land Disputes Based on Local Wisdom in the Coastal Area of Tomini Bay," *Journal of Law and Legal Reform* 7, no. 2 (2026): 863–902, https://doi.org/10.15294/jllr.v7i2.18287.
[68] Deni Yusup Permana, Imamulhadi Imamulhadi, Idris Idris, and Montisa Mariana, "Integrating Indigenous Wisdom in Environmental Protection: Exploring Village Authority within the Framework of State Responsibility in Indonesia," *Jambura Law Review* 7, no. 2 (2025): 359–89, https://doi.org/10.33756/jlr.v7i2.29582.
[69] Rico J. R. Tambunan, Rachmat Safa'at, Iwan Permadi, and Rachmi Sulistyarini, "Justice, Land, and Sharia: Conceptualizing Agrarian Courts in the Settlement of Land Ownership Disputes," *De Jure: Jurnal Hukum dan Syar'iah* 17, no. 2 (2025): 530–52, https://doi.org/10.18860/j-fsh.v17i2.32486.
[70] Dewi Muti'ah, Abd. Wachid Habibullah, Yusaq Djunarto, and Luthfi Basith Eko Cahyono, "Reconceptualisation of State Financial Losses to Prevent Misuse of Village Funds," *Trunojoyo Law Review* 7, no. 2 (2025): 361–90, https://doi.org/10.21107/tlr.v7i2.29856.

## Comparative and Transnational Benchmarks in the ASEAN and Global Context

The regional and global context is not ornamental to this analysis. Processed nickel from Indonesian estates enters supply chains governed by legal regimes that impose due diligence obligations on purchasers, and those obligations operate as conditions of market access irrespective of Indonesian law. The European regulation on batteries requires economic operators placing batteries on the Union market to establish and implement due diligence policies addressing social and environmental risk categories in the supply of nickel and other battery raw materials, to have those policies verified by a notified body, and to publish reports[71]. The directive on corporate sustainability due diligence extends comparable obligations across chains of activities, with civil liability for failure to comply, although its transposition timetable has been postponed[72]. The German supply chain statute already imposes risk analysis, preventive measures, and complaints procedures on large undertakings in respect of their suppliers[73]. The practical effect is that the documentary record which Indonesian law does not presently require is already being demanded by purchasers, and an Indonesian enterprise unable to produce it faces commercial exclusion rather than legal sanction.

Within Southeast Asia the picture is uneven but instructive. Thailand adopted the region's first national action plan on business and human rights, which places due diligence expectations on state enterprises and on companies in which the State invests, and uses procurement as an instrument[74]. The Philippines, as noted, makes consent a licensing precondition. Malaysia relies on a combination of environmental quality legislation and judicially recognized native title. Vietnam's environmental protection legislation introduced strengthened assessment and public consultation requirements for large projects. ASEAN itself has produced thematic work on business and human rights through its human rights commission but no binding instrument, so regional law provides persuasive rather than obligatory standards[75]. International humanitarian and human rights scholarship has observed that where binding regional obligation is absent, general principles retain a residual normative function, and that argument has been developed in relation to environmental protection and indigenous peoples[76]. Table 2 summarizes the comparison on the two variables that determine whether a regime is enforceable: whether consent or due diligence is a condition of authorization, and what consequence attaches to non-compliance.

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[71] Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, arts. 48–53, OJ L 191/1.

[72] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence, arts. 5–16 and 29, OJ L, 2024/1760; and Directive (EU) 2025/794 of 14 April 2025 amending the transposition and application dates.

[73] Federal Republic of Germany, Act on Corporate Due Diligence Obligations in Supply Chains (Lieferkettensorgfaltspflichtengesetz) of 16 July 2021, ss. 3–10.

[74] Kingdom of Thailand, *First National Action Plan on Business and Human Rights 2019–2022* (Bangkok: Ministry of Justice, 2019).

[75] ASEAN Intergovernmental Commission on Human Rights, *Thematic Study on Corporate Social Responsibility and Human Rights in ASEAN* (Jakarta: ASEAN Secretariat, 2014).

[76] Shontelle Grimberg, "Modern Interpretations of International Humanitarian Law's Martens Clause: Opening the Door to Strategies to Better Protect the Environment and Indigenous Peoples during Armed Conflict," *Asia-Pacific Journal of International Humanitarian Law* (2024): 129–75.

