



LEGAL ANALYSIS OF CORPORATE SOCIAL RESPONSIBILITY OF PUBLIC LIMITED COMPANIES AND STATE OWNED ENTERPRISES

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ABSTRACT

Companies are crucial in fulfilling people's needs for goods and services, but their use of natural resources can harm the environment. Consequently, companies bear a social responsibility to balance economic, social, and environmental interests. Investors must implement corporate social responsibility (CSR) and allocate funds for local welfare, as mandated by Law No. 25 of 2007 on Capital Investment (UUPM). Failure to meet these obligations can result in administrative sanctions, including written warnings, business activity restrictions, suspension of business activities, or revocation of investment facilities. However, the implementation of CSR in Indonesia has its shortcomings due to the absence of ideal regulations, allowing companies to execute CSR based on their own goals. Ideally, CSR should prioritize the local environment before addressing broader environmental concerns. Therefore, this study aims to examine the Legal Arrangements regarding CSR that must be implemented by Public Limited Liability Companies and BUMN in Indonesia, and to explore the obstacles to implementing CSR in Public Limited Companies and BUMN in Indonesia. Using normative legal method, the author found out that Legal regulations regarding Social and Environmental Responsibility (CSR) in Indonesia are contained in various laws, including Law no. 40 of 2007 concerning Limited Liability Companies and PP no. 47 of 2012 concerning CSR of Limited Liability Companies that requires companies, especially those operating in the natural resources sector, to implement CSR. Some companies only carry out CSR as a formality without any significant impact on society and the environment. The absence of comprehensive standard guidelines causes confusion and inefficiency.

Keywords: corporate social responsibility, public limited companies, state owned enterprises.

INTRODUCTION

The 1945 Constitution is the constitution of the Republic of Indonesia which regulates state governance and social welfare. Article 28 H paragraph (1) states that everyone has the right to live in prosperity, have a place to live, and receive a good living environment and health services. The government must be responsive to community problems and proactive in creating policies that support social development and prosperity (Rosyada, *et.al.*, 2003).

The concept of welfare according to Suharto includes four aspects: prosperous conditions (material and non-material needs

are met), social services (social security, health, education, housing and personal social services), social benefits for the poor, and the process of improving the quality of life through social services and benefits.

Companies play an important role in meeting people's needs for goods and services but also have the potential to damage the environment due to the use of natural resources. Therefore, companies have a social responsibility to maintain a balance between economic, social and environmental interests. So that, the government and the society could make a judge to the companies (Adjie, 2008).

In Law no. 40 of 2007 concerning Limited Liability Companies, companies related to natural resources are obliged to carry out social and environmental responsibilities. This is further regulated in Government Regulation no. 47 of 2012 which states that every limited liability company must carry out social and environmental responsibilities. The Law on Investment also requires companies to apply the principles of good governance, carry out social responsibility, and respect the cultural traditions of local communities.

In terms of being equated with humans, corporate social responsibility is termed Corporate Citizenship (Wijaya and Pratama, 2008). Investors are required to carry out corporate social responsibility (CSR) and allocate funds for welfare around the company, in accordance with Law no. 25 of 2007 concerning Capital Investment (UUPM). If the company does not fulfill its obligations, it may be subject to administrative sanctions such as written warnings, restrictions on business activities, freezing of business activities, or revocation of investment facilities.

The meaning or definition of Corporate Social Responsibility is the commitment of the company or business world to contribute to sustainable economic development by paying attention to corporate social responsibility and focusing on a balance between attention to economic, social and environmental aspects (Untung, 2008). The positive impact is that it can gradually increase economic growth, increase people's prosperity and welfare, increase capabilities and mastery of technology which will develop the capabilities of the national business world, expand and equalize employment opportunities and business opportunities as well as support and strengthen healthy and dynamic national stability in the context of strengthen national resilience (Soemartono, 1996).

BUMN Ministerial Regulation No. Per-05/MBU/04/2021 states that the aim of

the CSR program is to support economic, social, environmental, legal and corporate governance development. CSR also helps develop micro and small businesses and builds the company's image, increasing the trust of consumers and business partners.

According to Law no. 32 of 2009 concerning Environmental Protection and Management, companies are obliged to provide information related to environmental management, maintaining the sustainability of environmental functions, and complying with environmental quality standard provisions.

However, the implementation of CSR in Indonesia faces weaknesses because there are no ideal regulations governing its implementation, so that companies can carry out CSR according to their own targets. Ideally, CSR should pay attention to the surrounding environment first before the more general environment.

