Improving Corporate Compliance in the Global Supply Chain:

A study on the potential of using a functional interaction between frameworks concerned with CSR and the transnational anti-corruption

by

Lakso Anindito

Master's Thesis in European and International Trade Law

HARN 63

Spring 2021

Supervisor: Prof. Niklas Arvidsson

LUND UNIVERSITY

SCHOOL OF ECONOMICS AND MANAGEMENT

Table of Contents

Abstract

The option between mandatory and voluntary approaches become an unfinished debate in order to reach corporate compliance in the global supply chain on environmental, labour, human rights and anti-corruption issues. In this situation, this thesis proposes an alternative strategy that combines both approaches. For this aim, with the doctrinal and empirical legal approaches, this research scrutinizes the potential functional interaction between, on one hand, the framework concerned with the transnational anti-bribery enforcement and, on the other, CSR initiatives in the polycentric regulatory phenomenon. Considering the advantages and disadvantages of CSR and the anti-corruption system, enforcing mandatory anti-bribery instruments across jurisdictions potentially improve CSR initiatives' enforcement capability on protection, respect, and remediation. At the same time, the voluntary approaches of CSR initiatives, especially on anti-corruption issues, could be used to support the transnational anti-bribery enforcement achieving the goals in the deterrence of crime and remedy the impact. Therefore, from the perspectives of collaborative and alternative strategies, this potential functional interaction between frameworks could be an effective way to improve corporate compliance in the global supply chain.

Keywords: Corporate Social Responsibility, Sustainability, Transnational Bribery, Foreign Bribery, Commercial Bribery, Global Supply Chain, Corporate Compliance, Polycentric Regulatory Phenomenon.

Foreword

I would give my special gratitude to Prof. Niklas Arvidsson for his great advice, sharp commentary and excellent discussion in the supervision process so this thesis could be developed. Moreover, my appreciation is also given to Prof Jörgen Hettne as a lecture and leader for this master program, Andreas Inghammar, who gives an excellent lecture on CSR that gives me inspiration for my master thesis topic and other lectures and academic staffs for interesting discussions and learning process.

Special appreciation is also given to Swedish Institute because this could be realised due to support from the Swedish Institute Scholarship for Global Professionals (SISGP).

At this moment, I also want to say thank you to my lovely wife Rizca, two cute children Bumi and Cendekia, my parents Yudi and Suhartini, my father and mother in law Adrias and Meriaty and also my brothers and sisters Tya, Thika, Nana, Hanif and Ikhsan. Moreover, this gratitude also for my PPI Scania, KPK and REDD+/UKP4 families.

Lund, 14 June 2021

Lakso Anindito

Abbreviations

CSR	Corporate Social Responsibility
CPIB	Corrupt Practices Investigation Bureau of Singapore
EC	European Commission
EU	European Union
FCPA	Foreign Corrupt Practices Act
ILO	International Labour Organization
KPK	Komisi Pemberantasan Korupsi/ Corruption Eradication Commission of Republic Indonesia
MIC	Multilateral Investment Court
MIAC	Multilateral Investment Appeal Court
MNEs	Multinational Enterprises
OECD	Organisation for Economic Cooperation and Development
RSPO	Roundtable Sustainable Palm Oil
SDGs	Sustainable Development Goals of the United Nations
SEC	United States Securities and Exchange Commission
SFO	United Kingdom Serious Fraud Office
PICC	Unidroit Principles of International Commercial Contracts
UDHR	Universal Declaration of Human Rights
UKBA	United Kingdom Bribery Act
UN	United Nations
UNCAC	United Nation Convention Against Corruption
UN Global Compact	United Nations Global Compact
UNGP	United Nation Guiding Principles on Business and Human Rights
US DoJ	United States Department of Justice

1. Introduction

1.1 Background

To a large extent the global corporate supply chain is tied to Multinational Enterprises (MNEs) and requires corporate activities involving suppliers, distributors and subsidiaries in order to provide the best goods and services for customers with competitive prices.[1] At the same time, Corporate Social Responsibility (CSR) initiatives aims at improving corporate behaviour in a way that is conducive to universally recognized values and goals. These goals include minimizing harmful environmental effects, protecting human rights and eradicating corruption in the corporate supply chain. At the level of states, the Sustainable Development Goals of the United Nations (SDGs) encourage collaboration between states and private actors to improve sustainability practices in global development.[2] Furthermore, the United Nations Global Compact (UN Global Compact) and other voluntary initiatives constitute a new trend of CSR from the perspective of private actors.[3]

In order for CSR to contribute to the desired goals, there has to be some kind of enforcement mechanisms. Unfortunately, in this area, problems abound. According to a recent report of the European Commission (EC), the enforcement of CSR in the supply chain is not effective due to several obstacles, such as the complexity of supply chain processes and differences between member countries of regarding applicable standard mandatory rules of concerning due diligence on the social and environmental aspects of sustainability.[4]

[1] ILO, *Report IV Decent work in Global Supply Chains* (International Labour Conference 105th Session 2016) 1-3.

[2] Kasey McCall-Smith and Andreas Rühmkorf, 'Sustainable global supply chains: from transparency to due diligence' in Clair Gammage and Tonia Novitz (eds), *Sustainable Trade, Investment and Finance : Toward Responsible and Coherent Regulatory Frameworks* (Edward Elgar Publishing 2019) 113.

[3] Harish C. Chandan, 'Creating Alignment Between Corporate Sustainability And Global Compact Initiatives' in Gonzalez-Perez, Maria Alejandra, and Liam Leonard (eds), *The UN Global Compact : Fair Competition and Environmental and Labour Justice in International Markets* (Emerald 2015) 42.

[4] Lise Smit and others, *Study On Due Diligence Requirements Through The Supply Chain : Final Report* (European Commission 2020) 227-228.

On the other hand, the enforcement of anti-corruption laws across the jurisdictions conducted by countries has developed the transnational anti-bribery regime. Mandatory approaches in this regime become an advantage in enforcement and implementation that allow enforcers to use criminal, civil and administrative enforcements to enhance corporate compliance on anti-corruption issues. A notable example is the transnational enforcement activity of the United States Foreign Corrupt Practices Act (FCPA) which has encouraged a certain international standard of compliance of MNEs when conducting business abroad.[5] Nevertheless, like other mandatory enforcements these approaches also have limitations. One of these is the higher level of evidence required in criminal enforcement.[6]

Since Ruggie released the United Nation Guiding Principles on Business and Human Rights (UNGP) based on so called polycentric governance theory, a discussion about new strategies to encourage corporate compliance on CSR have emerged.[7] In polycentric governance theory, the law-making process is centred not only in the state's authority but also in non-state actors that could produce their regulatory influence in society. In the law, this phenomenon is also recognized as the polycentric regulatory regime.[8] From a polycentric regulatory vantage point, corporations have a responsibility to respect CSR by using their economic leverage rather than just depend on state. At the same time, states have an obligation in mainstreaming sustainability values in their policy in order to develop an ideal condition for corporations to implement CSR. However, in the remediation context, the states and undertakings must also collaborate to develop an effective remedy process when a violation occurs.[9] Furthermore, Ruggie also emphasized multi-channel approaches as a strategy to utilize the advantages of voluntary and mandatory channels like home state mandatory regulations, state aid, international

[5] Kevin E. Davis, *Between Impunity and Imperialism : The Regulation of Transnational Bribery* (Oxford University Press 2019) 34.

[6] Kevin R. Feldis, Laode M. Syarif, Rasamala Aritonang, and Lakso Anindito 'Indonesia' in T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019) 283-285.

[7] Radu Mares, 'Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress' in Radu Mares (ed.), *The UN Guiding Principles on Business and Human Rights – Foundations and Implementation*, (Martinus Nijhoff Publishers 2012) 3-5.

[8] Larry Catá Backer, 'The Emerging Normative Structures of Transnational Law: Non-State Enterprises in Polycentric Asymmetric Global Orders' [2016] 31 (1) BYU Journal of Public Law 1, 2-4, <EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.byujpl31.5&site=eds-live&scope=site.> accessed on 5 March 2021.

[9] Ibid.

laws, corporate voluntary and international trade regime in enforcing sustainability values.[10]

The lesson learnt from Ruggie's strategy could also be relevant to examine in broader contexts beyond CSR on human rights. This is to answer the current unfinished debate on the option between mandatory and voluntary approaches in providing the best strategy to reach corporate compliance. Moreover, in some circumstances, either the transnational bribery enforcement or CSR initiative has been enforced in different regimes like both frameworks do not have any correlation. For these reasons, considering the advantages and weakness of voluntary CSR initiatives and the mandatory transnational anti-corruption regime, the functional interaction between the two frameworks is possible to investigate deeply to get a comprehensive perspective about the possibility of the reciprocal benefits from both approaches in the polycentric regulatory system. A combined functional approach could be an alternative solution to improve corporate compliance in the global supply chain rather than just upholding a dichotomy between the two approaches.

1.2 Aim and research question

This research aims at scrutinizing the possibility of improving corporate compliance on environmental, labour, human rights and anti-corruption issues in the global supply chain by combining the potential functions between CSR initiatives and the transnational bribery regime when both frameworks interact in the polycentric regulatory regime.

This could be illustrated with an example when MNEs must obey the anti-corruption laws from foreign and home state countries because the mandatory approach affects corporations' integrity in fulfilling CSR's voluntary commitment. Respectively, the economic power of CSR initiatives could provide incentives for the undertakings to avoid corruption.

These findings are pivotal, especially when making all initiatives mandatory or voluntary is not the best way to achieve compliance. Furthermore, sometimes, both

[10] John Gerard Ruggie, 'Multinationals as global institution: Power, authority and relative autonomy' [2017] . Regulation & Governance John Wiley & Sons Australia, Ltd, 10-11 <https://media.business-humanrights.org/media/documents/files/documents/Ruggie-2017-Regulation_Governance.pdf> accessed on 10 April 2021.

approaches have been implemented in the different track without considering the potential benefit from interaction in practice.

The aim could achieve when this research could answer the main question:

How could the corporate compliance of the transnational bribery and CSR initiatives be improved by combining and utilizing their potential functions when interacting in the polycentric regulatory regime?

Furthermore, Sub-Question to answer the main question:

1. *What are the advantages and disadvantages of the enforcements of CSR initiatives and the transnational anti-bribery regime on corporate compliance in the global supply chain?*
2. *What are the potential functions of each framework for improving the enforcement capability of another framework in a reciprocal way in the polycentric regulatory regime?*

1.3 Scope and constraints

This research focuses on the functional interplay between enforcement frameworks concerned with CSR and the transnational anti-bribery that makes this research does not elaborate substance of sustainability issues in detail.

The object of this research is MNEs and their affiliated supplier or subsidiary that are regulated by foreign bribery laws, so this research does not cover undertakings from countries without this kind of laws. Furthermore, the core or parent or buyer companies in this research should involve in CSR initiatives, particularly at the strategic or the transformative CSR level.

The impact between the two regimes is analysed to find potential application in practice according to normative and empirical approach based on reports and other sources. This is also an affirmation that the researcher has not conducted direct empirical method, for instance, survey and interview.

This research has not chosen a specific sector in the global chain to measure implication in relation to a functional interaction between two regimes. As an alternative, the researcher prefers to use different samples of the effectiveness of

the functional interaction between regimes in various sectors with a specific baseline. In this context, this research takes "a helicopter view" rather than a specific case study.

1.4 Materials and method

In order to answer the main question, a researcher should answer the two sub-questions first. In general, the combination between Doctrinal Legal Study (DLS)[11] and Empirical Legal Study (ELS)[12] are dominant in this research.

The first sub-question is investigated with Historical Legal Research (HLR)[13] and Philosophical Legal Research (PLR)[14] to get a background explanation of polycentric regulatory regime in CSR and transnational bribery enforcement systems. Furthermore, Analytical Legal Research (ALR)[15] has a crucial role in investigating how the legal and non-legal instruments related to CSR are enforcing from perspective of protection, respect and remediation. On the other hand, the transnational anti-bribery as the mandatory regime is also analysed with the same method to get a description how the enforcement across jurisdiction has worked. At the end of each explanation, ALR and ELS will be used to scrutinize the implication of different enforcement methods on corporate compliance based on reports from credible institutions and case law.[16]

The second sub-question is really important to answer the main question. The ALR and the ELS methods will use again in this analysis to find potential instruments of the transnational anti-bribery regime that could be used to improve the ability of CSR initiatives from the point of view of protection, respect and remedies as baselines. On the other hand, CSR enforcement's impact on the capacity of the transnational anti-bribery regime will be looked from deterrence and legal remedies

[11] P. Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press 2019) 145.

[12] Ibid, 304-306.

[13] Ibid, 200-202; Marci Hoffman and Mary Rumsey, *International and Foreign Legal Research* (2nd edn, Martinus Nijhoff Publishers 2012) 85 and 107.

[14] Ibid, 230-235.

[15] Ibid, 173-175.

[16] Credible institutions, such as Transparency International, European Union, United Nations, Anti-Corruption Agencies, UN Global Compact Secretariat and other states agencies; Case laws like domestic and foreign bribery, international arbitration cases and tort litigations.

perspectives. Finally, the two sub-questions will give comprehensive knowledge to answer the main question.

The materials in this research are books, particularly on CSR, Transnational Anti-Bribery Regime and Polycentric Regulatory System, besides treaties, legislations, regulations, directives and guidelines from various countries, CSR initiatives and international organization. Moreover, the reports from credible institutions and case law at the international level and national level.

1.5 Current state of research

This research is new when comparing with previous research in journals, books and other publications based on the investigation on, *inter alia*, google scholar, LUB search and Lund publications. Nevertheless, sustainability, CSR and corruption have been investigated in some researches but in general and different perspectives and approaches, for example, the benefit of the anti-corruption issue on sustainability in general and a comparison between due diligence on the mandatory Anti-Corruption Regime and the mandatory Anti-Slavery Regime.[17]

The thesis is inspired and expanded from my research paper in Investment, Trade and Sustainability Course with the title "Developing Global Corporate Compliance: The Interplays Between Transnational Anti-Bribery Regime and Corporate Sustainability Initiatives" in this master program and this paper has not been published. However, this thesis has differences in methods and scope of the research.

1.6 Structure

After explaining the background, purposes and research questions, methods and scopes in the introduction, chapter two will introduce the concept of transformative and strategic CSR. Moreover, this second part will also explain the concept of the polycentric regulatory regime and elaborate on how CSR is implemented in this

[17] Morse Stephen, 'Is Corruption Bad for Environmental Sustainability? A Cross-National Analysis' [2006] 11 (1) Ecology and Society <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edsjsr&AN=edsjsr.26267783&site=eds-live&scope=site> accessed on 29 April 2021; T. Markus Funk, 'On the Anti- Bribery "Watchlist": Compliance and Labor/ Anti- Trafficking Issues' in T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019).

regime. In this chapter, the correlation between corporate compliance and enforcement of CSR initiatives will also be discussed.

The third chapter develops an understanding of how the transnational anti-bribery regime works as mandatory approaches through a robust legal framework and enforcement system. In addition, this regime will be scrutinized to look implication for corporate compliance.

The last chapter before a conclusion explains the potential impact of the transnational anti-bribery regime on CSR in respect, protect and remedy perspectives. In different circumstances, the potential influence of CSR initiatives on the transnational anti-bribery regime is studied in enforcement, compliance and remedy aspects. These explanations could be an answer to explain how the interplay could improve corporate compliance from the polycentric regulatory perspective.

2. Corporate Social Responsibility Initiatives

Corporate social responsibility is a voluntary strategy for the corporation in reaching environmental and social compliance. However, the questions are what kind and how far CSR could encourage corporate compliance in the global supply chain, particularly in the condition which the corporation has a prominent position in the polycentric regulatory regime.