***Table 2.*** *Consent and Due Diligence Regimes in Selected Jurisdictions*

| Jurisdiction | Instrument | Core Obligation | Consequence of Non-Compliance |
|---|---|---|---|
| Indonesia | Perpres 60/2023; Law 32/2009; Law 40/2007, art. 74 | Policy expectation of due diligence; assessment and approval; budgeted social and environmental responsibility | Administrative sanction for breach of approval; no sanction for absent due diligence |
| Philippines | Indigenous Peoples' Rights Act 1997, secs. 59–65 | Certified free, prior and informed consent obtained before any other permit issues | Permit cannot lawfully issue; permit granted without certification is void |
| Malaysia | Environmental Quality Act 1974; native customary title case law | Assessment and licensing; judicially protected customary title over ancestral land | Licence conditions enforceable; compensation for deprivation of title |
| Thailand | National Action Plan on Business and Human Rights 2019–2022 | Due diligence expectation for state-linked enterprises, with procurement leverage | Not binding; consequences operate through public procurement |
| European Union | Regulation (EU) 2023/1542, arts. 48–53; Directive (EU) 2024/1760 | Verified supply-chain due diligence for battery raw materials; chain-of-activities duty | Denial of market access; civil liability under the directive |
| Germany | Supply Chain Due Diligence Act 2021, ss. 3–10 | Risk analysis, preventive measures, and an operational complaints procedure | Administrative fines; exclusion from public contracts |

*Source: Authors' construction from the instruments cited in this section.*

The comparison exposes a divergence that matters for Indonesian legal design. In the Philippines and in the European Union the obligation is attached to an authorization or to market access, so that non-compliance produces a legal consequence without the need for separate enforcement proceedings. In Thailand and in Indonesia the obligation is articulated in a plan or a policy regulation, so that non-compliance produces no consequence at all unless some other instrument happens to capture the conduct. Malaysia occupies an intermediate position in which the protective work is performed by adjudication, which produces strong outcomes for the litigants but no systemic requirement before authorization. The design lesson is that the enforceability of a business and human rights norm depends almost entirely on the instrument to which it is attached, and not on the clarity with which it is expressed. Indonesian law already possesses instruments of the required kind—the environmental approval, the industrial estate business licence, and the mining business permit—each of which carries conditions whose breach attracts administrative sanction. Attaching due diligence and consent requirements to those instruments would therefore not create a new regulatory burden so much as relocate an existing expectation into the only legal form in which it can be supervised.

A further consideration concerns the relationship between transnational and domestic standards. Because purchasers in regulated markets must verify the conditions under which nickel was produced, the practical standard applied to Indonesian operations is increasingly set outside Indonesia and administered by private auditors engaged by buyers. That outcome is unsatisfactory from the perspective of both sovereignty and

protection: it displaces the determination of acceptable conduct from Indonesian institutions, and it orients verification toward the documentary needs of purchasers rather than the interests of affected communities, who have no standing in the audit. Internalizing the substance of these requirements into Indonesian licensing conditions would reverse both effects, placing the determination with the authority that is politically accountable for it and giving affected residents a domestic route through which non-compliance can be raised. Comparative assessment of Indonesia's framework for human rights in corporate settings supports that conclusion, identifying the absence of a licensing hook rather than the absence of normative commitment as the operative deficiency[77].

Three conclusions follow from the comparison. First, Indonesia is not alone in lacking a statutory due diligence obligation, but it is unusual in having adopted the policy architecture of the Guiding Principles without attaching any element of it to the licensing instruments that govern the activities concerned. Second, the Philippine model demonstrates that a consent requirement can be made operational through a certification precondition without displacing the licensing authority, which answers the principal objection to statutory consent in Indonesia. Third, the European instruments show that the content of due diligence has become sufficiently standardized that an Indonesian permit condition could incorporate it by reference, avoiding the need to legislate the detail. The trade-law dimension does not obstruct this course. The panel finding against Indonesia's export restrictions concerned quantitative restrictions on exportation and processing requirements, not environmental or human rights conditions attached to domestic operations, and conditions of the latter kind are the ordinary subject of regulatory autonomy.

## Community Evidence and Its Legal Weight

The empirical component of this study was designed to establish which protected interests are most salient to the population whose rights the framework concerns. The survey covered 250 adult residents of Lelilef, Sagea, Kobe, and immediately adjoining settlements. Table 3 reports the descriptive results for the five constructs on a five-point scale.

***Table 3.*** *Descriptive Statistics for the Study Constructs*

| Construct | Min | Max | Mean | SD |
|---|---|---|---|---|
| Socio-Economic Quality (SEQ) | 2.33 | 4.83 | 3.687 | 0.431 |
| Socio-Cultural Change (SCO) | 2.17 | 5.00 | 3.656 | 0.489 |
| Environmental Quality (EQ) | 2.88 | 4.88 | 3.725 | 0.433 |
| Corporate Human Rights Compliance (CHRC) | 2.72 | 4.89 | 3.686 | 0.435 |
| Public Perception (PO) | 2.67 | 5.00 | 3.761 | 0.467 |

*Source: Primary survey data, 2025 (n = 250).*

[77] Chang, "Assessment of Indonesia's Legal Framework," 158–64.

The construct means cluster between 3.66 and 3.76 with standard deviations below 0.50, indicating moderate and relatively homogeneous assessments rather than polarization. The minima and maxima show that the full range of experience is nevertheless present in the sample, which is consistent with the uneven spatial distribution of industrial effects across settlements at different distances from the installation. Because the constructs are aggregated from multiple indicators, the proximity of the means should not be read as equivalence of the underlying concerns; it indicates only that no domain is assessed in markedly negative terms on average. Table 4 reports the structural results.

