

Makalah Pembicara

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Corporations, Human Rights, and the Role of the State



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Corporations and Human Rights

- ◆ Corporate activity can lead to more jobs, wealth, economic growth and improvement in ESC rights
- ◆ Would not argue that they are ‘bad’ for human rights

Corporations and Human Rights

- ◆ Eg. Occupational health and safety (eg Union Carbide, Bhopal, 1984)
- ◆ Consumer rights (eg James Hardie, Nestle)
- ◆ Eg. Allegations of exploitation of workers (eg allegations against Nike in SE Asia)
- ◆ Eg. Severe environmental degradation (eg PT Lapindo, Sidoarjo; Freeport McMoran, Irian Jaya)
- ◆ Militarised commerce – Freeport; Shell, Nigeria; Exxon, Aceh; Rio Tinto, Bougainville ...

International Human Rights Law

- ◆ States must respect, protect, and fulfil human rights
- ◆ “Protect” includes the obligation to protect people from HR abuses by third parties, including corporations
- ◆ Obligation does not extend beyond borders.
- ◆ Few, if any, direct obligations for corporations

State regulation

- ◆ Criminal laws
- ◆ Workplace safety laws
- ◆ Environmental laws
- ◆ Tort law
- ◆ Consumer protection
- ◆ Corporations law (reporting, fiduciary duties)
- ◆ Human rights legislation
- ◆ CSR law (Indonesia)

A few facts about MNCs

- ◆ 51 out of top 100 'economies' in 2000
- ◆ 2000: Top 200 companies have combined revenue > combined GDP of all nations bar the top 20
- ◆ Very economically powerful entities

Problems with MNC accountability

- ◆ Some host States may be corruptible or economically vulnerable
- ◆ MNCs can limit liabilities by allocating assets across jurisdictions to minimise risk
- ◆ Consequence: sometimes MNC can operate with impunity
- ◆ Unsatisfactory to rely on host States

Transnational Human Rights Litigation in Home States

- ◆ Alien Tort Claims Act 1789 (USA)
- ◆ Transitory tort – USA, UK, Australia, Canada

Where are we at?

- ◆ No decided cases
- ◆ Dismissal, preliminary challenges ongoing, settlement
- ◆ Outstanding issue: corporate veil

Desirability

- ◆ Judicial imperialism
- ◆ Protectionist decisions
- ◆ Forum-shopping vs jurisdiction-shopping

Informal accountability

- ◆ NGO protests
- ◆ Consumer revolt
- ◆ Socially responsible investment
- ◆ Self-Regulation