2.1 Strategic and Transformative CSR in the Global Supply Chain

Corporation as a fictional subject was "born" by an agreement between individuals or other legal persons, which was recognized by the state, to consolidate human and capital resources with a purpose to accumulate profit without unlimited liability to mitigate risk.[18] As a subject of law, the corporation's responsibilities for preventing harm and contributing to society become central issues considering the severe impact that corporate activities have. Apart from its many positive effects of corporation, it also has profound negative effects on the environment, human rights and social conditions.[19] This discussion has emerged by experts from different perspectives that pro and contra about the possibility to put other responsibilities rather than just maximizing corporate profits, from Karl Marx who conducted comprehensive research about how the operation of the corporation causes inequality in society to Milton Friedman who supported profit maximization according to the duty of care principles as the ultimate goal of the corporation.[20]

[18] Grietje Baars, *The Corporation, Law and Capitalism A Radical Perspective on the Role of Law in the Global Political Economy* (Brill 2019) 33-35.

[19] Ibid, 35; Yuval Noah Harari, *Sapiens : A Brief History Of Mankind* (Vintage Books 2015) 334.

[20] William H. Shaw, 'Marxism, Business Ethics, and Corporate Social Responsibility', (2009) 84 (4) Journal of Business Ethics Springer 565, 569-670 <https://www.jstor.org/stable/40294761>, accessed on 4 April 2021; Milton Friedman, 'The Social Responsibility of Business is to Enhance Its Profits' (the New York Times, 13 Sept 1970) <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> accessed on 4 March 2021.

In this dilemma, CSR initiatives are part of strategies to balance the economic interest of a corporation and its responsibility on environmental, human rights, labour and anti-corruption issues.[21] Nowadays, the concept of CSR has been strengthened, particularly after this concept has shifted from just a philanthropy model to strategic and transformative models.

In the early stage, Wayne Visser explains that CSR is applied in a limited way in consideration of the possibility to use as a defense if any problem with the corporation. This phase continues with charitable CSR, which is more advanced because of voluntary giving something to society. The promotional CSR that has an orientation to use CSR as adversarial to the consumer is the next step before strategic CSR.[22]

Strategic CSR is a concept when companies have a commitment to set a certain standard on CSR to prevent harmful activities in their operational activities, including production, investment and business transaction in the global supply chain. In general, this concept is a common concept implemented in many CSR initiatives.[23] An example of realization of this model is Cadbury as the first company that implemented five days' work in the UK, and not only just rejected cocoa from a supplier with poor labour standard but also supporting the supplier to improve its labour condition.[24]

Contribution in society is the next step of CSR that known as transformative CSR or CSR 2.0 when the company has not only inhibited involvement in unsustainable activities but also contributing to the sustainability agenda.[25] At this phase, the company recognizes that companies are part of the problem, so it is essential to use their resources to develop a better world. The transformative CSR had been used by Ray Anderson through his company, FLOR, which was successful in developing more sustainable production and contributing to reduce gas emission.[26]

[21] Wayne Visser, *CSR 2.0: Transforming Corporate Sustainability and Responsibility* (Springer 2014) 1-4.
[22] Ibid, 7-14.
[23] Ibid, 15; Chandan (n 3) 53.
[24] Ibid, 14.
[25] Ibid, 16-17.
[26] Ibid, 16.

In international business practices, strategic CSR becomes a new standard of CSR initiatives in the supply chain. For example, on labour issues, the MNEs are voluntary commit to receive products from supplier or subsidiary that are produced without forced labour and child labour. This commitment also makes that transnational corporation should supervise their subsidiaries activities abroad. At a more advanced stage, some CSR commitments have also achieved a transformative CSR approach when making corporations contribute to sustainability goals.[27] The companies dedicated to following the commitment of CSR through many initiatives, from UNGP, the UN Global Compact to the Roundtable Sustainable Palm Oil (RSPO).

In some literatures, CSR is also associated with Corporate Sustainability and interchangeable in particular condition even though Corporate Sustainability has a broader meaning because of adopting an intergeneration concept in its production system.[28] On the other hand, CSR also has a correlation with sustainability initiatives because CSR is a way to reach sustainability in general.[29] In this way of thinking, CSR has a strategic position in the current discussion about sustainability.

2.2 Polycentric Regulatory Regime

Strategic and transformative CSR should be institutionalized in practice by corporations with support from the states. In this era, the polycentric regulation theory could use to explain this institutionalization phenomenon comprehensively.

The polycentric regulatory regime is a condition when the regulator is not just a state but also other states or even non-state actors, including the corporations, who could also enforce their ”laws” in specific issue or society together with state authorities.[30] The definition of this ”law” term is not in a narrow context as 'a body of social rules prescribing external conduct and considered justiciable'[31] due to the

[27] Radu Mares, ‘Decentring Human Rights from the International Order of States: The Alignment and Interaction of Transnational Policy Channels ‘ [2016] 23 (1) Indiana Journal of Global Legal Studies, 5-6 <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.ijgls23.11&site=eds-live&scope=site> accessed on 4 April 2021.

[28] McCall-Smith (n 2), 111-112; M. Ashrafi, M. Adams, T. R. Walker and G. Magnan, ‘How corporate social responsibility can be integrated into corporate sustainability: a theoretical review of their relationships’, (2018) 25 (8) International Journal of Sustainable Development & World Ecology 672, 674-675<https://search.ebscohost.com/login.aspx?direct=true&db=8gh&AN=132112246&site=eds-live&scope=site> accessed on 4 April 2021.

[29] Visser (n 21) 1-4.

[30] Backer (n 8).

[31] Hermann Kantorowicz and A. H. Campbell (edn), *The Definition Law* (Octagon Books 1980) 74.

justiciable aspect is not always guaranteed by state court or other states institutions like the real law in positivist perspective.[32] However, like *lex mercatoria* and other current trends of new ”law”, this ”law” could provide high normative efficacy.[33] For this reason, this perspective has differences from the traditional law approaches, which construct the only state that has the power to produce law in society.[34]

Although corporations are attributed status as a legal person by a state or community of states, such as Societas Europaea (SE)[35], corporations have capabilities to arrange a commitment, a code of conduct and even binding regulatory actions in their internal company, associate group or with other undertakings in a business relationship context.[36] These relationships are developed by corporations through contract, standard operating procedure, term and condition, certification requirement, announcement and participation in a particular commitment like UN Global Compact or UNGP. The instruments are enforceable in practices due to these instruments could give a similar effect like regulation in definite circumstances, for instance, a contract between supplier and buyer in the supply chain that requires protection standard of environment or human rights in the production process.

The next question is how to make private practices between non-states actors could be acknowledged as a “law” in society instead of just a norm. Teubner explained five phases to construct a “law” without direct state authority.[37] Firstly, the non-state actors should have capabilities to make norm, activities, or commitment become recognizable rules in their society.[38] This process needs ‘A self-reflexive mechanism for enforcement and elaboration’[39] or known as Private Juridification. Alongside global validity, this phase is essential to develop a “law” as a binary code

[32] Gunther Teubner, ’The Corporate Codes of Multinationals: Company Constitutions Beyond Corporate Governance and Co-Determination’ in Rainer Nickel (ed), *Conflict Of Laws And Laws Of Conflict In Europe And Beyond: Patterns Of Supranational And Transnational Juridification* (Hart, 2009), 205.

[33] Ibid.

[34] Backer (n 8) 12.

[35] EU, ’Setting up a European Company (SE)’ <https://europa.eu/youreurope/business/running-business/developing-business/setting-up-european-company/index_en.htm> accessed on 5 April 202.

[36] Backer (n 8) 28.

[37] Teubner (n 32).

[38] Lars Chr. Blichner and Anders Molander, ’What is juridification?’ [2005] 14 Working Paper Center for European Studies, University of Oslo, 23-24 <https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2001-2010/2005/wp05_14.pdf > accessed on 5 April 2021.

[39] Backer (n 8) 21.

to distinguish this code from other social instruments.[40] In this early process, a contract and internal code of conduct are examples of instruments that have a regulatory function for business parties.[41] Private juridification could be realized through three levels of activities. At the highest level, self-commitment of undertaking and code of company are demanded as principal guidelines for implementation of CSR. Thus, at the middle level, the executive organ is key in this procedure to realize the guidelines. Concrete activities must occur to complete Juridification as the last level.[42] Eventually, juridification gives binding effect to internal and external stakeholders through, *inter alia*, labour, principle-agent or contractual relationships.[43]

Secondly, Constitutionalisation is needed to provide a higher law framework for Juridification. Constitutionalisation facilitates non-states stakeholders to develop common fundamental legal values on substantive and procedural contexts when conducting activities, including a business commitment. This could be realized 'when inter-systemic linking institutions tie together secondary rule-making in the law with fundamental, rational principles of organization'.[44] However, this phase is still in the internal dimension that focuses on how these values have developed and respected to a degree of the transnational constitution in their business society.[45] Consequently, the external process is needed because 'Multinational codes may be autonomous, but they exist in a networked community of law and power'.[46] Interaction and adjustment between non-states actor law and state law are conducted in the International Judicialization process as the third phase.[47] Furthermore, both law regimes are influenced and complemented in the enforcement and implementation process through hybridisation.[48] Finally, at the advanced phase, the intermeshing happened when the networks of the corporation

[40] Tubner (n 32) 205-207.

[41] Sean D Murphy, 'Taking Multinational Corporate Codes of Conduct to the Next Level' (2005) 43 Colum J Transnat'l L 389, 420 <https://heinonline.org/HOL/P?h=hein.journals/cjtl43&i=399>accessed on 5 April 2021.

[42] Tubner (n 32) 206.

[43] Ibid, 207.

[44] Ibid, 208.

[45] Neil Walker, 'Chapter II: Taking Constitutionalism Beyond The State' in Rainer Nickel (ed), *Conflict Of Laws And Laws Of Conflict In Europe And Beyond: Patterns Of Supranational And Transnational Juridification* (Hart 2009) 222-223.

[46] Backer (n 8) 23.

[47] Teubner (n 32) 210.

[48] Ibid, 211-12.

could develop community regulatory order and cooperate with the state legal order in international activities.[49]

In this polycentric regulatory regime, the regulations are decentralized rather than depend on a single regulator. Interaction between mandatory laws produced by states and "law" developed by corporations emerge polycentric governance phenomenon in practice. This theory has not been supported only from the legal perspective. John Ruggie realized existing of Polycentric Governance as a basis to build protection of Human Rights initiatives in business.[50] Moreover, Dani Rodrick also elaborated three theories of decentralized governance that recommend us to use to analyse the current economic condition.[51]

2.3 Three Dimensions of CSR Enforcement from Polycentric Regulatory Perspective

John Ruggie has divided three aspects of responsibilities in UNGP to systematize the role of actors and topics on business and human rights.[52] The pillars turn into a baseline to describe how the interaction between actors in polycentric regulatory order should occur in a comprehensive way. State with its authorities must construct an ideal environment for undertaking to support of CSR initiatives whereas corporation respects human rights when conducting business in the global supply chain. Eventually, the company and state should collaborate in developing access of remedies for stakeholders that get impact of human rights violation.[53]

For this reason, this research adopts these three dimensional approaches to use as a baseline to study how CSR initiatives work in other issues aside from human rights, especially on environmental, labour and anti-corruption issues in polycentric regulatory regimes.

2.3.1 The Issue of Protect

The supply chain operation of MNEs across the continents involving various regulatory jurisdictions of states has an impact on the implementation of CSR

[49] Backer (n 8) 25; Teubner (n 31) 212-213.

[50] John Gerard Ruggie, 'Multinationals as global institution: Power, authority and relative autonomy' [2017] Regulation & Governance John Wiley & Sons Australia, Ltd, 10-11 <https://media.business-humanrights.org/media/documents/files/documents/Ruggie-2017-Regulation_Governance.pdf> accessed on 5 April 2021.

[51] Dani Rodrik, *The Globalization Paradox* (Oxford University Press 2011) 208-214.

[52] Mares (n 7).

[53] Ibid.

initiatives.[54] In this reality, vigorous legal framework and enforcement on the protection of CSR initiatives are an essential function of the state in this polycentric regulatory system.

When discussing the role of the states in the protection of human rights in policy and legislative phases, the state should be cognizant that the legal framework has a significant role to confer a supporting environment for undertaking activities on strategic and transformative CSR.[55] In the broader context, SDGs are a megaproject that consist of 17 agendas with malleable strategy option for the states to accomplish specific sustainability targets alongside development goals.[56] Nevertheless, these agendas, particularly goal 17, are not just about state but also mentioning specific collaboration between the state, corporation and other stakeholders that make a corporation as the salience actor in sustainability goals.[57]

On the ground conforming sustainability legal framework for CSR initiatives purpose, the state should create domestic legislation that accords with a minimum standard of international treaties or conventions principles on sustainability.[58]These treaties are optional to ratified by a country that cover various issues from principles of the Universal Declaration of Human Rights (UDHR)[59], the four fundamental labour rights[60], United Nation Convention Against Corruption (UNCAC)[61] to Paris Agreements[62]. Beyond the domestic law, in current international practices, countries also constitute bilateral or regional cooperation on investment and trade that considering sustainability agenda. The proof of this trend is increasing when the CSR has been mentioned in many Bilateral Investment Treaties (BIT) that affected activities of MNEs even tough in a limited scope, for instances, sustainability issues were mentioned specifically in the preamble of BIT among

[54] Floriab Rödl, 'Chaper 13: Regime-Collisions, Proceduralised Conflict of Laws and the Unitity of The Law : On The Form of Constitutionalism Beyond The State' in in Rainer Nickel (ed), *Conflict Of Laws And Laws Of Conflict In Europe And Beyond: Patterns Of Supranational And Transnational Juridification* (Hart, 2009), 270.

[55] UNHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (UN 2011), 4.

[56]Transforming Our World: The 2030 Agenda For Sustainable Development (adopted by the General Assembly on 25 September 2015) UN Resolution 70/01, Para 56.

[57] Ibid, Paragraph 36.

[58] UNHR (n 55).

[59] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

[60] McCall-Smith (n 2) 113.

[61] United Nation Convention Against Corruption (Adopted 31 October 2003, entered into force 14 December 2005) UNGA Res 58/4 (UNCAC).

[62] Judith Blau, *The Paris Agreement. Climate Change, Solidarity, and Human Rights* (Springer International Publishing 2017) 92-93.

Canada and China, and elaborated more comprehensively in BIT between China-Tanzania.[63]

The robust legal framework is not sufficient since many countries that ratified more treaties are not better places for implementation of CSR initiatives when compared with countries with fewer ratifications but forceful in enforcement, hence UNGP highlighted enforcement capability in the protection aspect as a pivotal factor.[64] Furthermore, in many cases, the limitation of MNEs power to monitor the execution of the contract due to complexity in the global supply chain makes the corporation depend on enforcement process by the state authorities when a supplier violates the core protection of human rights or environmental laws. Therefore, ineffective enforcement due to the weak capacity of the state in eradicating the corrupt behaviour of apparatus and institutions is potentially otiose ideal legal framework.[65] This is a reason why eradicating corruption has a function as an enabling factor in the implementation of human rights, according to UNGP.[66]

In addition, states able to use their budget and other economic leverage in a sustainable way. This can be illustrated briefly by the EU Directive on public procurement that accommodates sustainability issues as a requirement in the public procurement process or called as the strategic public procurement that has been implemented with the more progressive approach by some EU countries.[67] More examples are sustainability values on State-Owned Enterprises (SOE) business operation and the contract between states and non-state actors.

---

[63] Amy Man, 'Old players, new rules: a critique of the China-Ethiopia and China-Tanzania bilateral investment treaties' in Clair Gammage and Tonia Novitz (eds), *Sustainable Trade, Investment and Finance : Toward Responsible and Coherent Regulatory Frameworks* (Edward Elgar Publishing 2019) 158-159.

[64]Olga Avdeyeva, 'When Do States Comply with International Treaties? Policies on Violence against Women in Post-Communist Countries.' [2007] 51 (4) International Studies Quarterly, vol. 51 877, 892-893 <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edsjsr&AN=edsjsr.4621747&site=eds-live&scope=site> accessed on 14 March 2021; UNHR (n 55).