***Table 4.*** *Partial Least Squares Path Analysis Results*

| Structural Path | Path Coefficient | t-value | p-value | Conclusion |
|---|---|---|---|---|
| Socio-Economic Quality → Public Perception | 0.143 | 2.295 | 0.022 | Significant |
| Socio-Cultural Change → Public Perception | 0.201 | 3.034 | 0.003 | Significant |
| Environmental Quality → Public Perception | 0.412 | 5.664 | < 0.001 | Significant |
| Corporate Human Rights Compliance → Public Perception | 0.166 | 2.223 | 0.027 | Significant |

*Source: Primary survey data, 2025 (n = 250), analysed with PLS-SEM.*

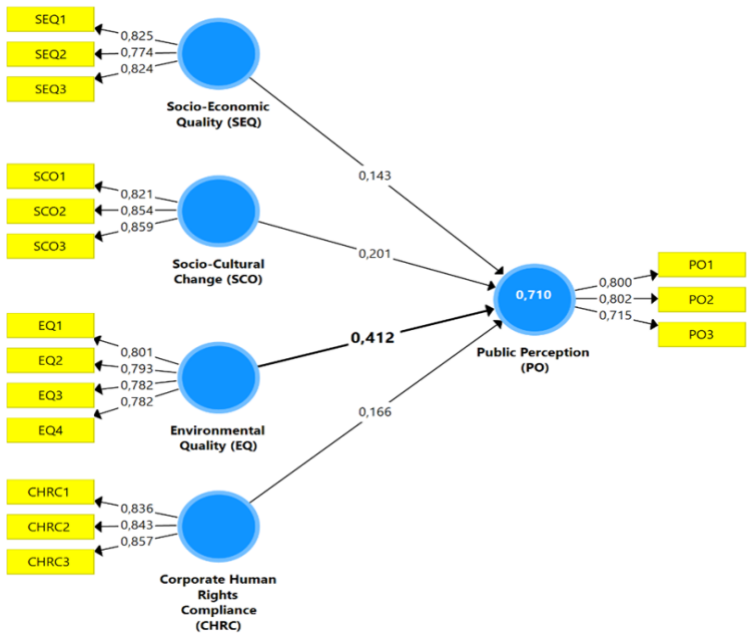



***Figure 1.*** *Measurement and Structural Model*

*Source: Authors' analysis of primary survey data, 2025.*

All four exogenous constructs are positively and significantly associated with overall public perception. Environmental quality has the largest coefficient by a substantial margin, followed by socio-cultural change, corporate human rights compliance, and socio-economic quality. The ordering is the legally significant result. It indicates that the population's assessment of the industrial park is governed principally by its environmental experience, and only secondarily by the employment and income effects

that dominate public justification of the downstreaming policy. Within the framework developed in this article, that finding directs attention first to the duties examined in the section on constitutional and statutory foundations—assessment, approval conditions, standards, and supervision—and to the complaint and inspection mechanism through which exceedance would be established. The significant coefficient for corporate human rights compliance, which was measured through perceived transparency, grievance handling, and consultation, locates the second priority in the participation, information, and due diligence duties.

The evidentiary limits must be stated with equal precision, because the value of the framework depends on not overstating what the survey proves. Perception data establish neither exceedance of an environmental quality standard nor the procedural adequacy of a consultation, nor the sufficiency of due diligence, nor causal responsibility for any harm. The design is cross-sectional, so it cannot support inference about change over time or about the effect of any particular corporate or regulatory action. Construct scores derive from self-report and are therefore susceptible to common-method variance. The constructs measuring socio-cultural change and overall perception are conceptually adjacent, and their discriminant validity should be confirmed before the relative magnitude of their coefficients is relied upon. Divergence between public perception and monitored environmental data is well documented in both directions, which is a further reason to treat these results as a basis for verification rather than as a substitute[78].

Within those limits the results perform three legally recognized functions. They constitute material on which a complaint under Article 65(5) of Law No. 32 of 2009 may properly be founded, since the provision requires an allegation of pollution or damage rather than proof of it. They are relevant to the identification of salient human rights impacts under the due diligence standard, where the perspective of potentially affected stakeholders is an express input rather than a courtesy. And they bear on the assessment of whether an activity presents a serious threat to the environment for the purposes of Article 88, a question that concerns the character of the risk rather than the occurrence of harm. Studies of ecosystem degradation and of livelihood dependence in coastal settings indicate that perceived deterioration in water and fishery conditions is frequently an early and reliable indicator of measurable change, which strengthens the case for treating such evidence as a trigger for inspection[79].

