

# EVENT REPORT



## “Doing Business Sustainably: Human Rights Compliance”

Wednesday, October 20<sup>th</sup>, 2010  
Hotel Nikko, Jakarta

# Background

Respecting environment, social, and human rights issues is crucial in current business environment, where most major firms have included this agenda into their Corporate Social Responsibilities (CSR) strategies. We have seen too many good international companies embarking on a CSR strategy, which fails to identify specific risks such as risks in sustainability and human rights areas. These companies revisit their CSR strategy in response to unfavourable events, which is reactive and very often this effort is not effective.

Business is now playing a more pronounced and visible role in the human rights debate following an increasing pressure for companies to respect human rights. Companies have the responsibility to act with due diligence to avoid infringing on the rights of others as laid out in the UN Human Rights' policy framework known as *Protect, Respect and Remedy* framework. This framework was put forth by John Ruggie – the UN Special Representative for Business and Human Rights in 2008 to generate commitment of companies and all elements of the business community to take human rights into considerations.

Ever since, there has been a rising awareness within business communities across the globe of the relevance of integrating Human Rights into their operations. More and more companies have started assessing their progress in aligning their business practices with universally-accepted principles in human rights, labor, environment and anti-corruption, and make the results of their human rights due diligence accessible to the public.

While awareness is growing, unfortunately, they are only a very small number of companies amongst around 80,000 operating internationally actively managing these risks. Many large corporations still run their businesses in the belief that as long as they meet all the requirements as stipulated in the prevailing local regulations, they are in a safe position and would be free from any legal and reputational risks. As a result, a large number of companies may be unaware of infringing upon the rights of others, which could potentially result in reputational damage and a major financial loss especially those actions that could potentially end up in a court room. Companies may often be uninformed whether or not they have met certain aspects of human rights and this could positively be used to leverage their position and reputation in their industry/market. In many cases, human rights compliance is actually a powerful strategy for legitimizing a business or becoming a social 'license' for a company to operate.

# Objectives

Mazars, an international, integrated and independent organisation, specialising in audit, accounting, tax, legal and advisory services strives to be a leader in human rights promotion and reporting and is taking a leading role in exploring the importance of human rights compliance in the business world.

The responsibility to respect human rights is not a one-time transactional activity, but is ongoing and dynamic. It involves meaningful engagement and dialogue with all potential stakeholders. Therefore, Mazars views that business leaders are in need of support and guidance to be able to move in the right direction.

This seminar initiated by Mazars aims to address and answer among others the following questions:

- ✓ *What is human rights compliance and what is its significance toward businesses in Indonesia?*
- ✓ *Are Indonesian laws and market practices representative of world trends?*
- ✓ *Where and how does corporate responsibility interact with human rights?*
- ✓ *How does a company avoid infringing on the rights of others and address adverse impacts when they do occur?*
- ✓ *How could a company identify and manage potential risks of business operations in the first place?*
- ✓ *What are the benefits of being in compliance?*

# Agenda

Time	Rundown
10.00 – 10.30	Registration
10.30 – 10.40	Opening by Moderator: James Kallman, <i>President Director of Mazars</i>
10.40 – 10.55	Dr. Homayoun Alizadeh, <i>Regional Representative for South-East Asia Office of the High Commissioner for Human Rights (OHCHR)</i> <i>Topic 1: “Embedding Human Rights in Business Practices”</i>
10.55 – 11.10	Mr. Bernd Sagasser, <i>Legal Partner – Marccus Partners</i> <i>Topic 2: “Legal and Practical Effects of OECD Guidelines on Human Rights”</i>
11.10 – 11.25	Lieut Gen. (Ret) Agus Widjojo – <i>Chairman of National Institute for Democratic Governance and former Deputy Speaker of the People’s Consultative Assembly (MPR), representing The Military and National Police Faction</i> <i>Topic 3: “Experiences &amp; State Duties in Enforcing Human Rights”</i>
11.25 – 11.40	Nur Kholis, <i>Deputy Chairman – External Relations - Indonesian National Commission on Human Rights/ KOMNAS HAM*</i> <i>Topic 4: “Human Rights Compliance and Incentives/Opportunities for and Experience of Companies in Indonesia”</i>
11.40 – 11.55	Mr. Marzuki Darusman, <i>Director of the Human Rights Research Center for ASEAN (HRRCA)</i> <i>Topic 5: “Identifying and Managing Human Rights Risks of Business Operations through Human Rights Due Diligence”</i>
11.55 – 12.30	Q&A/Discussion
12.30 – 13.30	Lunch