[65] Smit (n 4) 214.

[66] UNHR (n 55) 6.

[67] Directive 2014/24/EU of The European Parliament and The Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC; Martha Adronov, 'Contracting Authorities and Strategic Goal of Public Procurement- A relation Defined discretion?', in Sanja Bogojević, Xavier Groussot and Jörgen Hettne (eds), *Discretion in EU Public Procurement Law* (Hart Publishing 2018) 119-121; Marta Andrecka, 'Corporate Social Responsibility and Sustainability in Danish Public Procurement', [2017] 12 (3) European Procurement & Public Private Partnership Law Review (EPPPL) 333, 335-336 <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.epppl2017.47&site=eds-live&scope=site> acccessed on 14 March 2021.

2.3.2 The Issue of Respect

The strategic CSR initiatives crave internal and external policies of the corporation to respect sustainability values in production and business activities in the global supply chain while, at the higher level at the transformative CSR phase, not only prevention but also a contribution to sustainability is required. In this analysis, the respect dimension will elaborate minimum at the strategic CSR stage.

Before elaborating the policy strategies, the scope of what should be respected that must be defined. The substance of CSR initiatives covers wide issues but in general could be divided into four sectors which are environment, human rights, labour and anti-corruption. UN Global Compact is a comprehensive CSR initiative supported by the United Nations (UN) that sets standards on the environment, labour, human rights and anti-corruption with the participation of more than 10,000 undertakings with support from 3,000 non-business signatories in over 160 countries.[68] On the environmental issue, the company should (1) support a precautionary approach to environmental challenges, (2) take initiatives to promote greater environmental responsibility, and (3) strengthening development and diffusion of environmentally friendly technologies based on the Rio Declaration on environment and development.[69] Moreover, the Performance Standards on Environmental and Social Sustainability are requested by International Finance Corporation (IFI) in the financial sector that consist of eight standards including resource efficiency and pollution prevention and biodiversity conservation to sustainable management of living natural resources.[70]

The corporation must avert involvement in the violation of the basic human rights in its operation to fulfil a minimum standard to respect human rights besides contributing to promote the values referred to the UNGP and Global Compact.[71] In the protection of the labour sector, the four fundamental labour protections emerged in the production and distribution process that containing the freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour

[68] United Nations Global Compact, *Uniting Business In The Decade Of Action: Building on 20 Years of Progress* (UNGC 2020) 26.

[69] Ibid, 49.

[70] IFC World Bank, *IFC Performance Standards on Environmental and Social Sustainability* (IFC World Bank 2012), 2.

[71] United Nations Global Compact (n 68) 49; UNHR (n 55) 14.

and the elimination of discrimination in respect of employment and occupation.[72] The last issue is anti-corruption in all types, including extortion and bribery.[73]

These respected standards ought to be transformed into internal and external policies. Codes of conduct, standard operating procedure and management activities are examples of methods to implement the "law" in the internal business process while business agreement and external policies involving contract, self-declaration and investment policies prevail as an external strategy.

Incorporating CSR clauses with clear language and specific intention in the contract are required in the contractual relationship with the supplier.[74] Examining current practices, the corporations put CSR clauses into the contract through four different methods.[75] The Express Form Model facilitates CSR clauses as a part of the main contract that is different from the Reference Model as the second option which just makes a clause in the contract or code of conduct that mentioning parties obligation to comply with certain international conventions.[76] Other contractual models are the Stand-Alone Model, which separating CSR provision in the different contract, and the Implied Model that 'considered part of the contract although not explicitly mentioned in the contract'.[77] These models could bind the supplier even tough in unequal a level of consequences.[78]

Another approach in the global supply chain is a declaration by the buyer to inform all suppliers, business partners and, in many cases, consumers as a promotional effort about the corporation's commitment to CSR.[79] In the case of subsidiary nexus, the parent company is viable to build a code of conduct or standard operating procedure for the undertaking of members in the group.[80]

---

[72] McCall-Smith (n 2) 113.

[73] United Nations Global Compact (n 68) 49.

[74] Andreas Rühmkorf, 'From Transparency to Due Diligence Laws? Variations in Stringency of CSR Regulation in Global Supply Chains in the 'Home State' of Multinational Enterprises' in Jean J.du Plessis, UmakanthVarottil and JeroenVeldman (eds), *Globalisation of Corporate Social Responsibility and its Impact on Corporate Governance* (Springer 2018) 177.

[75] Vibe Ulfbeck, Ole Hansen and Alexandra Andhov, 'Contractual Enforcement Of CSR Clauses And The Protection Of Weak Parties In The Supply Chain' in Vibe Ulfbeck, Alexandra Andhov and Mitkidis, *Law and Responsible Supply Chain Management* (Routledge 2018) 47-48.

[76] Ibid, 48.

[77] Ibid, 49.

[78] Ibid.

[79] McCall-Smith (n 2) 17.

[80] Rühmkorf (n 74) 180-181.

Implementation and enforcement of non-state actor's "law" in the polycentric regulatory regime are the next challenges after developing a binding relationship. The economic leverage of the buyer is the power to encourage business partner to comply with the standard.[81] Conducting social and environmental due diligence to the supplier expedite this goal, albeit the ultimate target of this action is not just to terminate the non-compliant supplier. The core company is expected to intensify its business partners' capacity to inhibit exacerbation on sustainability[82], particularly when the supplier from a developing or less developed country where the complex situation occurs considering the economic and social condition.[83] In addition, due diligence has a function to describe weakness as an evaluation to improve the condition.[84]

Certification is also conceivable to gauge compliance. In the palm oil industry, RSPO, an association composed of various stakeholders, has been recognized by developed countries markets to issue certification of sustainable palm oil.[85] Nevertheless, this certification has been lambasted by some Non-Government Organizations (NGOs) because it is not representing the actual condition and does not follow up the public compliant with the proper process.[86] Another method beside certification is assessment. An example for this is Environmental, Social, and Corporate Governance (ESG) assessment as an indicator to consider investment decision for the investor. This method exercises the performance of corporation on three issues to enact the principle of responsible investment.[87]

The diverse choices of CSR initiatives to implement respect of corporation on sustainability values have been developed regulations that have an effect on the behaviour of stakeholders in polycentric regulatory regimes.

---

[81] Mares (n 27) 6-7.

[82] Ibid.

[83] Dani Rodrik, *Straight Talk on Trade: Ideas for a Sane World Economy* (Princeton University Press 2018) 90.

[84] Radu Mares, *The Dynamics Of Corporate Social Responsibilities* (Martinus Nijhoff Publishers 2008) 140.

[85] Rosediana Suharto and others, *Joint Study on the Similarities and Differences of the ISPO and the RSPO Certification System*s (UNDP 2015) 7.

[86] Retno Kusumaningtyas, *External Concerns on the RSPO and ISPO Certification Schemes* (Profundo 2018) 6.

[87]Christopher Johnson, 'The Measurement of Environmental, Social and Governance (ESG) and Sustainable Investment: Developing a Sustainable New World for Financial Services' [2020] 12 (4) Journal of Securities Operations & Custody 336, 336–56 <https://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=146494144&site=eds-live&scope=site.336-338> accessed on 14 April 2021.

2.3.3 The Issue of Remedies

CSR's existence could be tracked from the concern about the severe effect of corporate activities on human life and ecosystem. Therefore, an effective remedy mechanism for victims is pivotal for recovering the condition to fulfil the CSR goals. For this reason, the UNGP accentuated remediation as the third pillar that stimulating collaboration between states and corporation to ensure the judicial and non-judicial mechanism for the victim.[88] Nonetheless, in reality, it is arduous by virtue of unbalance position and power between victims and corporations.[89]

Claimants in the remediation process could be a business partner, a third party victim of CSR violation or even a consumer. The business partner has a right to claim when CSR become a provision in the contract to ensure implementation of CSR in the business operation.[90] On the other hand, the consumer has a right to claim when buying a product that has been claimed as a sustainable product, but in reality, this product is deceitful because producing without a sustainable method.[91] However, elaboration in this aspect will focus on the damaged victim that gets severe effect due to violation of CSR. These claimants should have access to judicial and non-judicial mechanisms.

2.3.3.1 The Judicial Mechanism

The judicial mechanism is dominated by state institutions even though an object in the dispute and choice of law, particularly in international contract, that appear in a business relationship emerge from undertakings' freedom of choice. Generally, a claim based on tort or contract is the most common approach in judicial dispute settlement mechanism.[92]

The breach of contractual agreement on CSR is possible to use as a reason for a claim in the litigation process as long as the claimant is a party and consequences of CSR violations are mentioned clearly in the contract.[93] In this case, the buyer is

[88] UNHR (n 55) 29-36.

[89] Kasey McCall-Smith and Andreas Rühmkorf, 'From international law to national law: The opportunities and limits of contractual CSR supply chain governance' in Vibe Ulfbeck, Alexandra Andhov and Mitkidis, *Law and Responsible Supply Chain Management* (Routledge 2018) 28-29.

[90] McCall-Smith (n 89).

[91] Ibid.

[92] Vibe Ulfbeck and Ole Hansen, 'Interplay between contract and tort in the supply chain' in Vibe Ulfbeck, Alexandra Andhov and Mitkidis, *Law and Responsible Supply Chain Management* (Routledge 2018) 133-134.

[93] Ulfbeck (n 75) 53-55.

feasible to sue the supplier who disobeys the obligation to produce a product sustainably, refer to the CSR clause in the contract.[94] Nevertheless, the Unidroit Principles of International Commercial Contracts (PICC) emphasized that the parties should be clear when determining their rights and duties in the contract to make clear in what situation the breach of contract occurs.[95]

The next question is how about third parties rights like damaged people who are incurable because of outsiders of the contracting parties. In a contractual relationship perspective, an opportunity for third parties to claim damage if the contractual parties with clear intention ascribe specific rights to specific third parties in the obvious language in the contract.[96] This principle is also acknowledged by the PICC that the parties 'may confer by express or implied agreement a right on a third party'.[97] Moreover, if the parties have a real intention in protecting other parties, the parties should adjust other provisions to avoid obstacles when third parties claim their rights.[98] In the Walmart case, employees of Walmart's supplier, as a third party in the contract, conducted class action against Walmart because of failure to ensure a minimum standard of labour protection through the social audit process referred as the 'Standards for Suppliers' clause.[99] This claim was dismissed by the court for one of the reasons that the contractual clause had not mentioned specific rights for employees of the supplier.[100]

This is why in the previous part about the respect dimension that it is really important to scrutinize the commitment of the company to CSR by examining how the company regulates CSR in the contract.

At the supranational level, the Investment-State Dispute Settlement (ISDS) constructs state and corporation in equal position as a result of the contractual relationship between countries that gives protection of investment for the

[94]Ulfbeck (n 75) 53-55.

[95] Article 4.1 and 4.4., *Unidroit Principles of International Commercial Contracts* [2016] The Governing Council of Unidroit (PICC).

[96] Kateřina Mitkidis, 'Enforcement Of Sustainability Contractual Clauses In Supply Chains By Third Parties' in Vibe Ulfbeck, Alexandra Andhov and Mitkidis, *Law and Responsible Supply Chain Management* (Routledge 2018) 70-75.

[97] Article 5.2.1 (1), PICC.

[98] Article 5.2.1 (2), PICC.

[99] Mitkidis (n 95), 74.

[100] Ibid.

companies from each country.[101] However, ISDS has been criticized for decreasing sovereignty of states and sustainability interest below the investment protection interest.[102] An example happened in the Bilcon v Canada case, the tribunal preferred the investor's expectation when the corporation failed in the environmental evaluation procedure.[103] Hence, in a contemporary situation, this concern has raised a new trend that CSR provisions are mentioned specifically in Bilateral Investment Treaties (BIT) or International Investment Treaties (IIT) in order to equalize unbalance interest. These treaties provide clauses that make investors lose their investment protection right if violating sustainability clauses even though this approach has a limitation in reality.[104] At the advantageous level, The Multilateral Investment Court (MIC) and The Multilateral Investment Appeal Court (MIAC) have been developed as the permanent court by the EU to protect the public interest in investment alongside sustainability clauses.[105]

The tort litigation is more flexible as a ground to claim rather than contract due to, in normative vantage point, the claimant is not always a party in the business relationship but can also be the third parties who have legal standing.[106] In the global supply chain, vicarious liability for independent contractor relationship and direct liability in subsidiaries condition are two alternatives for the victim to acquire remediation claim to core or parent company in cross border litigation beside domestic court process.[107]

However, in many cases, proving the nexus between parent and affiliated companies turns into an obstacle in this approach. In the parent and subsidiaries condition, the Chandler criteria that focus on 'superior knowledge' and 'reliance' of the parent companies should be satisfied to link responsibility from subsidiaries

[101] Andrew T. Guzman, 'Explaining The Popularity of Bilateral Investment Treaties' in Karl P. Sauvant and Lisa E. Sachs (eds), *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment Flows* (Oxford University Press 2009) 78.

[102] Thomas Dietz, Marius Dotzauer & Edward S. Cohen 'The legitimacy crisis of investor-state arbitration and the new EU investment court system' [2014] 26 (4) Review of International Political Economy 749, 759 < https://doi.org/10.1080/09692290.2019.1620308 > Accessed 15 April 2021.

[103] Enrique Boone 'Human rights obligations in investor-state contracts: Reconciling investors' legitimate expectations with the public interest' in Clair Gammage and Tonia Novitz (eds), *Sustainable Trade, Investment and Finance : Toward Responsible and Coherent Regulatory Frameworks* (Edward Elgar Publishing 2019) 201-202.

[104] Boone (n 103).

[105] Marc Bungenberg and August Reinisch, *From Bilateral Arbitral Tribunals and Investment Courts to a Multilateral Investment Court* (2nd ed, Springer 2020) 7-8.

[106] Vibe Ulfbeck and Andreas Ehlers, 'Direct and vicarious liability in supply chains' in Vibe Ulfbeck, Alexandra Andhov and Mitkidis, in Law and Responsible Supply Chain Management (Routledge 2018) 91.

[107] Ulbeck (n 106) 107.

action to the parent company.[108] By contrast, the relationship between independent supplier and company is more complicated because, in the traditional approach, it is not visible to make core company liable for the violation of supplier or independent contractor. A special condition is needed to raise the liability that can be illustrated briefly by circumstances when the rule on non-delegable duties, the rules on the retention of control or peculiar conditions are applied.[109]

The state has a function to afford independent, effective and reliable judicial institution to ensure access to remedy for the claimant. This could be attained through adequate legal framework and integrity behaviour of judiciary officials.

2.3.3.2 The Non-Judicial Mechanisms

In practice, Alternative Dispute Resolution (ADR) that consists of negotiation, mediation or arbitration is common in the non-judicial mechanism process. The undertaking and the state could develop their non-judicial mechanism with the minimum standard of effective remediation process for the victim. The UNGP formulates this minimum standard as legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and at the operational level that based on engagement and dialogue.[110]

Porgera Mine was an interesting study case of Non-Judicial Grievance Mechanisms (NJGM) when corporation collaborated with human rights experts and external stakeholders to endeavour impactful remediation process for victims of human rights violation conducted by the security of the company.[111] After this process, compensation for the victim and improvement capacity of the employees and internal monitoring system on human rights have been realized.[112] However, the result is not satisfying because of a lack of participation and limited access to justice

[108] Ulbeck (n 106) 107.

[109] Ibid 102-105.

[110] UNHR (n 55) 34-35.

[111] Maximilian J. L. Schormair and Lara M. Gerlach, 'Corporate Remediation of Human Rights Violations: A Restorative Justice Framework' [2019] 167 (3) Journal of Business Ethics, 477-8 < https://doi.org/10.1007/s10551-019-04147-2> accessed on 15 April 2021.