## Toward a Legally Determinate Accountability Framework

The analysis supports five prescriptions, each addressed to an identified defect and each implementable within the existing institutional structure. The first concerns the legal status of due diligence. Human rights and environmental due diligence should be incorporated as an express condition of the environmental approval and of the industrial estate business licence, by amendment to Government Regulation No. 22 of 2021 and Government Regulation No. 142 of 2015, with the content of the obligation incorporated

[78] Liu et al., "The Gap between Public Perceptions and Monitoring Data," 8–11.
[79] Yuki Yamamoto, "Living under Ecosystem Degradation: Evidence from the Mangrove-Fishery Linkage in Indonesia," *Journal of Environmental Economics and Management* 118 (2023): 102788, https://doi.org/10.1016/j.jeem.2022.102788.

by reference to the Guiding Principles and the applicable international guidance. The effect would be to convert the expectation created by Presidential Regulation No. 60 of 2023 into a supervisable requirement enforceable through the administrative sanctions already provided by Articles 76 to 83 of Law No. 32 of 2009, without creating new institutions or new offences.

The second concerns strict liability and attribution. The words relieving claimants of the burden of proving fault should be restored to Article 88 of Law No. 32 of 2009, and the provision should be extended to state expressly that the operator of an industrial estate is jointly responsible with its tenants for harm arising from the aggregate effects of activities within the estate that its control enables it to prevent. Without the first element, absolute liability is a label without an operation; without the second, the estate form permits the diffusion of responsibility among separate legal persons none of whom can be shown individually to have caused the harm experienced by the community as a whole.

The third concerns consent and participation. Indonesia should enact a statutory procedure for free, prior and informed consent in respect of projects affecting the lands and resources of traditional communities, modelled on the certification precondition operating in the Philippines and adapted to the Indonesian recognition framework, so that verification is performed by an independent body before the licensing decision rather than asserted by the proponent after it. The narrowing of public involvement effected by the Job Creation Law should be reversed to the extent that the determination of which communities are directly affected is removed from the proponent and made a reasoned and reviewable decision of the appraising authority.

The fourth concerns supervision and transparency. A joint central and provincial supervisory unit should be established for industrial estates holding strategic status, with a statutory duty to inspect at defined intervals, to respond to complaints within a fixed period with written reasons, and to publish inspection results and monitoring data as information that must be made available immediately under Law No. 14 of 2008. Publication is the single measure with the largest effect on the whole accountability chain, because it supplies the evidence on which administrative, civil, criminal, and non-judicial routes all depend, and it does so without altering any substantive standard.

The fifth concerns remedy. A layered grievance architecture should be recognized in law: an operational mechanism at the estate assessed against the effectiveness criteria of the Guiding Principles; a community-level alternative dispute resolution process given statutory recognition and grounded in local procedure, on the model developed in Indonesian scholarship for coastal land disputes; mediation by the National Commission on Human Rights with a duty on public bodies to respond to its recommendations; and unimpeded access to the courts, secured by legislative clarification that the protection of environmental advocacy under Article 66 of Law No. 32 of 2009 prevails over Article 162 of Law No. 4 of 2009. Sums recovered for environmental restoration should be allocated to restoration in the affected locality. Taken together, these five measures would make the duties identified in Table 1 determinate as to duty-bearer, evidence, and consequence, which is the condition that the present regime does not satisfy.

## Conclusion

Indonesian law supplies the substantive protection that nickel industrialization at Weda Bay requires, but it does not presently supply the determinacy that makes protection enforceable. The deficiency is institutional rather than normative. Licensing centralization under Law No. 3 of 2020 and the Job Creation Law separated the authority that sets the conditions of an environmental approval from the officials able to observe their performance. The narrowing of public involvement committed the boundary of direct effect to the parties least interested in drawing it widely, and the deletion of the no-fault wording from Article 88 of Law No. 32 of 2009 removed the operative element of absolute liability in exactly the settings where claimants cannot reconstruct a defendant's conduct. The industrial estate form distributes operational responsibility among separate legal subjects whose aggregate effects no claimant can apportion. Corporate social and environmental responsibility under Article 74 of Law No. 40 of 2007 continues to be offered in place of human rights due diligence, although it generates none of the evidence that due diligence produces, and free, prior and informed consent has no statutory procedure comparable to the certification precondition long operating in the Philippines.

Community evidence of the kind presented here, in which environmental quality emerges as the strongest correlate of public assessment, is legally valuable as a basis for complaint, as an input to the identification of salient impacts, and as a measure of serious threat. It cannot, however, establish exceedance, procedural defect, inadequate diligence, or causal responsibility, each of which requires its own class of evidence.

It follows that Indonesia should incorporate human rights and environmental due diligence as an express condition of the environmental approval and the industrial estate licence; restore the no-fault formula in Article 88 and extend it to make estate operators jointly responsible for preventable aggregate harm; enact a certified consent procedure and restore reasoned determination of affected communities; establish a joint central and provincial supervisory unit with duties to inspect, to answer complaints with reasons, and to publish inspection and monitoring data under Law No. 14 of 2008; and recognize a layered grievance architecture secured by legislative confirmation that the protection of environmental advocacy prevails over the obstruction offence in mining law. Future research should apply the accountability matrix developed here to the approval conditions, inspection records, consultation documents, and complaint outcomes of a specific estate, since it is only against those materials that a determinate legal assessment of conduct becomes possible.