Criticism has emerged regarding the CSR legal policy model which is mandatory and accompanied by sanctions, considering that CSR is generally voluntary. Since the enactment of the PT Law and the Investment Law, there have been no standard guidelines regarding mandatory CSR in Indonesia, creating a legal vacuum and confusion for stakeholders. This research aims to analyze the appropriate CSR legal policy model in Indonesia to create CSR that is effective and beneficial for the state, companies and society.

METHOD

This research employs normative legal research methods, also known as library research, to gather secondary data through the study of books and applicable laws and regulations. A normative juridical approach, specifically a statutory approach, is used to examine the legislative provisions related to the research problems and to review normative law for ensuring legal certainty in mediating industrial relations disputes.

The approach used in writing

research must be tailored to the type of research being conducted. For this thesis, a statutory approach was chosen because the research type is normative juridical. Since this research focuses solely on library data and documentation without any fieldwork, the analysis is qualitative. Data is presented in sentence form to explain the research findings, leading to conclusions articulated in declarative sentences.

RESULTS AND DISCUSSION

1. Corporate Social Responsibility.

The concept of corporate social responsibility (CSR) has been known for a long time, with the Code of Hammurabi (1700s BC) containing sanctions for negligent entrepreneurs. As time goes by, the concept of CSR is increasingly developing. In 1933, A. Berle and G. Means proposed that modern cooperatives be social institutions (Berle and Means, 1993). Peter F. Drucker emphasized management's responsibility to the company and society (Drucker, 1993).

In the 1950s, Howard R. Bowen initially defined CSR as the obligation of businesspeople to follow policies and actions that are consistent with societal values (Bowen, 2013). Bowen is considered the father of CSR. In the 1970s, Keith Davis put forward the "Iron Law of Responsibility" regarding the social responsibility of entrepreneurs (Davis, 1973).

In the 1970s, the concept of CSR developed with a broader definition. S. Prakash Sethi categorizes corporate behavior into social obligation, social responsibility, and social responsiveness (Sethi, 1974). In the 1980s, Peter F. Drucker encouraged companies to turn social problems into economic opportunities. Archie Carroll developed the concept of corporate social performance. The UN through the Brundtland Report in 1987 encouraged sustainable development.

In the 1990s, stakeholder theory by Edward Freeman stated that the more

satisfied stakeholders are, the more successful a company will be (Mahajan, *et.al.*, 2023). In 1992, the Earth Summit in Rio De Janeiro emphasized sustainable development. In 1997, John Elkington developed the triple bottom line concept (profit, people, planet). ISO launched ISO 26000 in 2002 for CSR guidance. The 2007 UN Global Compact meeting encouraged corporate responsibility.

The development of CSR continues, with increasing public awareness of environmentally friendly products and companies that apply social and human rights principles. CSR is now seen as an attractive long-term investment for investors.

In 1987, the UN through the World Commission on Environment and Development (WCED) published the report "Our Common Future" or Brundtland Report, which encouraged development policies that were more sensitive to environmental issues. This report forms the basis for multilateral cooperation in sustainable development.

In the 1990s, the focus of strategic management, especially stakeholder theory by Edward Freeman, stated that stakeholder satisfaction increases a company's likelihood of success. Figures such as Philip Kotler, Michael Porter, and Stuart Hart encouraged the practical application of CSR. The Earth Summit in Rio De Janeiro in 1992 reinforced the concept of sustainable development.

In 1997, John Elkington introduced the triple bottom line concept (profit, people, planet) which emphasizes the balance between profit, community welfare and environmental sustainability. In 2002, a meeting in Johannesburg added the concept of Social Responsibility. ISO established ISO 26000 for social responsibility guidance in September of the same year.

On 7 July 2007, the UN Global Compact in Geneva encouraged companies to demonstrate responsibility through CSR. Business forums such as AFCSR are

increasingly being held to discuss CSR practices, including in Indonesia in 2005.

As time goes by, the concept of CSR is increasingly developing with increasing public awareness of environmentally friendly products and compliance with human rights principles. Companies now see CSR as a long-term investment, and investors are more interested in companies that implement CSR (Sembiring, 2008).

A company is a legal entity that has rights and obligations like individuals. Apart from legal responsibilities, companies also have social or moral responsibilities. There are three main conditions for moral responsibility: conscious action, freedom of action, and the will to carry out the action. In the company context, this responsibility is implemented in every activity carried out to achieve company goals.