[112] Ibid.

in the process.[113] This problem raises a discourse on the probability to use the restorative justice model in the remediation process as an alternative in the future.[114]

Another alternative is the institutionalization of NJGM with a particular standard procedure like the Complaint Mechanism of RSPO. Everyone, including NGO, could report a violation of the RSPO's member through this complaint mechanism, and the RSPO will conduct a mediation process based on inquiry to manage the remediation process involving an independent facilitator with relevant background. If this mechanism could not solve the problem, the panel will be established that equipped by the appeal procedure.[115] Reading the study analysis of 39 human rights claims in the RSPO, the majority of the cases do not favour the claimants, with the second-highest number is solved by an agreement. In addition, just one of ten orders that favour the victim had been handled in an ideal way.[116]

The state is also recommended to provide NJGM with the same principles of effectiveness alongside support NJGM by a non-state actor. In 2010, seven people were killed in a tenurial conflict between PT Sumber Wangi Alam (PT SWA), a palm oil company, and Sodong Tribe in Mesuji, OKI, Sumatera Selatan, Indonesia that was triggered by abusive action of security guard of the company.[117] Public pressure triggered Government to conduct a joint fact-finding team that consisting of members from various backgrounds. Although the recommendations from the fact-finding team were successful in changing plantation regulation related to social justice issue by limiting maximum plantation land ownership for group corporation and improving the protection of tenure rights of tribe and smallholder[118], the action plan was failed to remedy the victim rights properly. In the beginning, this action plan could cease the conflict because this plan constructed a comprehensive analysis on the root of the problem to develop concrete action plans in order to

[113] Schormair (n 111).

[114] Ibid, 482-487.

[115] Mark Wielga and James Harrison, 'Assessing the Effectiveness of Non-State-Based Grievance Mechanisms in Providing Access to Remedy for Rightsholders: A Case Study of the Roundtable on Sustainable Palm Oil.' [2021] 6 (1) Business & Human Rights Journal 67, 74-76 <https://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=149396465&site=eds-live&scope=site> accessed on 15 April 2021.

[116] Wielga (n 115) 83 and 85.

[117] Tim Gabungan Pencari Fakta Kasus Mesuji (Joint Fact Finding Team on Mesuji) (TGPF), *Ringkasan Eksekutif Laporan TGPF Kasus Mesuji* (Executive Summary of Mesuji Report Case), (TGPF 2012) 28.

[118] TGPF (n 117) 41-42.

remedy the rights of the Sodong Tribe.[119] Nonetheless, the aim of the action plan did not achieve because of weak political will to follow up the action plan seriously, therefore the judicial mechanism must be used by Sodong Community to claim the rights with supporting evidence from the fact-finding report.[120]

These study cases show that NJGM by companies or even state still needs significant improvement to fulfil the standard of the remediation process.

2.4 Enforcement and Corporate Compliance

Gauging corporate compliance is not an easy task due to the differences in measurement methods and standards of CSR compliance. Communication on Progress (CoP) is one of the evaluation methods that has been used by the UN Global Compact to check the compliance rate of the member in the implementation of the ten principles.[121] This CoP report has a standardization guidance for the UN Global Compact members that explains how to report and recommends a method to measure compliance, including a social audit to the supplier.[122] In 2020, the Annual Management Report of UN Global Compact published that 5.033 reports from participants or equal to 82 % of total COP reports achieving the active level criteria while 10 % and 7 % categorized at advance and learner level respectively with the number of delisting was 365 participants.[123]

Nevertheless, some NGOs criticized the CSR audit process conducted by MNEs in the global supply chain because, without explicit and specific audit standards, the social audit is potentially becoming a greenwash method for unsustainability supplier activities at the operational level.[124] The gap on a level of the playing field between countries is the relevant issue in this context. The gap between mandatory and voluntary approaches of social and environmental audit in the supply chain of goods and services among countries, even in the same condition as developed countries status, has evoked concern about the different standards of compliance

[119] Ibid, 39-42.

[120] ELSAM, 'Kasasi Ditolak, PT. SWA Harus Akui Lahan Masyarakat' (Elsam, 2017) <https://elsam.or.id/kasasi-ditolak-pt-swa-harus-akui-lahan-masyarakat/> accessed on 15 April 2021.

[121] UN Global Compact, *Basic Guide Communication on Progress* (UN Global Compact 2019) 5.

[122] Ibid.

[123] UN Global Compact, *UN Global Compact: 2020 Annual Management Report* (UN Global Compact 2020) 35.

[124] Smit (n 4) 74.

between MNEs that affecting competition.[125] This could be illustrated when MNEs in the UK, the US, and France conducting social audit based on CSR initiatives that the audit is also suitable for these countries' mandatory law. As a consequence, this makes that the standard of compliance should prevail at a higher level if comparing with other companies in European Countries without obligatory laws. This is because the Dodd-Frank Act in the US and the Modern Slavery Act in the UK obligated companies to prevent modern slavery and abuse of human rights respectively to their subsidiaries and supplier through mandatory due diligence, whereas France has mandatory audit compliance for its companies on vigilance issues.[126] Moreover, the gap of a level of playing field in developing country from supplier perspective is also complicated and become another obstacle.

The second problem is complexity in the global supply chain that was elaborated by the EU. According to its research, around 51.82 % of respondents who conducted due diligence showed that 'third party impacts are included for first-tier suppliers only'.[127] As an impact, detection violation of CSR has languished when undertakings conduct due diligence for just opportunist purpose to fulfil a formal requirement. The EU also realized these obstacles related to enforcement capacity of CSR in encouraging real corporate compliance that was raised alternative proposal to regulate mandatory due diligence with the specific standard, at least on human rights and environmental issues, for undertaking in EU as part of the green deal program and complimentary of previous policy, inclusive of EU Non-financial Reporting Directive.[128]

Transparency and accountability become third issues. The flexibility of audit methods and process with a tendency of company to get just a good result without proper process causing integrity of audit is questionable.[129] The limitation of participation of stakeholders in the audit process becomes another problem in this

[125] Smit (n 4) 222-224.

[126] McCall-Smith (n 2) 122; Guillaume Delalieux and Anne-Catherine Moquet, 'French law on CSR due diligence paradox: The institutionalization of soft law mechanisms through the law' [2020] 15 (2) Society and Business Review 125, 130 <https://doi-org.ludwig.lub.lu.se/10.1108/SBR-03-2019-0033 130> accessed on 15 April 2021.

[127] Smit (n 4) 65.

[128] Ionel Zamfir, *Briefing Note: Towards a mandatory EU system of due diligence for supply chains* (EPRS | European Parliamentary Research Service 2020) 6-7.

[129] Smit (n 4) 70-71 and 218-219.

scope of the issue. This is because, in many cases, audit social does not require the involvement of NGOs and other relevant actors.[130]

Previous explanation about the Judicial and Non-Judicial mechanism of remediation also acknowledged the fundamental problem of CSR enforcement in the remediation process. Judicial and Non-Judicial institutions must be improved to establish robust access to remedy mechanism for stakeholder.

From the whole vantage point, integrity and independence in enforcing institutions of CSR are crucial enabling factors. For example, without public officials' integrity, it is possible for the supplier to delude the actual condition of operational business with the official report from the government. Moreover, the transboundary audit could potentially make a risk for the auditor influenced by the supplier when conducting an audit.

[130] Smit (n 4) 221.

3. The Transnational Anti-Bribery Regime

Unlike CSR, which relies on private commitment and enforcement, the transnational anti-bribery regime accentuates mandatory approaches through various instruments enforced by transnational law enforcement authorities. This strategy, in many circumstances, could encourage corporate compliance in a more effective way. Nevertheless, in some cases, this approach has limitation in practice.

3.1 Transnational Mandatory Rules and Legal Instrument

Anti-corruption has grown into a common virtue in public and private relationship at the global level, especially after the enforcement of foreign bribery in the 20th century, even though corruption has been condemned since ancient civilization in many countries.[131] Almost all countries have specific domestic regulation on corruption, at least, on bribery prohibition. On the other hand, foreign bribery and other relevant regulations issued by powerful countries have influenced international business activities. The combination between these laws has evolved the transnational anti-bribery regime with the mandatory approach at the global level to handle varieties of modus operandi in the public and private sectors.[132]

3.1.1 The Foreign Bribery Laws

The gap in enforcement of domestic bribery regulation between countries has engendered unfair competition between MNEs due to the probability that a company has not been investigated for corruption violation in countries with weak enforcement capacity.[133] This pragmatic business issue met with the obligation of

[131] Davis (n 5) 34.

[132] See UNCAC for International Convention as an example of international convention as a standardization for members to regulate corruption issues; Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector [2003] OJ L 192, 54 and Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union [1997] OJC195/2 for examples of regional legislations; and examples in national level, there are the United States Foreign Corrupt Practice Act (FCPA) 1977, The United Kingdom Bribery Act (UKBA) 2010 and the Swedish Penal Code.

[133]Davis (n 5) 110; Moiz A Shirazi, 'The Impact of Corruption on International Trade' (2012) 40 (1-3) Denver Journal of International Law and Policy 435, 436-437 <https://search-ebscohostcom.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.denilp40.25&site=edslive&scope=site> accessed on 17 April 2021; Jeffrey R. Boles, 'The Two Faces of Bribery: International Corruption Pathways Meet

the state to annihilate corruptive activities of the company that gave a lousy image to the country when operating abroad.[134] Foreign bribery provision was "born" in these circumstances to eradicate impunity of company through the possibility of law enforcement authority in the home country to prosecute MNEs that bribe foreign public official although locus of the crime beyond the territorial jurisdiction of the enforcer country. In this concept, the undertaking should be liable as long as bribery is conducted by company representation in a broad context, from an employee, agent to lawyer of the core company or subsidiaries of the company in a reason of corporation interest.[135] As a legitimacy, this approach uses the active personality principle in criminal law.[136] This is evident in the case of Alstom when the company was investigated by the US Department of Justice for bribery violation by core companies and subsidiaries in Indonesia, Saudi Arabia, Egypt, the Bahamas, and Taiwan to get tender in the procurement process.[137] In a progressive way, in a country like the US, this law could also cover offences of actors and objects that have not nexus with the regulator country in the condition the violation involved territory or interstate facility of the regulator.[138]

With the Foreign Corrupt Practices Act (FCPA) and Organisation for Economic Cooperation and Development (OECD) standards, the US and European Countries are prominent players in this field that have significantly increased enforcement of foreign bribery worldwide. Besides the FCPA as the first recognizable foreign bribery instrument, the OECD Anti-Bribery Convention has encouraged members to develop and improve their foreign bribery laws for achieving the same level of playing field among members.[139] This foreign bribery provision got momentum after strong public pressure due to contagious bribery of MNEs from these countries when conducting business not only in developing countries but also developed

Conflicting Legislative Regimes', (2014) 35 MICH. J. INT'L L. 673, 696 <https://repository.law.umich.edu/mjil/vol35/iss4/1> accessed on 17 April 2021.

[134] Davis (n 5) 195-96.

[135] T. Markus Funk and Andrew S. Boutros, 'United States—Deconstructing the FCPA' in T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019) 4-5.

[136] Davis (n 5), 205.

[137]United States of America v Alstom Network Schweiz AG (ALSTOM PROM AG) [2014] Deferred Prosecution Agreement Case 3:14-cr-00245-JBA.

[138] Funk (n 134); See also 15 U.S. Code § 78dd–1, 2 and 3.

[139] Davis (n 5), 40; OECD Convention on Combating Bribery of Foreign Public Officialsin International Business Transactions (Adopted 17 December 1997, entered into force 15 February 1999) OECD.

countries, like in the Lockheed case that involving the former prime minister of Japan, former minister of defence of Italy and Prince of the Netherlands.[140]

Currently, exporter countries that controlled 83% of world exports and more than 75% of foreign direct investment have foreign bribery laws nevertheless with different level of implementation.[141] United States, Germany, United Kingdom, Switzerland and Israel covered more than 16,5 % of world exports are categorized as active enforcers due to the investigation and prosecution process rate.[142] In the UK, Rolls Royce (RR) obligated to pay £497,252,645 through the Deferred Prosecution Agreement (DPA) mechanism as a liability for bribe CEO of SOE and public officials in six countries.[143] Nine exporter countries that handled 20.2 % of global exports, including Sweden, were enforcing the law at a moderate level while fifteen countries become limited enforcement categories.[144]

3.1.2 The Commercial Bribery Provision

In the business decision-making process, integrity is paramount to conduct the best decision for company interest that makes a reason why uncorrupted behaviour is one of the required conditions to impose the business judgment rule principles.[145] The basic logic of thinking of private to private bribery provision is akin to public corruption which accentuating the independence of the decision-maker with just the difference in a business that a duty of loyalty is to the corporation.[146] On account of this, commercial bribery could use as an instrument to probe bribery between private actors devoid of nexus to the public budget or not.

In some countries like Sweden and the United Kingdom, commercial bribery is not regulated in separate delict with corruption in the public sector that considering the

[140] Davis (n 5) 37-38.

[141] Gillian Dell and others, *Exporting Corruption Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention* (Transparency International, 2020), 6; Gillian Dell and Andrew McDevitt, Exporting Corruption : Progress report 2018: Assessing enforcement of the OECD Anti-Bribery Convention (Transparency International 2018) 6.

[142] Ibid, 4.

[143] Serious Fraud Office V Rolls-Royce Plc [2017] Deferred Prosecution Agreement Case U20170036 Court At Southwark Para 123.

[144] Dell, *Exporting Corruption Progress report 2020* (n 139) 13-14.

[145] Mellisa K Seenacherry, 'Liability of Company Directors: The Business Judgment Rule as Developed in the US and Adopted by Germany Compared to the Netherlands' Approach' (2020) 12 Amsterdam LF [xxxi], xxxvii<https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.amslawf12.6&site=eds-live&scope=site> accessed on 14 April 2021.

[146] Matthew Atkins, *What is the purpose of the ongoing use of fiduciary duties in English business law, with particular reference to breaches of duty in relation to bribery, secret profits, conflicts of interest and unconscionability?* (Lancaster University 2018) 205.

pivotal role of a healthy environment in business.[147] Nevertheless, it is not all of the states that regulate this provision clearly in their laws. In Indonesia, this provision is limited only if commercial bribery has a public interest dimension.[148] Although there is no prohibition of commercial bribery in the FCPA and other laws at the federal level in the US, the Travel Act regulates prohibition to use transportation, communication or facilities of the US to distribute unlawful proceed, including commercial bribery, which is prohibited by legislation at the state law level such as in New York.[149]

Enforcing commercial bribery is quintessential for a country that relies on business trust, *viz*., Singapore, a small country but has enormous influence in international trade and investment. From 2014 to 2018, the CPIB, an anti-corruption agency of Singapore, investigated more commercial bribery cases rather than public corruption. According to the data, 88 % of cases were private sector cases with the fact that 15% of the cases related to the public official who rejected the bribery, while the pure public sector cases were just 12 % in 2018.[150]

3.1.3 The Books and Records Provision

Corporations, especially listed companies, have obligations to conduct and maintain their books and records in specific and accountable ways as an effort to develop the integrity of the corporation in business operation. Failure to attain this duty could be a punishable crime based on the reason that fraud and other corrupt behaviours are conceivable without proper books and records.[151] Lawmakers in the US were conscious of this situation when writing the FCPA that made this provision is inseparable from foreign bribery provision.[152] Nowadays, this provision becomes a prominent instrument in the transnational anti-bribery regime due to the company does not have any option to impede the investigation by deluding the books and

[147] See Chapter 10, Section 5 a-e the Swedish Penal Code and Section 1 and 2 the United Kingdom Bribery Act 2010 (the UKBA).

[148] UU Nomor 11 Tahun 1980 tentang Tindak Pidana Suap, TLN 3178 (Law No. 11/1980 on Bribery) referred as the Private to Private Bribery related to Public Interest Act of Indonesia.

[149] the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2nd edn, US DoJ and SEC 2020) 47-49.