## References

Aditya, Zaka Firma, and Sholahuddin Al-Fatih. "Legal Protection of Indigenous People's Rights through Strengthening the Licensing Principles Based on Social Sensitivity." *Journal of Indonesian Legal Studies* 6, no. 1 (2021): 1–34. https://doi.org/10.15294/jils.v6i1.44671.

Aditya, Zaka Firma, and Sholahuddin Al-Fatih. "State Liability for Violation of Constitutional Rights against Indigenous People in Freedom of Religion and

Belief." *Brawijaya Law Journal* 4, no. 1 (2017): 29–58. https://doi.org/10.21776/ub.blj.2017.004.01.02.

Aidonojie, Paul Atagamen, Esther Chetachukwu Aidonojie, Godswill Owoche Antai, Collins Ekpenisi, and David Ayuba. "Constitutional and Legislative Frameworks for Green and Sustainable Environmental Governance in Uganda." *International Journal of Constitutional and Administrative Law* 1, no. 1 (2025): 1–20. https://doi.org/10.66502/n8sg2j47.

Apripari, Dian Ekawaty Ismail, Ahmad, Vivi Oktaviani Pulukadang, and Novendri M. Nggilu. "Restorative Justice in Victimless Crimes under the Criminal Procedure Code: Problematics and Solutions." *Jurnal Hukum Novelty* 17, no. 1 (2026): 144–66. https://doi.org/10.26555/jhn.v17i1.31003.

ASEAN Intergovernmental Commission on Human Rights. *Thematic Study on Corporate Social Responsibility and Human Rights in ASEAN*. Jakarta: ASEAN Secretariat, 2014.

Basrawi, M. Said Karim, and Aminuddin Ilmar. "The Politics of Criminal Law behind the Mining Industry's Image: Uncovering CSR Scandals in Indonesia." *Journal of Law and Legal Reform* 6, no. 1 (2025): 179–208. https://doi.org/10.15294/jllr.v6i1.14464.

Bunga, Marten. "Amendment by Other Means: Informal Change and the Replacement Boundary in Indonesia, Colombia, and India." *Journal of Constitutional Change* 1, no. 1 (2026): 24–47. https://doi.org/10.66502/vr91d068.

Butar Butar, Franky. "Penegakan Hukum Lingkungan di Bidang Pertambangan." *Yuridika* 25, no. 2 (2010): 151–68. https://doi.org/10.20473/ydk.v25i2.252.

Chang, Soonpeel. "Assessment of Indonesia's Legal Framework for Human Rights in Corporate Settings." *Indonesia Law Review* 11, no. 2 (2021): 145–68.

Chudasama, Hardik. "Sampling Methods in Research: A Review." *International Journal of Trend in Scientific Research and Development* 7, no. 3 (2023): 762–68.

Constitutional Court of the Republic of Indonesia. Decision No. 3/PUU-VIII/2010, June 16, 2011.

Constitutional Court of the Republic of Indonesia. Decision No. 35/PUU-X/2012, May 16, 2013.

Constitutional Court of the Republic of Indonesia. Decision No. 53/PUU-VI/2008, April 15, 2009.

Constitutional Court of the Republic of Indonesia. Decision No. 85/PUU-XI/2013, February 18, 2015.

Constitutional Court of the Republic of Indonesia. Decision No. 91/PUU-XVIII/2020, November 25, 2021.

Dungga, Weny Almoravid, Ahmad, Karem Aboelazm, Dewi Mulyanti, and Novendri M. Nggilu. "Ensuring Justice in the Trend of Remote Working: Legal Challenges and Implications for Companies and Workers." *Jurnal IUS Kajian Hukum dan Keadilan* 14, no. 1 (2026): 201–27. https://doi.org/10.29303/ius.v14i1.1721.

European Union. Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence. OJ L, 2024/1760.

European Union. Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025 Amending Directives (EU) 2022/2464 and (EU) 2024/1760 as Regards the Dates from Which Member States Are to Apply Certain Corporate Sustainability Reporting and Due Diligence Requirements. OJ L, 2025/794.

European Union. Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning Batteries and Waste Batteries. OJ L 191/1.

Federal Republic of Germany. Act on Corporate Due Diligence Obligations in Supply Chains (Lieferkettensorgfaltspflichtengesetz), July 16, 2021.

Fernando, Zico Junius, Firdaus Arifin, Muhamad Adystia Sunggara, and Fardana Kusumah. "Transnational Environmental Crime in the Context of International Criminal Law and Victim-Centered Environmental Justice." *Lampung Journal of International Law* 7, no. 1 (2025): 15–30. https://doi.org/10.25041/lajil.v7i1.4338.

Grimberg, Shontelle. "Modern Interpretations of International Humanitarian Law's Martens Clause: Opening the Door to Strategies to Better Protect the Environment and Indigenous Peoples during Armed Conflict." *Asia-Pacific Journal of International Humanitarian Law* (2024): 129–75.