# Participants

Around 75 participants from corporations, government institutions, NGOs, State-owned enterprises and media.

# Speakers



## **DR. HOMAYOUN ALIZADEH**

*Regional Representative for South-East Asia Office of the High Commissioner for Human Rights (OHCHR)*

Homayoun Alizadeh was born in 1952 in Zürich, Switzerland and attended primary and high school in Teheran and Shiraz, Iran. He studied Political Science (Ph. D) and Law at the University of Vienna, Austria, and graduated from the Diplomatic Academy of the Austrian Ministry of Foreign Affairs in 1983.

Since 1987, Alizadeh has been working with the Austrian Federal Ministry of the Interior as Deputy Director of Department for Refugees and Migration where he is currently on unpaid leave. In this capacity, Mr. Alizadeh conducted two official missions to Turkey in 1991 and interviewed almost 1,000 refugees in Turkey and succeeded in bringing 204 Kurdish refugees to Austria from Turkey during the war in Iraq in 1991. He also conducted a series of interviews with prisoners of war in Bosnia-Herzegovina affirming violations of international humanitarian law and human rights law in the former Yugoslavia. On the basis of these interviews, a report was presented on behalf of the Austrian Government to the UN Security Council in 1993.

Since 1995, Alizadeh has been working with the United Nations. From 1995 to 1998, he worked as Government Liaison Officer and Assistant to Chief of Mission with the United Nations Human Rights Field Operation in Rwanda (UNHRFOR), and from 1999 to 2001, he worked as a Member of the Identification Commission and was Coordinator of the Appeals Analysis Teams with the United Nations Mission for the Referendum in Western Sahara (MINURSO). From March 2001 to June 2005, Alizadeh was Head of Office of the United Nations High Commissioner for Human Rights (OHCHR) in Khartoum. From July 2005 to March 2006, Alizadeh served as Senior Human Rights Advisor to the Director of the Inter-Agency Internal Displacement Division (IDD), Office for the Coordination of Humanitarian Affairs (OCHA), Geneva, Switzerland. He is currently working as the Regional Representative of OHCHR for South-East Asia with its seat in Bangkok, Thailand. Alizadeh has longstanding experience in human rights training programmes for members of the armed forces, including military, security and police personnel.

As a human rights activist, he worked with Amnesty International (AI) from 1976 to 1981 and was a board member of the Austrian Section of AI and responsible for adoption groups and co-ordinator of the campaign against the death penalty. From 1982 to 1987, he was chairperson of the Austrian Committee for the Defence of Human Rights in Iran.

# Speakers



## **BERND SAGASSER**

*Managing Partner – Marccus Partners Paris, France*

Bernd Sagasser is a German lawyer and tax advisor and the Managing Partner of Marccus Partners, a European law firm with offices in Asia (Shanghai and Jakarta). He specialises in corporate investments, fund structuring and international taxation.

Over the last 20 years Bernd Sagasser has been advising on capital investments in Europe and in Asia, acting principally on behalf of German, French, Austrian and Swiss clients with regard to the structuring and protection of their investments abroad.

Bernd Sagasser is the author of several books on the taxation of capital investments as well as on the reorganisation of companies. He has a doctorate in law from Munich University.

Marccus Partners is comprised of corporate lawyers and tax advisors from several European jurisdictions whose transactional focus lies primarily in the areas of Corporate, M&A, Private Equity and Venture Capital. Marccus Partners is a member of the Mazars Group.

Mazars is an international, integrated and independent organisation, specialising in audit, accounting, tax and legal advisory services provided by 12,500 professionals working in 56 countries.