[150] The Corrupt Practices Investigation Bureau, *Press Release Corruption Statistics 2018* (CPIB 2018) para 7.

[151] Stuart H. Deming, *Anti-Bribery Laws in Common Law Jurisdictions* (Oxford University Press 2014) 251-253.

[152] Ibid.

records that close the great loophole in previous regulation on bribery, particularly when this provision is equipped with internal control clause in some countries.[153]

Obligation on books and records provision has been regulated across the jurisdictions, particularly in public company law, securities law and tax law but not all of these country gives serious consequences with criminal and civil sanction for the violation.[154] Nevertheless, in the active bribery enforcer countries, for instance, the US, the level of enforcement and sanction are not lowered even than the foreign bribery offence, e.g., Panasonic Avionics Corporation agreed to pay $137,403,812 as the profound corollary of falsification of the books, records, and accounts.[155]

3.1.4 The Domestic Bribery Laws

The criminalization of domestic bribery is common in almost all countries in the world.[156] Nevertheless, the differences of scope to define what is domestic bribery emerges the problem to unify the standardization. This is why UNCAC gives guidance on how state members should regulate these offences properly.[157] However, issues on active and passive bribery, facilitation payment and gratification prevailed in the regulatory framework among the state members when regulating bribery besides illicit enrichment and trading in influence that are also part of the discourse in broader corruption matters.

Beyond the legislation issue, the differences of enforcer capacity between countries have been developed an enforcement alternative, such as foreign bribery enforcement which has mentioned before. With all of these discourses, at the minimum level of regulation, prohibition of bribery becomes a minimum standard when a corporation is doing business everywhere.

3.1.5 The Issues of Legal Remedies

Global eradication corruption efforts that have not provided sufficient attention on legal remedies for the victim of corruption emanate critics on current anti-

[153] Davis (n 5) 35.

[154] T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019) xxviii.

[155] United States Of America V. Panasonic Avionics Corporation [2018] Deferred Prosecution Agreement Case, The District Of Columbia Case No. 18-CR-00118, Para 7.

[156] Funk (n 153) xxiv-xxv.

[157] Article 1, 3 and 4 UNCAC.

corruption strategy.[158] Nonetheless, the legal remedies mechanisms have sophisticated issues in practice. Defining the victim is the first discussion before elaborating the mechanism, which is also complicated. For instance, the foreign country that asks for remedy in foreign bribery case raises a question about the reason to categorize victim country as a real victim. Some experts argue that the foreign country is a part of the perpetrator due to the violation involving public official as a receiver and, on another side, the proponents explained that the foreign country could categorize as a victim because of the damage of the crime for the country.[159]

UNCAC recommends member countries to ensure the right of the victim to initiate legal proceedings to obtain compensation from the violators.[160] Some countries provide a mechanism for the victim of corruption to ask for restitution through the state prosecution process. In Indonesia, the victims could request the prosecutor to put their damage claim in indictment after getting confirmation from the Indonesia's Victim and Witnesses Protection Agency as the victim although this mechanism is never realized in case law.[161] Moreover, in the plea bargain agreement process, a victim country could ask to get an allocation of settlement in the global settlement agreement as a result of the flexibility of the DPA, especially, if the affected country active in the process of enforcement.[162] However, this system is not standardized in international practice that makes not every affected country get an allocation of remediation in the settlement even though active in collaboration in the enforcement process. Another option is a civil lawsuit by states that recommended by STAR initiatives[163], although this mechanism has an issue that leaves the direct victim of a natural person in reality.

[158] Richard E. Messick, *Legal Remedies for Victims of Bribery under U.S. Law* (Open Society Foundations 2016) 1.

[159] Davis (n 5) 9 and 83.

[160] Article 35 UNCAC.

[161] Article 7A Undang - Undang Nomor 31 Tahun 2014 Tentang Perubahan Atas Undang - Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi dan Korban, LN No. 293 Tahun 2014, TLN No. 5602 (Law No. 31/2014 on Protection of Witnes and Victim) (UU LPSK).

[162] Messick (n 158) 3.

[163] Jean-Pierre Brun and others, *Public Wrongs, Private Actions: Civil Lawsuits to Recover Stolen Assets* (STAR-UNDOC & World Bank 2015) 12-13.

3.2 Enforcement and Corporate Compliance

Corporate compliance on anti-corruption becomes the international business standard that requires MNEs to allocate specific resources in preventing corruption in their business activities. Multilayers enforcement, severe sanction, and the crucial role of compliance in defence and plea bargain program are the combination of factors creating seriousness of the corporation on anti-corruption issues.

When undertaking or its subsidiaries operate in foreign countries, these entities should obey the law in the relevant jurisdictions. As consequences, the local authority has the power to enforce the violators with the domestic bribery law, including subsidiaries or even foreign companies that give bribery to the domestic public official. From another perspective, this offence falls under the foreign bribery provision when the company is listed or registered in the home countries that criminalize bribery to the foreign public official. For these reasons, several countries have justification to investigate the same case but in different delicts of crimes[164] that is recognized as the multilayers enforcement phenomenon. Respond to this phenomenon is different according to the case law. In some cases, the related countries will cooperate and share responsibilities, e.g., in Alstom Case that conducted bribery in four countries between 1999-2011 to get contract around US$ 3,508,000,000, the US law enforcer handled parent corporation whereas Komisi Pemberantasan Korupsi (KPK), a Corruption Eradication Commission of Republic Indonesia, prosecuted public official and leader of the corporation in Indonesia.[165] The problem occurs when the relevant enforcement agencies from various countries choose to prosecute the same defender through the enforcement process in each country that known as the carbon copy prosecution. In the Halliburton case that involving bribery to get a contract in Nigeria, after the US settled the case with Halliburton, the Nigeria Anti-Corruption Agency conducted an investigation on the same subject in Nigeria.[166] However, different options of the multilayers

[164] Andrew S. Boutros and T. Markus Funk,'"Carbon- Copy Prosecutions": A Multi- Dimensional Enforcement Paradigm that is Here to Stay' in T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019) 496.

[165] United States of America v Alstom Network Schweiz AG (ALSTOM PROM AG) [2014] Deferred Prosecution Agreement Case 3:14-cr-00245-JBA; Anti-Corruption Clearing House KPK, Jejak Kasus Eddie WIdiono Suwondho <https://acch.kpk.go.id/id/jejak-kasus/151-eddie-widiono-suwondho> accessed on 21 April 2021; TRQ/NWK, "KPK Resmi Umumkan Emir Moeis Sebagai Tersangka" (Detik, 26 Jul 2012) <https://news.detik.com/berita/d-1975949/kpk-resmi-umumkan-emir-moeis-sebagai-tersangka> accessed on 22 April 2021.

[166] Boutros (n 164) 497-498.

enforcement have impeded corporation to avoid liability even if the domestic enforcer has a weak capability in enforcing the law.

In 2020, the total sanction of foreign bribery violation was around US$ 5,813,000,000, with a total of 18 corporations and ten individuals were punished by the US DoJ and SEC.[167] These amazing results could be achieved because the calculation method of monetary sanction is a key to impose enormous amounts to the corporation in plea bargain procedure. This great number does not happen just in the US cases like Petrobras, which should pay US$ 1,786,673,797[168] as part of settlement agreements but also other bribery cases around the world. In another jurisdiction, Telia Company AB obligated to pay US$ 274,000,000 in the agreement with the Dutch Public Prosecution Service (DPPS) based on a foreign bribery probe in Uzbekistan.[169] In the national jurisdiction case, PT Nusa Konstruksi Engineering, Tbk was sentenced to around Rp.85,490,234,737 (US$ 5,855,143) for domestic bribery violation in Indonesia.[170]

Compliance could not be separated from the law enforcement system in order to encourage undertaking to implement prevention program. In the UK, the UKBA allows the corporation to use 'the adequate procedures' as a defence to avoid corporate criminal liability in the case bribery is conducted by an employee.[171] The adequate procedures consist of six principles to gauge the compliance program of the corporation to prevent corruption.[172] Moreover, even if the corporation agrees with the authorities to solve the cases through the plea bargain agreement, the compliance monitoring program must be definitely included in the agreement. In the DPA between US DoJ and Telia AB, as a requirement to release from the prosecution process, the company must review its existing internal controls,

[167] Arthur and Toni Rembe Rock Center for Corporate Governance., 'Corporate Sanction Per Year and Entinty Groups and Individuals Charged Per Year (FCPA Claim Only)' (Stanford Foreign Corrupt Practices Act Clearinghouse, 2021) <https://fcpa.stanford.edu/index.html> Accessed on 22 April 2021.

[168] United States of America v. Petróleo Brasileiro of The S.A. – Petrobras, [2018] Order Instituting Cease-Andin The Matter of Desist Proceedings, Administrative Proceeding File No. 3-18843, 9-10.

[169] Netherlands Public Prosecution Service 'International fight against corruption: Telia Company pays 274.000.000 US Dollars to the Netherlands' (NPPS, 21 September 017) <https://www.prosecutionservice.nl/latest/news/2017/09/21/international-fight-against-corruption-telia-company-pays-274.000.000-us-dollars-to-the-netherlands> Accessed on 22 April 2021.

[170] Republic of Indonesia v. PT Nusa Konstruksi Enginering, Tbk (previously known as PT Duta Graha Indah, Tbk) [2018] Decision No. 81/Pid.Sus/Tipikor/2018/PN.Jkt.Pst, 288-289.

[171] Quinn Emanuel Urquhart and Robert Amae 'United Kingdom' in T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019) 495; Section 9, the UKBA 2010.

[172] Ministry of Justice of the UK, *the UK Bribery Act Guidance : about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing* (Ministry of Justice of the the UK 2011) 20-31.

policies, and procedures alongside the existing compliance program that are periodically reviewed by an independent consultant.[173]

These mandatory approaches could make corporate compliance on anti-corruption become a big business alongside competition law issues and anti-money laundering compliance.[174] However, the transnational anti-bribery regime has limitation due to too rely on criminal law approaches conducted by a state bureaucracy that does not encourage the voluntary commitment of various actor and public participation. Moreover, this nature of the enforcement system has not accommodated enough attention in the remediation of victims in practice.

[173] United States v. Telia Company AB [2017] Deferred Prosecution Agreement No. Case 1:17-cr-00581-GBD, Paras 11-12 and Attachment C.

[174] Davis (n 5) 41.

4. The Functional Interaction

It is clear that the transnational anti-bribery enforcement strategy differs from CSR initiatives with strong points and obstacles in each track of enforcement. However, the two systems are having a reciprocal impact when interacting in the polycentric regulatory system. Therefore, improving enforcement in one system could be a way to invigorate the enforcement capability of another system. This is because of the potential functional interaction between CSR and Anti-Corruption regimes that is useful as a complementary or alternative strategy to achieve corporate compliance in the global supply chain.

4.1 Potential Impact of the Transnational Anti-Bribery Regime on CSR Initiatives

Anti-Corruption has been recognized as an enabling factor to achieve corporate compliance on CSR. Nevertheless, a baseline is needed in order to study the potential implication on CSR in a more objective way. Protection, respect and remediation dimensions prevail as a baseline in this research due to represent three-dimensional characters of CSR in the polycentric regulatory system as mentioned in chapter 2.

4.1.1 Dimension of Protection

Enforcing the anti-bribery provision at the global level is possible to affect the dimension of the CSR's protection by the state which has a function in providing the ideal environment for sustainable business actives.

Multilayers enforcement of foreign and domestic bribery could galvanize independence and integrity of state apparatus in the decision-making process and supervising corporate sustainability implementation. According to Lessig, the ultimate vicious of corruption is the bias of public officials in the decision-making process that has been influenced by bribery.[175] With their enormous resources,

[175] Lawrence Lessig, *Republic Lost : How Money Corrupts Congress - and a Plan to Stop It* (Twelve 2011) 138-143.

corporations have an instrumental power to influence public policy.[176] In the CSR context, corruption could prevent lawmakers from writing laws related to sustainability protection when the proposed law goes against the business interest. Monsanto case is a good illustration in this context because the bribery from the company to a senior public official of the Ministry of Environment in Indonesia had an aim to repeal the 'an unfavourable decree that was likely to have an adverse effect on Monsanto's business'.[177]

In the multilayers enforcement system, the local enforcement authority has the authority to investigate domestic bribery violation in the decision making or monitoring process on CSR activities by a public official. If this enforcement is not effective, the foreign authority is also possible to prosecute public official, for instance, the US DoJ prosecuted the two Haitian public officials based on money laundering provision with transnational bribery as a predicate crime.[178]

The function of foreign bribery and domestic bribery is also essential to identify a violation of environmental and social values by relevant authorities. By way of illustration, the police department could investigate a violation of child labour provision based on the result of an investigation of bribery involving a labour authority official who conceals child labour activities in the company in his official compliance report.

From the supervision perspective, books and records provisions are essential instruments in the audit process to ensure the integrity of books and records, including expenditure on labour and other sustainability issues. The inspector from relevant agencies is easier in auditing the company if supported with the prudent book record as evidence.

4.1.2 Dimension of Respect

Contributions of the transnational anti-corruption enforcement to the implementation of corporate respect on CSR have been found in many aspects, from the business decision process to the due diligence activities.

---

[176] Ruggie (n 10) 5-6.

[177] United States v. Monsanto Company [2005] Appendix A Deferred Prosecution Agreement CRIMINAL NO. 1 :05-cr-008ESH-ALL, Paras 6-7; FCPA Clearing House of Stanford Law School 'FCPA Case Information United States of America v. Monsanto Company' < http://fcpa.stanford.edu/enforcement-action.html?id=372> Accessed on 27 April 2021.

[178] Davis (n 5) 76.

Commercial bribery prohibition prevents distortion and strengthens the loyalty of various actors in the company, including employee and the Board of Director, to the virtue and interest of the company, including sustainability commitment when the company joins into CSR initiatives. This is because the provision could reach the liability of corrupt agents in the decision-making process. As an illustration, Brand-Rex Limited became the first defendant for violation of Section 7 of the UK Bribery Act 2010 in the case of commercial bribery to an employee of the customer company who had authority in the procurement process.[179]

Lack of integrity on behalf of external or internal auditors is an obstacle in the audit process, including social due diligence. Commercial bribery provision has a role as "a safeguard" to ask the liability of a corrupt auditor when conducting a social audit to the supplier on behalf of the buyer company. Chevron Singapore Case is an example of the implementation of private to private bribery related to the supervision and audit process. In September 2020, a Health, Environment and Safety Specialist at Chevron Singapore Pte Ltd was charged with commercial bribery provision for obtaining bribery from a Director of LGC Engineering & Contractors Pte Ltd in order to get 'leniency in his supervision of the work done by LGC at the Chevron Singapore Lube Oil Blending Plant'.[180]

Bribery is just a method to achieve the real aim of the briber. In many cases, the fundamental objective of bribery frequently has a robust correlation with interest against sustainability, among other things deluding the result of the social audit process or getting a permit without fulfilling sustainability requirement. Regarding this logic of thinking, the parent or buyer company can identify violations of CSR issues in its supply chain through bribery cases. This correlation could describe in PT SMART Tbk Case. KPK prosecuted the Vice President of PT SMART Tbk, one of the biggest palm oil companies in the world that affiliated with Golden Agri-Resources Ltd (GAR), for bribery contravention in 2019. This bribery was given to prevent the Local Lawmakers from developing the inquiry commission to probe

[179] Squire Patton Boggs, 'Cooperation is Key – Scottish Company receives civil penalty for contravention of Bribery Act' (anticorruptionblog, 2015) < https://www.anticorruptionblog.com/uk-bribery-act/cooperation-is-key-scottishcompany-receives-civil-penalty-for-contravention-of-bribery-act/> accessed on 26 April 2021.