Hair, Joseph F., Jr., G. Tomas M. Hult, Christian M. Ringle, and Marko Sarstedt. *A Primer on Partial Least Squares Structural Equation Modeling (PLS-SEM)*. 3rd ed. Thousand Oaks, CA: SAGE, 2022.

Hartati, and Zainal Amin Ayub. "Jurisdictional Disputes between Central and Local Governments in the Management of Coal Mining." *Sriwijaya Law Review* 8, no. 2 (2024): 269–85. https://doi.org/10.28946/slrev.Vol8.Iss2.3003.pp269-285.

Hartiwiningsih, Seno Wibowo Gumbira, and Jaco Barkhuizen. "Dysfunctional Factors of Environmental Law on Strategic Lawsuit against Public Participation and Developing Remedial Strategies through Reconstruction Criminal Law System Model in Indonesia." *Padjadjaran Journal of Law* 10, no. 3 (2023): 411–30. https://doi.org/10.22304/pjih.v10n3.a6.

Hidayah, Ahdiyatul, Faturrahman Fahrozi, and Ahmad Rifani. "The Role of Environmental Principles in Mining Resources: A Discourse of Islamic and Indonesian National Law." *Jambe Law Journal* 6, no. 1 (2023): 23–45. https://doi.org/10.22437/jlj.6.1.23-45.

Itmam, Muhammad Shohibul, Sirajul Munir, Lukman Santoso, Taufikin, and Abdelmalek Aouich. "Legal Politics of Mining Spatial Planning in Sumenep District: Maqāṣid Sharīʻah Overview." *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 25, no. 1 (2025): 1–27. https://doi.org/10.18326/ijtihad.v25i1.1-27.

Jamin, Mohammad, Abdul Kadir Jaelani, Mulyanto Mulyanto, Reza Octavia Kusumaningtyas, and Duc Quang Ly. "The Impact of Indonesia's Mining Industry Regulation on the Protection of Indigenous Peoples." *Hasanuddin Law Review* 9, no. 1 (2023): 88–105. https://doi.org/10.20956/halrev.v9i1.4033.

Jayantiari, I Gusti Agung Mas Rwa, I Nyoman Prabu Buana Rumiartha, I Gst Pt Bagus Suka Arjawa, I Gusti Ngurah Dharma Laksana, and Anak Agung Sagung Ngurah Indradewi. "The Rights of Customary Law Communities to Resources: The Relationship of Coexistence of State Law and Customary Law." *Jurnal IUS Kajian Hukum dan Keadilan* 13, no. 1 (2025): 187–98. https://doi.org/10.29303/ius.v13i1.1329.

Kadaryanto, Bagio, Ardian Kurniawan, and Burhanuddin Burhanuddin. "Reconstruction of Indigenous Community Inclusion in Village Autonomy Policy: Towards a Substantive Autonomy Model in Indonesia." *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 25, no. 1 (2025): 1–19.

Kemp, Deanna, and John R. Owen. "Community Relations and Mining: Core to Business but Not 'Core Business.'" *Resources Policy* 38, no. 4 (2013): 523–31. https://doi.org/10.1016/j.resourpol.2013.08.003.

Kingdom of Thailand. *First National Action Plan on Business and Human Rights 2019–2022*. Bangkok: Ministry of Justice, 2019.

Kristanto, Kiki, Zico Junius Fernando, and Papontee Teeraphan. "Anticorruption School: A Solution to Building the Integrity of Judges." *IJCLS (Indonesian Journal of Criminal Law Studies)* 8, no. 2 (2023): 193–220. https://doi.org/10.15294/ijcls.v8i2.45473.

Listiyani, Nurul, Muzahid Akbar Hayat, and Subianta Mandala. "Penormaan Pengawasan Izin Lingkungan dalam Pencegahan Pencemaran dan Kerusakan Lingkungan Hidup dalam Eksploitasi Sumber Daya Alam." *Jurnal Media Hukum* 25, no. 2 (2018): 217–27. https://doi.org/10.18196/jmh.2018.0116.217-227.

Liu, B., H. Du, J. Fan, B. Huang, K. Zhou, and J. Gong. "The Gap between Public Perceptions and Monitoring Data on Environmental Quality." *Environmental Science and Pollution Research* 28 (2021): 1–14.

MacInnes, A., M. Colchester, and A. Whitmore. "Free, Prior and Informed Consent: How to Rectify the Devastating Consequences of Harmful Mining for Indigenous Peoples." *Perspectives in Ecology and Conservation* 15, no. 3 (2017): 152–58. https://doi.org/10.1016/j.pecon.2017.05.007.

Muti'ah, Dewi, Abd. Wachid Habibullah, Yusaq Djunarto, and Luthfi Basith Eko Cahyono. "Reconceptualisation of State Financial Losses to Prevent Misuse of Village Funds." *Trunojoyo Law Review* 7, no. 2 (2025): 361–90. https://doi.org/10.21107/tlr.v7i2.29856.