# Speakers



## **LIEUT GEN. (RET) AGUS WIDJOJO**

***Chairman of National Institute for Democratic Governance and former Deputy Speaker of the People's Consultative Assembly (MPR), representing The Military and National Police Faction***

Lieutenant General TNI (Retired) Agus Widjojo graduated from Indonesian Armed Forces Academy in 1970. He attained the degrees of Master of Military Art Science, US Army Command and General Staff College in 1988 and Master of Science in National Security, US National Defense University in 1994. He was awarded a Master of Public Administration (MPA) from George Washington University. He has served with the Indonesian delegation to the ICCS Vietnam in 1973 and The Indonesian Battalion to UN Emergency Forces II Sinai, Middle East in 1975. He held various field assignments while in service with The Army Strategic Reserve Command (Kostrad) units, among others as Commander of the 17<sup>th</sup> Airborne Brigade. He was The Commandant of The Defense Force Command and Staff College, and also served as Assistant for Strategic Policy and General Planning, Senior Advisor on Political and Security Affairs, and Chief of Staff for Territorial Affairs to the Commanding General of TNI. He served tours of duty in East Timor and Irian Jaya.

He was The Deputy Speaker of the People's Consultative Assembly (MPR), representing The Military and National Police Faction, before entering his retirement from active duty military service effective as of March 1, 2003. He was a Visiting Senior Fellow at Institute of Defense and Strategic Studies Singapore in late 2003, Senior Advisor on Security Sector Reform and Democratization to United Nations Support Facilities for Indonesian Recovery (UNSFIR). He was also a Commissioner in the Commission for Truth and Friendship Indonesia-Timor Leste, and Deputy I of the Presidential Monitoring Unit. He is now a member of the Directing Board at National Resilience Institute (Lemhannas), Institute for Peace and Democracy at Udayana University, Senior Fellow with The Center for Strategic and International Studies in Jakarta, and Chairman of National Institute for Democratic Governance.

# Speakers



## **NUR KHOLIS**

*Deputy Chairman – External Relations, Indonesian National Commission Human Rights/ KOMNAS HAM\**

Previously Nur Kholis led the Monitoring and Investigation sub commission of KOMNAS HAM RI. He is an alumni of Law Faculty, University of Sriwijaya, Palembang, South Sumatra. He had participated in a number of Human Rights Courses in USA, Budapest – Hungary, the Philippines and Thailand. He also earned his master degree from SungKongHoe University in South Korea in February 2008.

Nur Kholis was formerly the director of Walhi (Friends of the Earth) for South Sumatra Office and former Chairman of National Council of Walhi. He once sat as the director of Legal Aid Foundation in Palembang, South Sumatra and was an active member of the Indonesian Bar Association (IKADIN) Palembang.

# Speakers



## **MAZUKI DARUSMAN**

*Director of the Human Rights Research Center for ASEAN (HRRCA)*

Mr. Marzuki Darusman is the Director of the Human Rights Research Center for ASEAN (HRRCA) and was former member of United Nations Commission of Inquiry on the assassination of PM Benazir Bhutto, Pakistan.

Mr. Darusman was the Attorney General of Republik Indonesia (1999 – 2001). Prior to that, he was active in National Commission on Human Rights of Indonesia /KOMNAS HAM, he was the Vice Chairman during 1993-1998, appointed as the Chairman of Commission in 1998 – 2000 and then served as Advisor in 2001-2003.

Preceding to his current role in the United Nations, in 2007 – 2008, he played a role as a member of IIGEP (International Independent Group of Eminent Persons), a body consisting of 11 members from different countries appointed by the President of Sri Lanka to observe and investigate on gross violations of human rights in Sri Lanka.

Since 1996 to now, Co-Chair with Prof. Vitit Muntharbon (United Nations Special Rapporteur (UN SR) on North Korea), Mr. Darusman helps ASEAN Working Group for an ASEAN Human Rights Mechanism, an independent body within ASEAN specifically on human rights mechanism in ASEAN.