[180] CPIB, 'Press Release: Charged with Corruption to be Lenient in Supervision of Contractor Work' (CPIB, 10 September 2020) <https://www.cpib.gov.sg/press-room/press-releases/charged-corruption-be-lenient-supervision-contractor-work> Accessed on 26 April 2021.

pollution in Lake Sembuluh that was suspected related to palm oil activities.[181] In the global supply chain, this company is the leading supplier for prominent brands globally, including in European countries, with a serious commitment to environmental protection as a part of CSR.[182] In another case related to modern slavery, the International Labour Organisation (ILO) identified a correlation between modern slavery in the fishing industry and corruption because, due to corruption, monitoring could not be optimal.[183]

The adequate procedure embodied as a defence in anti-bribery law enforcement has improved integrity in business operation. As a potential defence to avoid severe sanction in the future, MNEs equip their management with a comprehensive compliance program with support from professional experts on good corporate governance. This corporate compliance program on anti-corruption could also enhance CSR capacity in the participation context, especially the whistle-blower system and complaint handling system that are part of compliance principles.[184] Therefore, internal or external stakeholders could use these channels to report any potential violation in the business activities beyond corruption, including sustainability violation. Moreover, the books and records clauses support the audit process because fraud and falsifying records are punishable with serious criminal sanction.

4.1.3 Dimension of Remediation

The judicial and non-judicial mechanisms need the integrity to establish the fair process for victims and stakeholders in the legal remedies process. In the implementation, commercial bribery is possible to become a tool to eradicate corrupt behaviour in private non-judicial mechanisms, whereas public bribery provision deterrence corruption in the judicial process and state non-judicial procedure.

[181] Republic Indonesia v Edy Saputra Suradja [2019] Putusan PN Jakarta Pusat 4/PID.SUS-TPK/2019/PN.JKT.PST.

[182] IDH, 'Latest data shows 86% of palm oil imported to Europe sustainable', (IDH, 2 September 2020) <https://www.idhsustainabletrade.com/news/latest-data-shows-86-of-palm-oil-imported-to-europe-sustainable/> accessed on 26 April 2021.

[183] ILO, 'Global Action Programme Against Forced Labour And Trafficking Of Fishers At Sea' (ILO, 2015) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/-declaration/documents/publication/wcms_429359.pdf> accessed on 26 April 2021.

[184] For example in UKBA Principles, see Ministry of Justice of the UK (n 172) 22-23.

Judicial corruption is the most problematic situation not only in developing or less developed country but also in developed countries[185] because this situation could impede access to justice in the remediation process. In the Philippines, Saligan, one of the prominent NGOs, was actively lobbying a new regulation to reform the labour tribunal for preventing corruption in the labour dispute settlement system.[186] The recent report of TI on Corruption in Asia explained that the judges and magistrates are in the position of seventh in Asia and the second rank in some Asian countries as the most corrupt officials and institutions according to the survey.[187] Thus, the domestic bribery law has a crucial role in eradicating corrosive behaviour in the court, e.g., in 2011, KPK caught judge and curator for bribery in the insolvency process as a part of 46 actors who involved in Judicial Corruption that have been prosecuted by KPK since 2008.[188]

Even still in the investigation phase, the bribery offences have consequences to the contractual relationship between parties and the third parties claim of the victim of CSR violation.[189] The implication could be divided into two scenarios. The first scenario occurs when the bribery is a purpose in the contract, such as a public official or affiliated actors claim bribery payment based on the contractual relationship. Judge Lagergren's decision in 1963 was a landmark case for this condition in international arbitration that considered the main contract with the purpose to fulfil commitment on corruption which violating national, international law principles and *boni mores* was void according to the New York Convention of 10 June 1958.[190] As consequences, the claim could not be handled by the tribunal

[185] Stratos Pahis, 'Corruption in Our Courts: What It Looks Like and Where It Is Hidden'[2009] 188 (8)Yale Law Journal 1900, 1922-1931 < https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5179&context=ylj&fbclid=IwAR2Q643IkCabqsK0KSRRD0jt-kz7EZSnVMVTZTwfYjA_lzP0BiIdGggjE18> accessed on 26 April 2021.

[186]Stephen Golub, 'The 'other 90 per cent': how NGOs combat corruption in non-judicial justice systems' in Diana Rodriguez and Linda Ehrichs (Eds) *Global Corruption Report 2007: Transparency Internationa*l (Cambridge University Press and Transparency International 2007) 131.

[187] Jon Vrushi, *Global Corruption Barometer Asia 2020 Citizens' Views and Experiences of Corruption* (Transparency International 2020), 14 and 38-54.

[188]KPK, Graph TPK Berdasarkan Profesi/Jabatan (KPK, 1 January 2021) <https://www.kpk.go.id/id/statistik/penindakan/tpk-berdasarkan-profesi-jabatan> accessed on 27 April 2021; Dewi Nurita, 'OTT Hakim PN Jaksel, 17 Hakim Ini Pernah Dicokok KPK' (Tempo, 29 November 2018) <https://nasional.tempo.co/read/1150699/ott-hakim-pn-jaksel-17-hakim-ini-pernah-dicokok-kpk/full&view=ok > accessed on 27 April 2021.

[189] Kevin E Davis, 'Contracts Procured through Bribery of Public Officials: Zero Tolerance versus Proportional Liability' [2017] 50 (4) New York University Journal of International Law and Politics 1261, 1269-1270 <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.nyuilp50.36&site=eds-live&scope=site.> accessed on 27 April 2021.

[190] ICC Award No. 1110 of 1963 by Gunnar Lagergren, YCA 1996, at 47 et seq. <https://www.trans-lex.org/201110/_/icc-award-no-1110-of-1963-by-gunnar-lagergren-yca-1996-at-47-et-seq-/#head_1> accessed on 27 April 2021.

due to a lack of jurisdiction.[191] Otherwise, in the condition the contract tainted by corruption but the main purpose of the contract is not corruption, the contract is voidable instead of void.[192] In theory and regulations, in the void case, the contract is not existing due to the substance of the agreement is illegal, whereas in the voidable circumstance, the contract is 'intrinsically valid, but is one which due to the circumstances of its making the court in its equitable jurisdiction will not enforce'.[193] This separation is also acknowledged by the European Civil Law Convention on Corruption that mentioned differences between a corrupt clause in the contract and a contract influenced by the corrupt behaviour of the agent.[194] The voidable issue could be seen in the case the World Duty-Free v. Kenya. Kenya was successful in avoiding the contract liability when used corrupt behaviour of the company that influencing agent of the state as a defence, even though this case triggered serious discussion which considering imbalance consequences for corrupt company and state that its apparatus conducted corrupt behaviour, particularly, in this case, the receiver of bribery was the president as the highest level official position in Kenya.[195] Furthermore, in the third party claim case, the victim of CSR could also use corruption as evidence to support legal remedies claim in the tort litigation, such as in the case of falsification of document of origin by a corrupt public official to delude conflict mineral in the supply chain.[196]

Finally, the plea bargain in foreign bribery procedure could use as an alternative legal remedies forum beyond tort and contractual litigation for violation of CSR as long as the violation involving corruption. In 2009, the MNE punished to pay US$ 73,824 to the government of Haiti as a sanction for foreign bribery through DPA in the US.[197] Moreover, in James Giffen case, the $115 million was distributed to

[191]Michaela Halpern. 'Corruption as a Complete Defense in Investment Arbitration or Part of a Balance' [2015] 23 (2) Willamette Journal of International Law and Dispute Resolution 297, 303 <https://www.jstor.org/stable/10.2307/26209971> accessed on 27 April 2021.

[192] Ibid, 302-304.

[193]World Duty Free Company Limited v. Republic of Kenya, [2006] Award ICSID Case No. ARB/00/7, Para 164.

[194] Civil Law Convention on Corruption (Addpoted 4 November 1999, entered into force 1 November 2003] ETS No.174, Artcile 8; Council of Europe, Explanatory Report to the Civil Law Convention on Corruption (Council of Europe 1999), paras 63-65.

[195] Halpern (n 191) 310-315.

[196] Bénédict de Moerloose, 'Challenging Pillage: Argor-Heraeus and Gold from the Democratic Republic of Congo' in Ken Hurwitza and Richard E. Messick (*eds), Legal Remedies For Grand Corruption The Role Of Civil Society* (Open Society Foundations, 2019), 145-150.

[197] Messick (n 158) 4.

children in Kazakhstan through the BOTA foundation and international NGOs based on the agreement between the the US, Switzerland, and Kazakhstan.[198]

4.2 Potential Impact of CSR Initiatives on the Transnational Anti-Bribery Regime

The modern mandatory anti-corruption instruments, especially criminal enforcement, have two ultimate purposes for ensuring deterrence effect[199] and, in a more modern context, remedy the damage for the victim in the context of restorative justice.[200] In the transnational anti-bribery regime, the CSR initiatives also have a potential benefit to support the fulfilment of deterrence effect through effective enforcement and corporate compliance alongside legal remedies in restorative justice context.

4.2.1 Enforcement Aspect

The power of contractual relationship among business partners on CSR could be another enforcement layer of anti-corruption enforcement that state actors have conducted conventionally through anti-bribery laws. The breach of trust has serious consequences in the continuation of business in the future. For this reason, the company will think twice to conduct corruption because the consequences could be doubled because not only severe sanction of the mandatory regime that has been dominated by state criminal enforcement procedure but also damages and breach of contract claims by business partners.

Although the bribery conduct is punishable without a specific clause in the contract because, in principle, the contract tainted by corruption is voidable like that has been elaborated in the previous section, the effort to formalize this provision in the contract has increased due to certainty of business and voluntary commitment on anti-corruption. Awareness to put a specific clause on anti-corruption is not limited in the contract between companies. Currently, different types of anti-corruption provision have been encompassed by countries in their BIT or Free Trade

[198] Messick (n 158) 14.

[199] Alexandra M Manea, 'Outlawing Foreign Bribery: International Developments in Regulating the Bribery of Public Officials in International Business Transactions' [2015] 2015 (2) Law Annals Titu Maiorescu U 113, 124 <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.latitu2015.52&site=eds-live&scope=site.> accessed on 27 April 2021; Davis (n 5) 7.

[200] Ken Hurwitz, 'Foreword: Seeking Legal Remedies For Grand Corruption' in Ken Hurwitza and Richard E. Messick (eds), *Legal Remedies For Grand Corruption The Role Of Civil Society* (Open Society Foundations 2019) 2.

Agreement (FTA) that have a serious impact on MNEs when investing or conducting business.[201] This clause is written by indirect approach through putting CSR in the investment treaty or in the stricter model like 'Carve-out' method.[202] Canada is one of the countries that wrote specific CSR obligation on anti-corruption in BIT and FTA for their companies. Nevertheless, this option needs more endeavour due to the BIT just encourages affected corporations to develop their internal and external regulation to commit to CSR initiatives.[203] The 'Carve-out' strategy has more direct implication due to giving direct obligation for the company to comply with the anti-corruption clause if the company does not want to lose their right of investment treaty protection, inclusive of access to the company investment arbitration process.[204]

The CSR approach is also fulfilling the gap of criminal law enforcement because the standard in the civil litigation process is not higher at the level of criminal procedure. For this reason, this approach could also use to reach affiliate perpetrators who are not possible to prosecute with criminal law but, in the civil liabilities perspective, are liable.

4.2.2 Compliance Aspect

An incentive of CSR initiatives gives a rational reason for the corporation to prevent corruption in its business operation. Consideration of non-financial report performance on ESG is an example that company need sustainability to get investment from reputable investor[205] and, in a narrow spectrum, as a method of promotion to the customer.[206] On the other hand, the business actors realize that corruption is an unnecessary expenditure that impedes fair competition. From an internal perspective, corruption in the internal business process has a negative effect on the business decision of the company that makes the company will support the enforcement of commercial bribery provision.

---

[201] Stefan Mbiyavanga, 'Combating Corruption through International Investment Treaty Law' [2017] 1 Journal of Anti-Corruption Law 132, 135-137 < https://heinonline.org/HOL/License> accessed on 28 April 2021.

[202] Yueming Yan, 'Anti-Corruption Provisions in International Investment Agreements: Investor Obligations, Sustainability Considerations, and Symmetric Balance'[2020] 23 Journal of International Economic Law 989, 993 < doi:10.1093/jiel/jgaa026> accessed on 28 April 2021.

[203] Ibid, 995 and 99.

[204] Yan (n 202) 999-1003.

[205] Johnson (n 87) 338-340.

[206] Visser (n 21) 7-14.

Due to reasons such as these, the company is voluntary involving in CSR initiatives. In a pragmatic way, economic leverage could motivate the company to comply with the anti-corruption standard.

4.2.3 Legal Remedies Aspect

The litigation and non-litigation process in the CSR's legal remedies system focus on parties, customers and victims of corruption. These mechanisms fill in the loophole in the transnational anti-bribery enforcement system that has not given enough attention to legal remedies issues, particularly after series of legal action to review the legality of state apparatus to handle the disgorgement remedy. However, in the current decision in the SEC v. Liu, the Supreme Court allowed SEC to consider disgorgement in enforcement as long as 'it does not exceed a wrongdoer's net profits and is awarded for victims'.[207]

The implementation strategy of this CSR alternative remediation process for corruption victim is possible through the collaboration litigation process with state prosecutor or separating in standing alone litigation. The collaboration has been seen in *Biens Mal Acquis* Affair Trial in France. In this case, the initiation of legal battle to claim illegal asset of Teodoro Nguema Obiang Mangue was conducted by Sherpa with *Survie* and *Fédération des Congolais de la Diaspora*.[208] The Transparency International of France, supported by Sherpa, filed a petition to join in this case as a civil party which was approved by The Criminal Chamber of the Court of Cassation. This is history because the non-state agency could have legal standing in the criminal process alongside the state prosecutor[209] with the result more than €100 million of ill-gotten assets Teodorin had been confiscated[210] even though in this legal process, several affiliated supporters were threatened.[211]

The second option is private litigation in civil procedure by relevant victims. The tort claims were issued by the Government of Trinidad and Tobago in Florida State Court to the companies for the damage due to bribery in the new airport

[207] Criminal Division of the US DoJ and the Enforcement Division of SEC (n 149) 71.

[208] Maud Perdriel-Vaissière, 'France's Biens Mal Acquis Affair: Lessons from a 10-Year Legal Struggle', in Ken Hurwitza and Richard E. Messick (eds), *Legal Remedies for Grand Corruption The Role of Civil* Society (Open Society Foundations 2019) 17.

[209] Ibid, 20.

[210] Ibid, 27.