Mutti, Diana, Natalia Yakovleva, Diego Vazquez-Brust, and Martín H. Di Marco. "Corporate Social Responsibility in the Mining Industry: Perspectives from Stakeholder Groups in Argentina." *Resources Policy* 37, no. 2 (2012): 212–22. https://doi.org/10.1016/j.resourpol.2011.05.001.

Najicha, F. U., I. G. A. K. R. Handayani, and N. Hartiwiningsih. "Legal Protection 'Substantive Rights for Environmental Quality' in Environmental Management." *International Journal of Criminology and Sociology* 10 (2021): 234–39.

Nggilu, Novendri, Lisnawaty Wadju Badu, and Suwitno Yutye Imran. "Legal Protection Bonda and Bulango Languange: In Reality and Prospect." *Jambura Law Review* 3, no. 1 (2021): 19–36. https://doi.org/10.33756/jlr.v3i1.6947.

Nggilu, Novendri M., Ahmad, Moh. Rivaldi Moha, Apripari, and Moh. Hidayat Muhtar. "Abusive Constitutional Court: Dysplasia and the Destructive Power of Constitutional Court Decisions." *Estudios Constitucionales* 22, no. 2 (2024). https://estudiosconstitucionales.utalca.cl/index.php/home/article/view/188.

Nggilu, Novendri M., Zulkifli Zulkifli, Yassine Chami, Indra Perwira, and Ali Abdurahman. "The Absence of Judicial Review on Constitutional Amendments in Indonesia: Urgency and Legal Reform for Constitutional Safeguards." *Journal of Law and Legal Reform* 6, no. 2 (2025): 659–92. https://doi.org/10.15294/jllr.v6i2.20888.

Nggilu, Tri Delvi GM, Fenty Puluhulawa, and Apripari. "The Constitutional Duty–Administrative Capacity Gap in Forest Governance: Indonesia and Brazil Compared." *International Journal of Constitutional and Administrative Law* 2, no. 2 (2026): 183–217. https://doi.org/10.66502/05ybef09.

Nugroho, Wahyu, Erwin Syahruddin, Saiful Anam, and Aris Yulia. "Religious Community Organization as Corporation: Legal Politics at the Edge of the Mine." *LITIGASI* 26, no. 1 (2025). https://doi.org/10.23969/litigasi.v26i1.20375.

Organisation for Economic Co-operation and Development. *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*. Paris: OECD Publishing, 2023.

Pandiangan, Marolop, Harkristuti Harkrisnowo, and Febby Mutiara Nelson. "The Conflict between Mining Law and Anti-Corruption Law in Indonesia's Extractive Sector: A Study of Legal Justification and Judicial Reasoning." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 9, no. 1 (2026): 111–26. https://doi.org/10.24090/volksgeist.v9i1.14411.

Permadi, Iwan, Weny Almoravid Dungga, and Azhani Arshad. "Ensuring Indigenous People's Rights Protection through Normative Law in Land Acquisition for Indonesia's New National Capital City, Nusantara." *Jambura Law Review* 7, no. 1 (2025): 30–54. https://doi.org/10.33756/jlr.v7i1.24930.

Permana, Deni Yusup, Imamulhadi Imamulhadi, Idris Idris, and Montisa Mariana. "Integrating Indigenous Wisdom in Environmental Protection: Exploring Village Authority within the Framework of State Responsibility in Indonesia." *Jambura Law Review* 7, no. 2 (2025): 359–89. https://doi.org/10.33756/jlr.v7i2.29582.

Phillips, Sara K. *Mining Law and Governance: Structures and Challenges*. Comparative Environmental Law Series. London: Routledge, 2020.

Putri, Nabilla Desyalika, Ellectrananda Anugerah Ash-shidiqqi, and Mutiara Dwi Sari. "Legal Certainty in Mining Regulation: A Comparative Study of Indonesia and Malaysia." *Administrative and Environmental Law Review* 7, no. 2 (2026): 139–54. https://doi.org/10.25041/aelr.v7i2.4589.

Republic of Indonesia. Constitution of the Republic of Indonesia of 1945.

Republic of Indonesia. Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management.

Republic of Indonesia. Government Regulation No. 47 of 2012 on Corporate Social and Environmental Responsibility.

Republic of Indonesia. Government Regulation No. 142 of 2015 on Industrial Estates.

Republic of Indonesia. Law No. 3 of 2014 on Industry.

Republic of Indonesia. Law No. 4 of 2009 on Mineral and Coal Mining, as Amended by Law No. 3 of 2020 and Law No. 2 of 2025.

Republic of Indonesia. Law No. 14 of 2008 on Public Information Disclosure.

Republic of Indonesia. Law No. 27 of 2007 on the Management of Coastal Zones and Small Islands, as Amended by Law No. 1 of 2014.

Republic of Indonesia. Law No. 32 of 2009 on Environmental Protection and Management, as Amended by Law No. 6 of 2023.

Republic of Indonesia. Law No. 39 of 1999 on Human Rights.

Republic of Indonesia. Law No. 40 of 2007 on Limited Liability Companies.

Republic of Indonesia. Presidential Regulation No. 60 of 2023 on the National Strategy for Business and Human Rights.