Companies are not individuals who have automatic moral responsibility. This responsibility is implemented through managers and individuals within them. According to Friedman, companies are only responsible for increasing profits, but social responsibility involves more than just economics, including impacts on society and the environment.

The concept of Corporate Social Responsibility (CSR) has developed over time, transforming from a focus only on shareholders to involving all stakeholders. CSR is a company's commitment to sustainable development which includes three main aspects: social responsibility, economic growth and environmental sustainability (triple bottom line: profit, people, planet).

The basic principles of CSR include compliance with the law, respect for international bodies, accountability, transparency, ethical behavior, and respect for human rights. This concept is also in line with the principles of good corporate governance (GCG), which include justice, transparency, accountability and responsibility.

Implementation of CSR includes activities that are not just donations or legal compliance but involve ongoing commitment and direct involvement in every activity that has a positive impact on society and the environment. Companies must integrate CSR principles in every aspect of their operations to ensure sustainability and community welfare.

2. CSR in Indonesia.

Before discussing further about CSR, it is important to understand who is meant by company stakeholders. Stakeholders can be defined as a group of individuals or entities that have an interest and influence on the company. According to several experts, stakeholders are any group inside or outside the company that has a role in determining the company's success. Stakeholders can have three main attributes, namely power, legitimacy and interests.

There are two categories of stakeholders according to David Wheeler and Maria Sillanpää (Wheeler and Sillanpää, 1997):

- a. Primary Stakeholders: Includes shareholders, investors, employees, customers, local communities, suppliers and business partners who have a direct interest in the company and greatly influence the company's success.
- b. Secondary Stakeholders: Includes government, civil institutions, NGOs, media, competitors, business associations, and the general public who, although not having a direct interest, can influence the company's reputation and support.

The community and government are the main stakeholders in CSR implementation, because they directly feel the impact of the company's existence and have an important role in creating a conducive business environment (Whineberg, *et.al.*, 2004).

CSR practices in Indonesia have been going on for a long time but were initially

voluntary and depended on corporate generosity. In the early 2000s, the concept of CSR began to be discussed more seriously, especially after various environmental and social cases such as the pollution of Buyat Bay by PT Newmont Minahasa Raya, demonstrations by PT Freeport employees, community feuds with PT Portanigra, and the case of Nike's contract with a local shoe company. Attention to CSR increased rapidly after these cases.

Ultimately, the Investment Law regulates CSR as a legal obligation, with Article 15 letter b which requires companies to create harmonious relationships with the environment and society. The Limited Liability Company Law then also requires social and environmental responsibility (CSR) for companies whose businesses are related to natural resources.

These two laws require all investors, both domestic and foreign, to implement CSR. In the Limited Liability Company Law, the term CSR is used and is mandatory for companies related to natural resources. Even though the two laws have different views on CSR, their goals are the same, namely to direct CSR as a company's commitment to sustainable economic development.

CSR has actually been regulated implicitly in various other laws such as the Law on Environmental Management, Employment, Prohibition of Monopoly Practices, Mining, Forestry, Water Resources, Human Rights, and BUMN. Companies that do not implement CSR will be subject to sanctions in accordance with relevant laws, making CSR a legal obligation, no longer just a moral obligation.

This arrangement is also an implementation of the 1945 Constitution Chapter XIV concerning National Economy and Social Welfare, especially Article 33 paragraphs (1), (2), (3), and (4). This article emphasizes that the national

economy must be organized based on the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and maintaining a balance of progress and national economic unity. The Constitutional Court also emphasized that the CSR regulations in the Limited Liability Company Law do not conflict with Article 33 of the 1945 Constitution.

With the CSR regulations in the Limited Liability Company Law, companies' obligations to the environment and communities around their operations are increasingly clear, including their social obligations. Companies that do not implement CSR will be subject to sanctions in accordance with relevant laws.

Since the enactment of the Investment Law and the Limited Liability Company Law, these two laws have caused controversy, especially the article regulating CSR (Article 74 and its explanation) in the Limited Liability Company Law. This article was requested for material review at the Constitutional Court by several business actors due to differences in interpretation regarding CSR. Previously, CSR was understood as a voluntary moral obligation, but this law makes it a legal obligation.