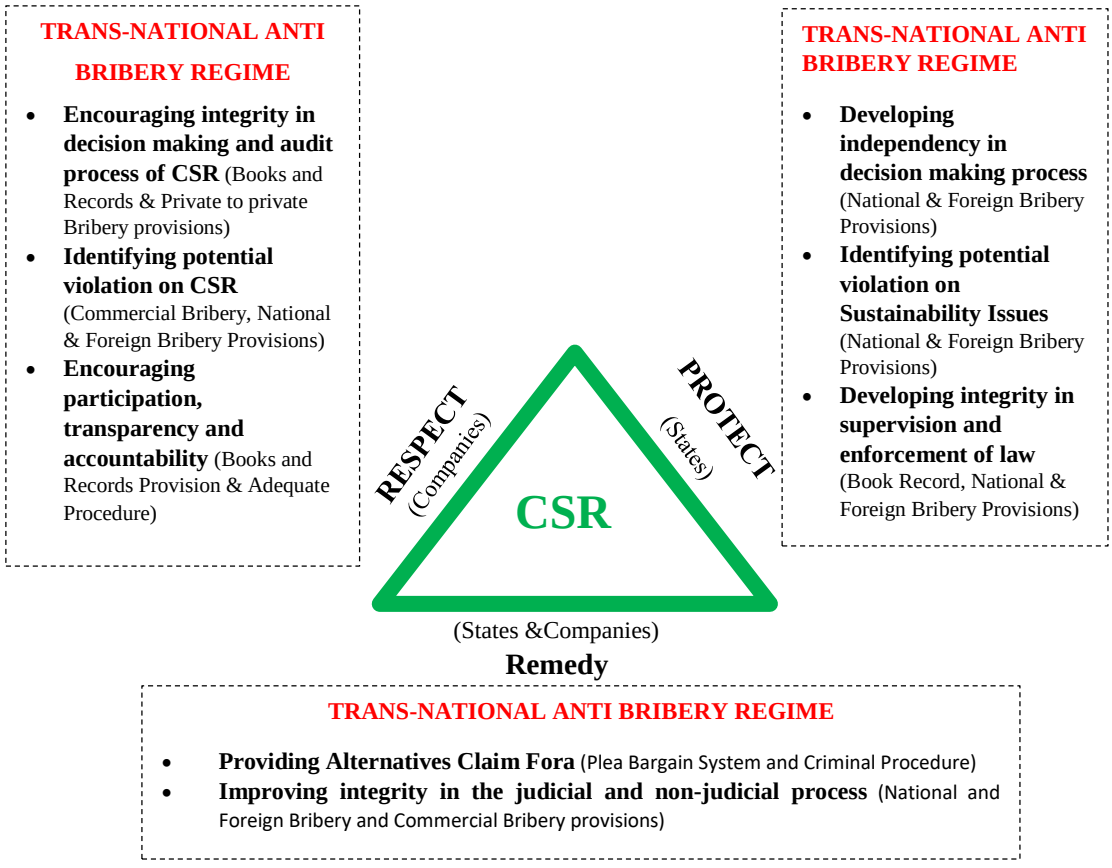
[211] Perdriel-Vaissière (n 208) 18-19.

procurement process. At least $4.5 million has been settled in this process with several defendant companies.[212] New Market Corporation as a competitor of Innospect on a gasoline additive market, is also categorized as a victim in the unfair procurement process tainted by bribery that received $45 million after proposed legal claim to Innospect in the civil court.[213]

4.3 Improving Corporate Compliance

According to the previous explanation about functional interaction between frameworks, the international anti-bribery enforcement could have an impact on CSR enforcement capability in the dimension of protection, respect and remedy (see diagram 1[214]).

Diagram 1. Potential function of the Transnational Bribery enforcement in improving enforcement capability of CSR initiatives



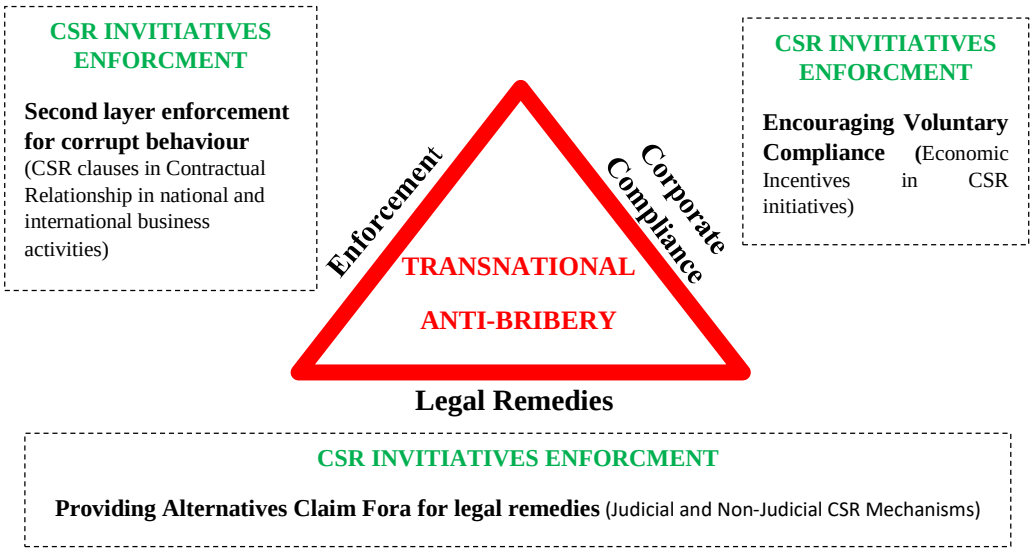
[212] Messick (n 158) 10.

[213] Ibid, 15-16.

[214] The three aspect of respect, protect and remedy in this diagram is inspired by UNGP that developed by John Ruggie that has been elaborated in this paper.

Otherwise, CSR's enforcement strategy could also support transnational anti-bribery enforcement to achieve its purposes to develop effective enforcement, corporate compliance, and remedy for the victim (see Diagram 2).

Diagram 2. Potential function of CSR Initiatives enforcement on the Transnational Bribery Enforcement Purposes



Based on the two diagrams, the functional interaction between frameworks concerned with CSR and the Transnational Anti-Bribery Enforcement has shown the potential benefit of each regime to another. In practice, this functional interaction could be used in two perspectives.

Firstly, from the complementary perspective, two systems work in parallel tracks, and corporate compliance will be developed when the enforcement of each system interact in the polycentric regulatory system. For example, improving enforcement on commercial bribery could improve the audit social capacity because of increasing the auditor's integrity.

Secondly, an alternative enforcement perspective that makes enforcer of each regime could support or even use enforcement in another regime to improve compliance in its system. For example, the victim of corruption could use CSR's legal remedy to ask corporation liability as an alternative for criminal procedure.

These two perspectives become keys to improve collaboration between two regimes to develop global compliance in the supply chain.

5. Summary and conclusions

The leverage of economic power in the contractual relationship and business commitment could be utilized by the corporation to respect sustainability. In this strategic and transformative CSR era, the states have responsibilities in providing an ideal environment for companies to implement CSR initiatives. Furthermore, the judicial and non-judicial mechanisms have been developed as efforts to ensure access for affected victims in the violation of CSR commitment cases. However, the gap on a level of the playing field, the complexity of the supply chain and the real implementation of third party's rights protection in the remediation process are obstacles that impede ideal enforcement of CSR initiatives beside problem in integrity and independence of audit and decision-making process.

Comparing with CSR, the transnational anti-bribery regime has developed multilayer enforcement that combines various mandatory foreign and domestic instruments consist of legal frameworks and enforcement authorities covering commercial and public corruption issues. The unique position of adequate procedure as a defence and a part of requirements in the plea bargain procedure that is embodied in the criminal prosecution system has encouraged compliance of corporation to avoid severe sanction and liability of the legal person. Nevertheless, this system is not lacking problems in practice, for instance, the limitation of the criminal enforcement system and inadequate attention on legal remedies for victims become obstacles in the implementation process.

Analysing these conditions, the functional interaction between frameworks in the polycentric regulatory system could positively affect the enforcement capability of each system.

In the dimension of CSR protection, eradicating transnational bribery is potentially increasing the independence of a public official's decision-making process on sustainability issues. In addition, the bribery case could be used by the enforcer agency as a resource to find a potential violation of sustainability. Books and records provision and bribery laws are essential for building integrity in the

supervision and enforcement of laws related to sustainability. In respect dimension, encouraging integrity in the corporation's decision-making and audit process on CSR is potential to be improved through the seriousness of state authorities in enforcing the books and records provision and commercial bribery laws. Furthermore, the parent company or even buyer could identify potential CSR violations of their subsidiaries and suppliers based on corruption cases. Alongside the proper books and records provision, the adequate procedure in the anti-corruption system that requires the corporation to construct the whistle-blower and complaint handling systems could also be used as tools to improve participation, transparency and accountability of CSR initiatives enforcement. In the remediation aspect, the anti-corruption develops integrity in the judicial and non-judicial mechanism, whereas the DPA system and criminal procedures in transnational bribery become alternative fora to claim remedies for victim.

On the other hand, CSR enforcement supports transnational anti-bribery enforcement to achieve its goals. In the deterrence aspect, corporations will voluntarily construct their corporate compliance system on anti-corruption due to economic motives like getting the investment based on ESG performance or avoiding tort or contractual breach damages because of bribery. In the legal remedies process, CSR's judicial and non-judicial system is potential to use as alternative claim mechanisms for victims of corruption.

In the end, from the complementary or alternative enforcement perspective, the functional interaction between frameworks could improve global corporate compliance in the supply chain. This could be achieved if the state and non-state enforcers collaborate to achieve sustainability goals by using and optimizing the advantages of each framework for strengthening another system as the complementary system. In addition, from the alternative approach, the stakeholders are possible to use the option of instruments in CSR initiatives or transnational bribery to substitute the gap in each system as alternative enforcement to encourage corporate compliance on sustainability issues. However, further research is needed to develop more practical strategies for the stakeholders to implement these potential functions from complementary and alternative perspectives, for example, the cooperation or common understanding between public and private stakeholders.

Reference list / Bibliography

Official Publications

European Union

Smit, Lise and Others, *Study On Due Diligence Requirements Through The Supply Chain: Final Report* (European Commission 2020)

Zamfir, Ionel, *Briefing Note: Towards a mandatory EU system of due diligence for supply chains* (EPRS | European Parliamentary Research Service 2020)

Indonesia

Tim Gabungan Pencari Fakta Kasus Mesuji (Joint Fact Finding Team on Mesuji) (TGPF), *Ringkasan Eksekutif Laporan TGPF Kasus Mesuji (Executive Summary of Mesuji Report Case)* (TGPF 2012)

Singapore

CPIB, 'Press Release: Charged with Corruption to be Lenient in Supervision of Contractor Work' (CPIB, 10 September 2020) <https://www.cpib.gov.sg/press-room/press-releases/charged-corruption-be-lenient-supervision-contractor-work> accessed on 26 April 2021

Corrupt Practices Investigation Bureau (CPIB), *Press Release Corruption Statistics 2018* (CPIB 2018)

United Kingdom

Ministry of Justice of the UK, *the UK Bribery Act Guidance: about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing* (Ministry of Justice of the UK 2011)

United States

Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2nd edn, US DoJ and SEC 2020)

International

Council of Europe, *Explanatory Report to the Civil Law Convention on Corruption* (Council of Europe 1999)

Dell, Gillian and others, *Exporting Corruption Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention* (Transparency International 2020)

Dell, Gillian and Andrew McDevitt, *Exporting Corruption: Progress report 2018: Assessing enforcement of the OECD Anti-Bribery Convention* (Transparency International 2018)

IFC World Bank, *IFC Performance Standards on Environmental and Social Sustainability* (IFC World Bank 2012)

ILO, *Report IV Decent work in global supply chains* (International Labour Conference 105th Session 2016)

ILO, 'Global Action Programme Against Forced Labour and Trafficking of Fishers at Sea' (ILO 2015) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/-declaration/documents/publication/wcms_429359.pdf> accessed on 26 April 2021

UNHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (UN 2011)

United Nations Global Compact, *Uniting Business in The Decade of Action: Building on 20 Years of Progress* (UNGC 2020)

UN Global Compact, *Basic Guide Communication on Progress* (UN Global Compact 2019)

UN Global Compact, UN Global Compact: 2020 Annual Management Report (UN Global Compact 2020)

Vrushi, Jon, *Global Corruption Barometer Asia 2020 Citizens' Views and Experiences of Corruption* (Transparency International 2020)

Literature

Adronov, Martha, 'Contracting Authorities and Strategic Goal of Public Procurement- A relation Defined discretion?', in Sanja Bogojević, Xavier Groussot and Jörgen Hettne (eds), *Discretion in EU Public Procurement Law* (Hart Publishing 2018)

Atkins, Matthew, *What is the purpose of the ongoing use of fiduciary duties in English business law, with particular reference to breaches of duty in relation to bribery, secret profits, conflicts of interest and unconscionability*? (Lancaster University 2018)

Ashrafi, M. Adams, T. R. Walker and G. Magnan, 'How corporate social responsibility can be integrated into corporate sustainability: a theoretical review of their relationships', (2018) 25 (8) International Journal of Sustainable Development & World Ecology <https://search.ebscohost.com/login.aspx?direct=true&db=8gh&AN=132112246&site=eds-live&scope=site> accessed on 4 April 2021

Andrecka, Marta 'Corporate Social Responsibility and Sustainability in Danish Public Procurement', [2017] 12 (3) European Procurement & Public Private Partnership Law Review (EPPPL) <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.epppl2017.47&site=eds-live&scope=site> accessed on 14 March 2021

Avdeyeva, Olga, 'When Do States Comply with International Treaties? Policies on Violence against Women in Post-Communist Countries.' [2007] 51 (4) International Studies Quarterly <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edsjsr&AN=edsjsr.4621747&site=eds-live&scope=site> accessed on 14 March 2021

Baars, Grietje, *The Corporation, Law and Capitalism A Radical Perspective on the Role of Law in the Global Political Economy* (Brill 2019)

Backer, Larry Catá, 'The Emerging Normative Structures of Transnational Law: Non-State Enterprises in Polycentric Asymmetric Global Orders' [2016] 31 (1) BYU Journal of Public Law <EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.byujpl31.5&site=eds-live&scope=site.> accessed on 5 March 2021

Bhat, P. Ishwara, *Idea and Methods of Legal Research* (Oxford University Press 2019)

Blichner, Lars Chr. and Anders Molander, 'What is juridification?' [2005] 14 Working Paper Center for European Studies, University of Oslo <https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2001-2010/2005/wp05_14.pdf > accessed on 5 April 2021

Blau, Judith, *The Paris Agreement. Climate Change, Solidarity, and Human Rights* (Springer International Publishing 2017)

Boone, Enrique, ‘Human rights obligations in investor-state contracts: Reconciling investors' legitimate expectations with the public interest’ in Clair Gammage and Tonia Novitz (eds), *Sustainable Trade, Investment and Finance : Toward Responsible and Coherent Regulatory Frameworks* (Edward Elgar Publishing 2019)

Boles, Jeffrey R., ‘The Two Faces of Bribery: International Corruption Pathways Meet Conflicting Legislative Regimes’, (2014) 35 MICH. J. INT'L L. <https://repository.law.umich.edu/mjil/vol35/iss4/1> accessed on 17 April 2021

Boutros, Andrew S. and T. Markus Funk, ’“Carbon- Copy Prosecutions”: A Multi-Dimensional Enforcement Paradigm that is Here to Stay’ in T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019)

Brun, Jean-Pierre and others, *Public Wrongs, Private Actions: Civil Lawsuits to Recover Stolen Assets* (STAR-UNDOC & World Bank 2015)

Chandan, Harish C., ‘Creating Alignment Between Corporate Sustainability And Global Compact Initiatives’ in Gonzalez-Perez, Maria Alejandra, and Liam Leonard (eds), *The UN Global Compact: Fair Competition and Environmental and Labour Justice in International Markets* (Emerald 2015)

Davis, Kevin E., *Between Impunity and Imperialism: The Regulation of Transnational Bribery* (Oxford University Press 2019)

Davis, Kevin E, ’Contracts Procured through Bribery of Public Officials: Zero Tolerance versus Proportional Liability’ [2017] 50 (4) New York University Journal of International Law and Politics <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.nyuilp50.36&site=eds-live&scope=site> accessed on 27 April 2021

Delalieux, Guillaume and Anne-Catherine Moquet, ’French law on CSR due diligence paradox: The institutionalization of soft law mechanisms through the law’ [2020] 15 (2) Society and Business Review <https://doi-org.ludwig.lub.lu.se/10.1108/SBR-03-2019-0033 130> accessed on 15 April 2021

Deming, Stuart H., *Anti-Bribery Laws in Common Law Jurisdictions (*Oxford University Press 2014)

Dietz, Thomas, Marius Dotzauer & Edward S. Cohen ‘The legitimacy crisis of investor-state arbitration and the new EU investment court system’ [2014] 26 (4) Review of

International Political Economy <https://doi.org/10.1080/09692290.2019.1620308> accessed 15 April 2021

Feldis, Kevin, Laode M. Syarif, Rasamala Aritonang, and Lakso Anindito 'Indonesia' in T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019)

Friedman, Milton, 'The Social Responsibility of Business is to Enhance Its Profits' (the New York Times, 13 Sept 1970) <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> accessed on 4 March 2021