Republic of the Philippines. Indigenous Peoples' Rights Act of 1997, Republic Act No. 8371.

Ruggie, J. G. "The Social Construction of the UN Guiding Principles on Business and Human Rights." In *Research Handbook on Human Rights and Business*, edited by S. Deva and D. Birchall, 63–86. Cheltenham: Edward Elgar, 2020.

Rusdiana, Erma, Lindra Darnela, Muwaffiq Jufri, Paul Atagamen Aidonojie, and Souad Ezzerouali. "The Potential for Corporate Corruption in Mining Licensing Policies for Religious Organizations in Indonesia." *Lex Scientia Law Review* 9, no. 2 (2025): 1587–1636. https://doi.org/10.15294/lslr.v9i2.21551.

*Sagong bin Tasi and Others v. Kerajaan Negeri Selangor and Others* [2002] 2 MLJ 591 (High Court of Malaya, Shah Alam); affirmed [2005] 6 MLJ 289 (Court of Appeal).

Salauwe, Desi Angraini, August E. Pattiselano, and Junianita F. Sopamena. "The Impact of IWIP Company on the Socio-Economic Community in Lelilef Village, Weda Tengah District, Central Halmahera Regency, North Maluku Province." *International Journal of Integrative Sciences* 4, no. 6 (2025): 1273–1306. https://doi.org/10.55927/ijis.v4i6.345.

Suleman, Ciputra Sigit. "The Delegated Constitution: Organic Statutes, Desuetude, and Constitutional Change in Indonesia." *Journal of Constitutional Change* 1, no. 1 (2026): 93–121. https://doi.org/10.66502/ytwvjr95.

Supreme Court of the Republic of Indonesia. Decision No. 651 K/Pdt/2015 (Ministry of Environment v. PT Kallista Alam).

Supreme Court of the Republic of Indonesia. Decision No. 1794 K/Pdt/2004 (Mandalawangi).

Supreme Court of the Republic of Indonesia. Regulation No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases.

Supriyadi, Aditya Prastian, Mustafa Lutfi, and Kurniasih Bahagiati. "Strengthening Indonesia's Green Investment Law: Legal Reconceptualisation toward Net-Zero Emissions under Green Constitution and Maslahah." *Jurisdictie: Jurnal Hukum dan Syariah* 16, no. 2 (2025): 417–57. https://doi.org/10.18860/j.v16i2.35169.

Tambunan, Rico J. R., Rachmat Safa'at, Iwan Permadi, and Rachmi Sulistyarini. "Justice, Land, and Sharia: Conceptualizing Agrarian Courts in the Settlement of Land Ownership Disputes." *De Jure: Jurnal Hukum dan Syar'iah* 17, no. 2 (2025): 530–52. https://doi.org/10.18860/j-fsh.v17i2.32486.

Tarrad, Abdullah Mukhlif. "The Subject Element in Contract and Obligation: A Comparative Analytical Legal Study." *Indonesia Private Law Review* 6, no. 1 (2025): 1–18.

United Nations General Assembly. *United Nations Declaration on the Rights of Indigenous Peoples*. A/RES/61/295, September 13, 2007.

United Nations Office of the High Commissioner for Human Rights. *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*. New York and Geneva: United Nations, 2011. HR/PUB/11/04.

Wantu, Fence M., Weny Almoravid Dungga, Yassine Chami, Ahmad Ahmad, and Muhammad Mukhtar. "Reconstructing Alternative Dispute Resolution for Land Disputes Based on Local Wisdom in the Coastal Area of Tomini Bay." *Journal of Law and Legal Reform* 7, no. 2 (2026): 863–902. https://doi.org/10.15294/jllr.v7i2.18287.

Wettstein, Florian. "Betting on the Wrong (Trojan) Horse: CSR and the Implementation of the UN Guiding Principles on Business and Human Rights." *Business and Human Rights Journal* 6, no. 2 (2021): 312–25. https://doi.org/10.1017/bhj.2021.6.

World Trade Organization. Panel Report, *Indonesia — Measures Relating to Raw Materials*, WT/DS592/R, circulated November 30, 2022.

Wuryandari, Utji Sri Wulan, Anggi Dewinta Chairani, and Myrna Asnawati Safitri. "Weak Investment Law Enforcement in Land and Forest Fire Cases in Indonesia." *Substantive Justice International Journal of Law* 5, no. 2 (2022): 205–15.

Yamamoto, Yuki. "Living under Ecosystem Degradation: Evidence from the Mangrove-Fishery Linkage in Indonesia." *Journal of Environmental Economics and Management* 118 (2023): 102788. https://doi.org/10.1016/j.jeem.2022.102788.

Yuliasih, Ade, I Gde Pantja Astawa, Sarifuddin Suding, and Chami Yassine. "Constitutional Consistency of Indonesia's Job Creation Law and Its Impact on Regional Autonomy." *Jambura Law Review* 8, no. 1 (2026): 190–209. https://doi.org/10.33756/jlr.v1i1.34262.