Mr. Darusman is also the Chairman of Partnership for Governance Reform in Indonesia (PGRI), a reform program on governance coordinated with UNDP and BAPPENAS.

# Press Coverage

## Human Rights Compliance Determines Reputation of Corporations

Hukum Online, Wednesday, October 20<sup>th</sup>, 2010

Government doesn't need to worry because human rights compliance will attract more investors.

Law No 40 Year 2007 concerning Limited Liability Company regulates companies operating business in Indonesia are obliged to perform corporate social responsibilities. However, developing trend shows that performing CSR only is not sufficient. Today, corporations are also demanded to comply with human rights principles.

James Kallman, President Director Mazars Indonesia said that corporations can be in two opposing sides. If corporations conduct their business in a sustainable manner, they can be an effective driving force for better education, equality and prosperity in developing nations. On the other hand, if they do this poorly, corporations can cause discrimination, degrade the environment and exploit vulnerable groups.

"In recent years, we have seen a growing understanding among companies that recognizing human rights risks in their local operating environments is one of the most important steps in ensuring company compliance, good practices and, as a result, doing business sustainably," James said in a seminar titled "Doing Business Sustainably: Human Rights Compliance" in Jakarta, Wednesday, October 20<sup>th</sup>, 2010.

James added that Human Rights compliance is a powerful strategy for conducting business in a sustainable manner. It could legitimize a business or become a social license for a company to operate. In regards to this, several countries have began implementing human rights due diligence.

Bernd Sagasser, legal partner at Marccus Partners, said that the Organisation for Economic Co-operation Development (OECD) have issued a guidelines for multinational enterprises. The guidelines oblige corporations to respect human rights. The stipulation reads as follows:

"On a related issue, while promoting and upholding human rights is primarily the responsibility of governments, where corporate conduct and human rights intersect enterprises do play a role, and thus MNEs are encouraged to respect human rights, not only in their dealings with employees, but also with respect to others affected by their activities, in a manner that is consistent with host governments' international obligations and commitments. The Universal Declaration of Human Rights and other human rights obligations of the government concerned are of particular relevance in this regard."

The problem is, according to Bernd, the OECD guidelines is not taken seriously by legal practitioners. Not only is it a soft law, which is very difficult to uphold, but the guidelines are binding only to OECD members. Unfortunately, Indonesia is not a member of OECD until now.

### Violator of Human Rights

In the same occasion, Vice Chairman of National Commission for Human Rights (Komnas HAM) Nur Kholis said that conflicts between corporations and society which result in human rights violation is a classic issue for the country. He said it not without reason. He showed data consisting of 5,000 public complaints submitted to Komnas HAM; thirty percent is involving corporations' business operations.

"The issue has not yet been solved, even since the reformation era," he said. The situation is worsened by government that tends to have closer relation with business community rather than to society. Government, according to Nur Kholis, is in a dilemmatic position that is in urgent need of investment and its obligation to give people human rights protection.

Komnas HAM has been giving its best effort to maximize roles in addressing cases of human rights violations involving corporations. However, he added that the commission can only act as mediator between people and corporations. Even if Komnas HAM conducts investigations, Nur Kholis doubted it would be effective because question has emerged on whether or not corporations can be a subject of human rights violations. "Corporations can be brought into legal court if they are proven guilty of violating human rights," he added.

Referring to Law No. 39 Year 1999 on Human Rights, human rights violations mean "all actions by individuals or groups of individuals, including the state apparatus, both intentional and unintentional, that unlawfully diminish, oppress, limit and/or revoke the human rights of an individual or group of individuals guaranteed by the provisions set forth in this Act, and who do not or may not obtain fair and total legal restitution under the prevailing legal mechanism".

According to former Chairman of Komnas HAM Marzuki Darusman, corporations can be categorized as violator of human rights. The argument is based on Law on Limited Liability which admits corporations as legal personality. Thus, Marzuki concluded that corporations act upon prevailing regulation as other legal personalities do. "Corporations can be a subject of human rights violations," he said after the seminar.