Funk, T. Markus and Andrew S. Boutros (eds*), From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019)

Funk, T. Markus, 'On the Anti- Bribery "Watchlist": Compliance and Labor/ Anti-Trafficking Issues' in T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019)

Funk, T. Markus and Andrew S. Boutros, 'United States—Deconstructing the FCPA' in T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019)

Guzman, Andrew T., 'Explaining The Popularity of Bilateral Investment Treaties' in Karl P. Sauvant and Lisa E. Sachs (eds), *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment Flows* (Oxford University Press 2009)

Golub, Stephen, 'The 'other 90 per cent': how NGOs combat corruption in non-judicial justice systems' in Diana Rodriguez and Linda Ehrichs (Eds) *Global Corruption Report 2007: Transparency International* (Cambridge University Press and Transparency International 2007)

Halpern, Michaela 'Corruption as a Complete Defense in Investment Arbitration or Part of a Balance' [2015] 23 (2) Willamette Journal of International Law and Dispute Resolution <https://www.jstor.org/stable/10.2307/26209971> accessed on 27 April 2021

Harari, Yuval Noah, *Sapiens: A Brief History Of Mankind* (Vintage Books 2015)

Hoffman, Marci and Mary Rumsey, *International and Foreign Legal Research* (2nd edn, Martinus Nijhoff Publishers 2012)

Hurwitz, Ken, ’Foreword: Seeking Legal Remedies For Grand Corruption’ in Ken Hurwitza and Richard E. Messick (eds*), Legal Remedies For Grand Corruption The Role Of Civil Society* (Open Society Foundations 2019)

Johnson, Christopher, ’The Measurement of Environmental, Social and Governance (ESG) and Sustainable Investment: Developing a Sustainable New World for Financial Services’ [2020] 12 (4) Journal of Securities Operations & Custody <https://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=146494144&site=eds-live&scope=site.336-338> accessed on 14 April 2021

Kantorowicz, Hermann and A. H. Campbell (ed), *The Definition Law* (Octagon Books 1980)

Kusumaningtyas, Retno, *External Concerns on the RSPO and ISPO Certification Schemes* (Profundo 2018)

McCall-Smith, Kasey and Andreas Rühmkorf, ‘Sustainable global supply chains: from transparency to due diligence’ in Clair Gammage and Tonia Novitz (eds), *Sustainable Trade, Investment and Finance: Toward Responsible and Coherent Regulatory Frameworks* (Edward Elgar Publishing 2019)

Mares, Radu, ’Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress’ in Radu Mares (ed.), *The UN Guiding Principles on Business and Human Rights – Foundations and Implementation*, (Martinus Nijhoff Publishers 2012)

Mares, Radu, ‘De-centring Human Rights from the International Order of States: The Alignment and Interaction of Transnational Policy Channels ‘ [2016] 23 (1) Indiana Journal of Global Legal Studies <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.ijgls23.11&site=eds-live&scope=site> accessed on 4 April 2021

Mares, Radu, *The Dynamics Of Corporate Social Responsibilities* (Martinus Nijhoff Publishers 2008)

McCall-Smith, Kasey and Andreas Rühmkorf, ’From international law to national law: The opportunities and limits of contractual CSR supply chain governance’ in Manea,

Alexandra M, 'Outlawing Foreign Bribery: International Developments in Regulating the Bribery of Public Officials in International Business Transactions' [2015] 2015 (2) Law Annals Titu Maiorescu U <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.latitu2015.52&site=eds-live&scope=site.> accessed on 27 April 2021

Mbiyavanga, Stefan, 'Combating Corruption through International Investment Treaty Law' [2017] 1 Journal of Anti-Corruption Law < https://heinonline.org/HOL/License> accessed on 28 April 2021

Marc Bungenberg and August Reinisch, *From Bilateral Arbitral Tribunals and Investment Courts to a Multilateral Investment Court* (2nd ed, Springer 2020)

Man, Amy, 'Old players, new rules: a critique of the China-Ethiopia and China-Tanzania bilateral investment treaties' in Clair Gammage and Tonia Novitz (eds), *Sustainable Trade, Investment and Finance: Toward Responsible and Coherent Regulatory Frameworks* (Edward Elgar Publishing 2019)

Messick, Richard E, *Legal Remedies for Victims of Bribery under U.S. Law* (Open Society Foundations 2016)

Mitkidis, Kateřina, 'Enforcement Of Sustainability Contractual Clauses In Supply Chains By Third Parties' in Vibe Ulfbeck, Alexandra Andhov and Mitkidis, *Law and Responsible Supply Chain Management* (Routledge 2018)

Murphy, Sean D, 'Taking Multinational Corporate Codes of Conduct to the Next Level' (2005) 43 Colum J Transnat'l L <https://heinonline.org/HOL/P?h=hein.journals/cjtl43&i=399> accessed on 5 April 2021

Moerloose, Bénédict de, 'Challenging Pillage: Argor-Heraeus and Gold from the Democratic Republic of Congo' in Ken Hurwitza and Richard E. Messick (eds), *Legal Remedies for Grand Corruption the Role of Civil Society* (Open Society Foundations, 2019)

Ruggie, John Gerard, 'Multinationals as global institution: Power, authority and relative autonomy' [2017] Regulation & Governance John Wiley & Sons Australia, Ltd <https://media.business-humanrights.org/media/documents/files/documents/Ruggie-2017-Regulation_Governance.pdf> accessed on 5 April 2021

Rühmkorf, Andreas, 'From Transparency to Due Diligence Laws? Variations in Stringency of CSR Regulation in Global Supply Chains in the 'Home State' of Multinational Enterprises' in Jean J.du Plessis, UmakanthVarottil and JeroenVeldman (eds),

Globalisation of Corporate Social Responsibility and its Impact on Corporate Governance (Springer 2018)

Rödl, Floriab, 'Chaper 13: Regime-Collisions, Proceduralised Conflict of Laws and the Unitity of The Law : On The Form of Constitutionalism Beyond The State' in in Rainer Nickel (ed), *Conflict Of Laws And Laws Of Conflict In Europe And Beyond: Patterns Of Supranational And Transnational Juridification* (Hart 2009)

Rodrik, Dani, *The Globalization Paradox* (Oxford University Press 2011)

Rodrick, Dani, *Straight Talk on Trade: Ideas for a Sane World Economy* (Princeton University Press 2018)

Lessig, Lawrence, *Republic Lost : How Money Corrupts Congress - and a Plan to Stop It* (Twelve 2011)

Pahis, Stratos, 'Corruption in Our Courts: What It Looks Like and Where It Is Hidden'[2009] 188 (8) Yale Law Journal <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5179&context=ylj&fbclid=IwAR2Q643IkCabqsK0KSRRD0jt-kz7EZSnVMVTZTwfYjA_lzP0BiIdGggjE18> accessed on 26 April 2021

Perdriel-Vaissière, Maud, 'France's Biens Mal Acquis Affair: Lessons from a 10-Year Legal Struggle', in Ken Hurwitza and Richard E. Messick (eds*), Legal Remedies for Grand Corruption The Role of Civil Society* (Open Society Foundations 2019)

Shaw, William H., 'Marxism, Business Ethics, and Corporate Social Responsibility', (2009) 84 (4) Journal of Business Ethics Springer <https://www.jstor.org/stable/40294761> accessed on 4 April 2021

Stephen, Morse, 'Is Corruption Bad for Environmental Sustainability? A Cross-National Analysis' [2006] 11 (1) Ecology and Society <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edsjsr&AN=edsjsr.26267783&site=eds-live&scope=site> accessed on 29 April 2021

Schormair, Maximilian J. L. and Lara M. Gerlach, 'Corporate Remediation of Human Rights Violations: A Restorative Justice Framework' [2019] 167 (3) Journal of Business Ethics < https://doi.org/10.1007/s10551-019-04147-2> accessed on 15 April 2021

Seenacherry, Mellisa K, 'Liability of Company Directors: The Business Judgment Rule as Developed in the US and Adopted by Germany Compared to the Netherlands' Approach'

(2020) 12 Amsterdam LF <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.amslawf12.6&site=eds-live&scope=site> accessed on 14 April 2021

Shirazi, Moiz A, 'The Impact of Corruption on International Trade' (2012) 40 (1-3) Denver Journal of International Law and Policy <https://search-ebscohostcom.ludwig.lub.lu.se/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.denilp40.25&site=edslive&scope=site> accessed on 17 April 2021

Suharto, Rosediana and others, *Joint Study on the Similarities and Differences of the ISPO and the RSPO Certification Systems* (UNDP 2015)

Teubner, Gunther, 'The Corporate Codes of Multinationals: Company Constitutions Beyond Corporate Governance and Co-Determination' in Rainer Nickel (ed), *Conflict Of Laws And Laws Of Conflict In Europe And Beyond: Patterns Of Supranational And Transnational Juridification* (Hart 2009)

Ulfbeck,Vibe, Alexandra Andhov and Mitkidis, *Law and Responsible Supply Chain Management* (Routledge 2018)

Ulfbeck, Vibe, Ole Hansen and Alexandra Andhov, 'Contractual Enforcement Of CSR Clauses And The Protection Of Weak Parties In The Supply Chain' in Vibe Ulfbeck, Alexandra Andhov and Mitkidis, *Law and Responsible Supply Chain Management* (Routledge 2018)

Ulfbeck, Vibe and Andreas Ehlers, ' Direct and vicarious liability in supply chains' in Vibe Ulfbeck, Alexandra Andhov and Mitkidis, *Law and Responsible Supply Chain Management* (Routledge 2018)

Ulfbeck, Vibe and Ole Hansen, 'Interplay between contract and tort in the supply chain' in Vibe Ulfbeck, Alexandra Andhov and Mitkidis, *Law and Responsible Supply Chain Management* (Routledge 2018)

Urquhart, Quinn Emanuel and Robert Amae 'United Kingdom' in T. Markus Funk and Andrew S. Boutros (eds), *From Baksheesh to Bribery: Understanding the Global Fight Against Corruption and Graft* (Oxford University Press 2019)

Viser, Wayne, *CSR 2.0: Transforming Corporate Sustainability and Responsibility* (Springer 2014)

Walker, Neil, 'Chapter II: Taking Constitutionalism Beyond The State' in Rainer Nickel (ed), *Conflict Of Laws And Laws Of Conflict In Europe And Beyond: Patterns Of Supranational And Transnational Juridification* (Hart 2009)

Wielga, Mark and James Harrison, 'Assessing the Effectiveness of Non-State-Based Grievance Mechanisms in Providing Access to Remedy for Rightsholders: A Case Study of the Roundtable on Sustainable Palm Oil' [2021] 6 (1) Business & Human Rights Journal <https://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=149396465&site=eds-live&scope=site> accessed on 15 April 2021

Yan, Yueming, 'Anti-Corruption Provisions in International Investment Agreements: Investor Obligations, Sustainability Considerations, and Symmetric Balance' [2020] 23 Journal of International Economic Law < doi:10.1093/jiel/jgaa026> accessed on 28 April 2021

Online sources

Anti-Corruption Clearing House KPK, Jejak Kasus Eddie Widiono Suwondho <https://acch.kpk.go.id/id/jejak-kasus/151-eddie-widiono-suwondho> accessed on 21 April 2021

Arthur and Toni Rembe Rock Center for Corporate Governance., 'Corporate Sanction Per Year and Entinty Groups and Individuals Charged Per Year (FCPA Claim Only)' (Stanford Foreign Corrupt Practices Act Clearinghouse, 2021) <https://fcpa.stanford.edu/index.html> accessed on 22 April 2021

Boggs, Squire Patton, 'Cooperation is Key – Scottish Company receives civil penalty for contravention of Bribery Act' (anti-corruption blog, 2015) <https://www.anticorruptionblog.com/uk-bribery-act/cooperation-is-key-scottishcompany-receives-civil-penalty-for-contravention-of-bribery-act/> accessed on 26 April 2021

EU, 'Setting up a European Company (SE)' <https://europa.eu/youreurope/business/running-business/developing-business/setting-up-european-company/index_en.htm> accessed on 5 April 2021

ELSAM, 'Kasasi Ditolak, PT. SWA Harus Akui Lahan Masyarakat' (Elsam, 2017) <https://elsam.or.id/kasasi-ditolak-pt-swa-harus-akui-lahan-masyarakat/> accessed on 15 April 2021

FCPA Clearing House of Stanford Law School 'FCPA Case Information United States of America v. Monsanto Company' < http://fcpa.stanford.edu/enforcement-action.html?id=372> accessed on 27 April 2021

IDH, 'Latest data shows 86% of palm oil imported to Europe sustainable', (IDH, 2 September 2020) <https://www.idhsustainabletrade.com/news/latest-data-shows-86-of-palm-oil-imported-to-europe-sustainable/> accessed on 26 April 2021

ILO, ‘Global Action Programme Against Forced Labour And Trafficking Of Fishers At Sea’ (ILO, 2015) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/-declaration/documents/publication/wcms_429359.pdf> accessed on 26 April 2021

KPK, ‘Graph TPK Berdasarkan Profesi/Jabatan’ (KPK, 1 January 2021) <https://www.kpk.go.id/id/statistik/penindakan/tpk-berdasarkan-profesi-jabatan> accessed on 27 April 2021

TRQ/NWK, “KPK Resmi Umumkan Emir Moeis Sebagai Tersangka” (Detik, 26 Jul 2012) <https://news.detik.com/berita/d-1975949/kpk-resmi-umumkan-emir-moeis-sebagai-tersangka> accessed on 22 April 2021

Netherlands Public Prosecution Service ’International fight against corruption: Telia Company pays 274.000.000 US Dollars to the Netherlands’ (NPPS, 21 September 017) <https://www.prosecutionservice.nl/latest/news/2017/09/21/international-fight-against-corruption-telia-company-pays-274.000.000-us-dollars-to-the-netherlands> accessed on 22 April 2021

Nurita, Dewi, ’OTT Hakim PN Jaksel, 17 Hakim Ini Pernah Dicokok KPK’ (Tempo, 29 November 2018) <https://nasional.tempo.co/read/1150699/ott-hakim-pn-jaksel-17-hakim-ini-pernah-dicokok-kpk/full&view=ok > accessed on 27 April 2021

Case

Indonesia

Republic of Indonesia v. PT Nusa Konstruksi Enginering, Tbk (previously known as PT Duta Graha Indah, Tbk) [2018] Decision No. 81/Pid.Sus/Tipikor/2018/PN.Jkt.Pst, 288-289

Republic Indonesia v Edy Saputra Suradja [2019] Putusan PN Jakarta Pusat 4/PID.SUS-TPK/2019/PN.JKT.PST

United Kingdom

Serious Fraud Office v. Rolls-Royce Plc [2017] Deferred Prosecution Agreement Case U20170036 Court at Southwark

United States

United States of America v. Panasonic Avionics Corporation [2018] Deferred Prosecution Agreement Case, The District of Columbia No. Case 18-CR-00118

United States of America v. Alstom Network Schweiz AG (ALSTOM PROM AG) [2014] Deferred Prosecution Agreement No. Case 3:14-CR-00245-JBA

United States of America v. Petróleo Brasileiro of The S.A. – Petrobras, [2018] Order Instituting Cease-Andin The Matter of Desist Proceedings, Administrative Proceeding File No. 3-18843

United States v. Telia Company AB [2017] Deferred Prosecution Agreement No. Case 1:17-cr-00581-GBD

United States v. Monsanto Company [2005] Appendix A Deferred Prosecution Agreement No. Case 1 :05-CR-008ESH-ALL

International Arbitration

ICC Award No. 1110 of 1963 by Gunnar Lagergren, YCA 1996, at 47 et seq. <https://www.trans-lex.org/201110/_/icc-award-no-1110-of-1963-by-gunnar-lagergren-yca-1996-at-47-et-seq-/#head_1> accessed on 27 April 2021

World Duty Free Company Limited v. Republic of Kenya, [2006] Award ICSID Case No. ARB/00/7