These two laws require companies to implement CSR, but do not clearly and in detail regulate the implementation criteria, thus causing confusion among entrepreneurs regarding their implementation. Some companies implement CSR according to their understanding, while others do not implement it or only implement it as a formality.

According to the Big Indonesian Dictionary, criteria are measurements used as a guide to determine something. Based on the definition of CSR provided by WBCSD, CSR is a sustainable commitment by the business world to act ethically and contribute to the economic development of local communities and wider society, as

well as improving the standard of living of workers and their families. Thus, CSR is not just volunteerism on the part of the company.

Commitment to implementing CSR requires continuity and not just philanthropy. CSR must contribute to society and improve the standard of living of workers and their families. This commitment is the company's responsibility, both morally and legally.

CSR principles and concepts related to sustainable development include social responsibility, economic growth and environmental sustainability. Based on these three concepts, companies can be said to have implemented CSR if their activities include social responsibility, economic growth and environmental preservation.

ISO 26000 Guidance Standard on Social Responsibility covers seven main issues in CSR, namely community development, consumers, healthy institutional activity practices, environment, employment, human rights, and organizational governance. Even though ISO 26000 only contains guidelines and not requirements, this concept remains relevant in CSR development.

The juridical definition of CSR in the Limited Liability Company Law is a company's commitment to participate in sustainable development in order to improve the quality of life and the environment. Meanwhile, in the Investment Law, CSR is the company's responsibility to create relationships that are harmonious and in accordance with the environment, values, norms and culture of the local community.

The elements of CSR according to these two laws are:

- a. The company's commitment to participate in sustainable development.
- b. This commitment is the company's responsibility.
- c. CSR aims to improve the quality of life in society and the environment.

- d. CSR is carried out to establish a harmonious relationship between the company, society and the surrounding environment.

Article 74 of the Limited Liability Company Law states that companies whose business activities are related to natural resources are obliged to implement CSR and budget it as company costs. Companies that do not carry out this obligation will be subject to sanctions in accordance with statutory provisions.

The CSR criteria that must be met by companies, especially Public Limited Liability Companies and BUMN in Indonesia, include:

- a. CSR programs must be implemented in a sustainable manner.
- b. CSR programs must involve all stakeholders.
- c. CSR programs must provide benefits to companies, communities and the environment in sustainable development efforts.
- d. CSR program costs must be budgeted as company operational costs.

If the CSR program carried out by the company does not meet these criteria, then the company has not carried out its CSR obligations properly. Each company has different ways and forms of CSR according to its capabilities, creativity, and social conditions and the environment around the company. The main objective of implementing CSR is to fulfill corporate social responsibility, create a positive image, and support company sustainability to achieve maximum profits.

Effective CSR can also be learned from other companies through benchmarking. However, CSR implementation must be adjusted to the conditions of each company.

Examples of CSR in Indonesia include PT Archi Indonesia Tbk and Bank Rakyat Indonesia (BRI) Manado Region.

- a. PT Archi Indonesia Tbk is active in

improving the economy of communities around the mine through training, micro loans, local procurement of goods, and the formation of farmer groups and cooperatives. Archi also provides educational scholarships both locally and internationally.

- b. Bank Rakyat Indonesia (BRI) implements CSR with a "sustainability business" approach which involves the socialization, implementation and internalization of CSR in business processes. BRI Peduli implements CSR programs that support the environment and society, such as providing hearses to the Al-Falah Bendungan Hilir Mosque.

Good CSR is considered important to support share prices and company sustainability, and must be carried out seriously and effectively.

CONCLUSION

Legal regulations regarding Social and Environmental Responsibility (CSR) in Indonesia are regulated in various laws, including Law Number 40 of 2007 concerning Limited Liability Companies and Government Regulation Number 47 of 2012 concerning CSR of Limited Liability Companies. This law requires companies, especially those operating in the natural resources sector, to implement CSR as their obligation. This rule is strengthened by the Minister of BUMN Regulation Number Per-05/Mbu/04/2021 concerning the BUMN CSR Program.

Even though there are clear regulations, the implementation of CSR faces various obstacles, such as a lack of uniformity in the interpretation and implementation of regulations by companies. Some companies carry out CSR only as a formality without any significant impact on society and the environment. The absence of comprehensive standard guidelines also results in confusion and

inefficiency in implementation.

Proper implementation of CSR can bring various benefits, both for companies and society. For companies, CSR can improve the image, reputation and trust of consumers and business partners. For the community, CSR can improve welfare and quality of life through social, economic and environmental programs.

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