This Director of Human Rights Research Center for ASEAN said that the country has the obligation to uphold human rights including to corporations. He denied anxiety that investors will leave if the country takes firm actions against corporations violating human rights in Indonesia. On the contrary, human rights compliance shall attract investors. Furthermore, human rights compliance will give positive impacts on corporations' reputation.

"Let people make their opinion and government should not be afraid of upholding human rights to corporations because the international community considers human rights compliance of a country," said former Attorney General during Abdurrahman Wahid's regime.

# Press Coverage

## Many Companies in Indonesia Reportedly Violate Human Rights

*Neraca, Thursday, October 21, 2010*

Violations of human rights by corporations have been increasingly gaining international spotlight. Even the National Commission on Human Rights (Komnas HAM) reported of 5,000 public complaints has been submitted to the commission; thirty percent is involving corporations' business operations.

"There are 5,000 public complaints submitted to Komnas HAM; thirty percent is involving corporations' business operations," said Vice Chairman of National Commission for Human Rights (Komnas HAM) Nur Kholis in a seminar titled "Doing Business Sustainably Human Rights Compliance" in Jakarta, Wednesday, October 20<sup>th</sup>, 2010.

According to him, a number of big corporations in Indonesia have been proven to have influence on government policy on economy and politic. Thus, many recommendations come from big corporations and weaken state power. As a result, government is incapable of addressing human rights cases.

Nur Kholis added that conflicts between corporations and society which result in human rights violation is a classic issue for the country. It has happened since 1992, when big corporations started to flood Indonesia. "The issue has never been solved," he mentioned.

The situation is worsened by government that tends to have closer relation with business community rather than to society. Government, according to Nur Kholis, is in a dilemmatic position that is in urgent need of investment and its obligation to give people human rights protection.

Komnas HAM has been giving its best effort to maximize roles in addressing cases of human rights violations involving corporations. However, he added that the commission can only act as mediator between people and corporations. Even if Komnas HAM conducts investigations, Nur Kholis doubted it would be effective because question has emerged on whether or not corporations can be a subject of human rights violations. "Corporations can be brought into legal court if they are proven guilty of violating human rights," he added.

Meanwhile, James Kallman, President Director Mazars Indonesia said that in recent years, we have seen a growing understanding among companies that recognizing human rights risks in their local operating environments is one of the most important steps in ensuring company compliance, good practices and, as a result, doing business sustainably. This will affect the companies' performance.

Clearly, James added that Human Rights compliance has a direct effect on corporate bottom lines and profitability. It is a powerful strategy for conducting business in a sustainable manner. It could legitimize a business or become a social license for a company to operate. However, business must also realize the complexity of performing human rights due diligence as part of its sustainable commitment.

James said that corporations can be in two opposing sides. If corporations conduct their business in a sustainable manner, they can be an effective driving force for better education, equality and prosperity in developing nations. On the other hand, if they do this poorly, corporations can cause discrimination, degrade the environment and exploit vulnerable groups.

# Results & Recommendation

## RESULTS

### Media Coverage

- The event was covered by two media: *Hukumonline* (the leading Indonesian law and legal Information portal) and *Neraca* (a national daily provides news on economy issues). Both articles published by these two media provided a considerable attention to James Kallman, President Director Mazars in regards to his statements on human rights compliance issue.

### Mazars Brand Visibility

- Mazars was able to show:
  - Strong brand visibility for Mazars amongst corporations that showed an interests on human rights compliance and components in their business;
  - Strong positioning amongst other players that have also started to tap into Human Rights Compliance arena;
  - Solid alliance with human rights network both in Indonesia and also internationally.

## RECOMMENDATIONS

- Such event should be followed up by communications or meetings with respective organisations/companies participating in the event.
- Mazars should continuously provide an updated news in human rights to the event participants or those who were also informed about the event.
- A formal partnership with the *Human Rights Research Center for ASEAN* needs to be formed and an initial meeting should be scheduled.
- The success of the event should be well communicated to Mazars Group and also to Mazars existing clients.

# Photos



# Photos



# Photos



# Photos

