

THE OBLIGATION OF MINING COMPANY IN APPLYING CORPORATE SOCIAL RESPONSIBILITY (CSR)

Lelisari

Faculty of Law

University of Sumatera Utara, Medan, Indonesia

Email: lelisiregar@yahoo.com

Bismar Nasution

Faculty of Law

University of Sumatera Utara, Medan, Indonesia

Email: bismar.nasution@gmail.com

ABSTRACT

The obligation of corporate social responsibility (CSR) in Indonesia is regulated explicitly in legislation. The implementation of CSR based on voluntary principle in the light of business ethics can apparently be shifted to mandatory principle because legal obligation should be built on the basis of moral values. Such thing does not need to be argued because law and morality are not separable. The obligation of mining company of CSR is in Law No 40 of 2007 on Limited Liability Company Article 74: company running its business activity in the sector and/or connected with natural resources requires performing social and environmental responsibility budgeted and estimated as corporate cost whose implementation is conducted by considering propriety and appropriateness. Concerning the management of mining in Indonesia, the one that is recently applied is Law No 4 of 2009 on Mineral and Coal Mining, pluralistic in nature and the CSR implementation is in dualistic system. The adjustment of CSR as a part of company's legal scope, especially in the sector of mining, is still succinct and partially degrading. As an entity, mining company formed as Limited Liability Company should submit to Law No 40 of 2007, however in the activity of mining does submit to Law No 4 of 2009.

Keywords: Corporate Social Responsibility, mining

Introduction

The obligation of corporate social responsibility (CSR) is regulated explicitly in legislation. The implementation of CSR based on voluntary principle in the light of business ethics can apparently be shifted to mandatory principle because legal obligation should be built on the basis of moral values. Such thing does not need to be argued because law and morality are not separable. There is a strong connection between law and ethics; in the Roman empire, there is a well-known saying: *Quid leges sine moribus?* what is the meaning of law if it is without morality? (K. Bertens: 2000).

CSR and continuous development become extremely important if associated with environmental issue. Demand of CSR becomes inevitable when the fact shows that corporate consumption towards natural resource reaches more than 30 percent from what the nature/environment can provide. The world now engages the difficulty in getting clean water, tropical forests diminish, extinction of endangered animals occur, air pollution and climate change take place. (Reza Rahman: 2009). Corporation is demanded to have concern with not only environmental issues, but also social issues coming from negatively affected society due to corporate operation. The role of corporation amid societal community is not only as economic institution pursuing profit maximization but also as social institution. As social institution, corporation is demanded to be proactive in removing social and environmental problems in where the corporation takes place. (Andreas Lako: 2010).

Mining company is no exception; mining has some following characteristics: non-renewable, having relatively high risk and its endeavor has relatively high, both physical and social, environmental impact compared to other commodities' endeavor in general. Basically, due to its non-renewable nature, mining business doers always look for new proven reserves. Proven reserves decrease by producing and increase by making discovery. There are some types of risk in mining sector, namely: geological risk (exploration) related to the uncertainty in finding reserves (production), technological risk related to cost uncertainty, market risk related to price change, and risk of governmental policy related to tax change and domestic price. Those risks relate to variables affecting business profit, namely: production, price, cost, and tax. The business having higher risk demands higher rate of return. Basically, exploration generates environmental impact; nevertheless, exploitation generates the main mining environmental impacts. Such environmental impacts can be in the physical form of destruction of forest, water pollution (river, lake, sea) and energizing air pollution. Such environmental impacts can also be in social nature, namely: the loss of the livelihood of the people surviving from the products of forest. (Adrian Sutedi: 2012).

This is why the existence of mining company in Indonesia seems to be held in contempt by various groups of people. This is like what happened to gold company PT Agincourt Resources, subsidiary of G-Resources Group Ltd, operated in Martabe, in the

western Sumatera, District of Batang Toru, and Province of North Sumatera. According to Kusnadi, as Director of Vehicle of Indonesia's Ecosystem (WALHI) North Sumatera, it is stated that, from the time the license was given to Martabe G-Resources Group Ltd gold mine in April 1997 to today, forest destruction in District of Batang Toru, County of Tapsel, is quite extensive, that is, from 163.900 hectares of licensed area, 30 percent of the forest in the area is destroyed. The forest destruction was conducted by dredging the land, chopping down woods, and by other destruction process using explosives. In the last finding, from about September 2013 to January 2014, this mining company re-explores by destroying the forest and environment in the County of North Tapanuli. It damages not only the forest but also the river because the company's waste disposal is executed to Batang Toru River. (Ayat Suhaeri KaroKaro: 2014). The next one is PT Newmont Nusa Tenggara (PT NNT) that operated in 2000 in the project of Batu Hijau of County of North Sumbawa, Province of West Nusa Tenggara. This company earned many obstacles from the community because the mining of PT NNT not only created pollution but also aggravated the ecosystem, land ownership right of the people based on their progeny ownership and their livelihood. (Nor Hadi: 2011).

Again, this phenomenon is because the existence of mining company has caused negative impacts in the endeavor of mining materials; the impacts are as follows: the forest destruction in the area of mining perimeter, the pollution of sea, the diseases for the people residing in the mining perimeter and the conflict between the people of mining perimeter and the mining company. (H. Salim HS: 2004). There is a phenomenon describing that mining companies are companies sensitive to the impact environmental pollution. Mine Advocacy Network (Jatam) approximates about 70% of Indonesia's environmental destruction is due to mining operation. Around 3.97 million hectares of conservation area are in danger because of mining activities, including biological diversity. Not only that, areas of river streams (DAS) get destroyed and this escalates in the last 10 years. There are 108 which are badly damaged out of 4.000 DAS. (<http://www.neraca.co.id/>: 2012).

Truly, program of societal empowering and environmental conservation are very important to mining companies. However, there are few mining companies in Indonesia that are aware and willing to practice CSR. From thousands of mining company operating in Indonesia, there are just 10 (ten) companies who are seriously and continuously run the CSR program. (Feby Dwi Sutianto: 2012). Presently, multinational companies still dominate the implementation of CSR activities in Indonesia. To multinational companies, particularly in the sector of mining, there is an impression that CSR is solely for protecting their business. Indeed, such aspect is clearly seen. However, nothing is wrong if one of the goals of CSR implementation is to protect their business from the hands of the surrounding people. (Bismar Nasution: 2009).

The obligation of mining company of CSR is in Law No. 40 of 2007 on Limited Company Article 74: company running its business activity in the sector and/or connected with natural resources requires performing social and environmental responsibility budgeted and estimated as corporate cost whose implementation is conducted by considering propriety and appropriateness. Concerning the management of mining in Indonesia, the one that is recently applied is Law No. 4 of 2009 on Mineral and Coal Mining, pluralistic in nature and the CSR implementation is in dualistic system. The adjustment of CSR as a part of company's legal scope, especially in the sector of mining, is still succinct and partially degrading. Based on the statements above, analysis need about application of rule of CSR at the Mining Company.

Discussion

1. Legislation Regulating on CSR

In Indonesia, business ethics related to CSR have been formulated in positive law as regulated in:

- a. Law No. 9 of 2003 on State-Owned Enterprises Article 2 in connection with Article 66 Section (1) therefore states that State-Owned Enterprises is expected to improve the quality of service towards society and contribute to improving national economic growth and help the input of national finance. Its implementation is in the form of partnership program and environmental construction program having originated from the allocation of after-tax profit of 2% in maximum. The amount of such contribution has been stipulated by Minister (General Meeting of Stakeholder) for companies; in certain situation, it can be re-stipulated by the approval of Minister (General Meeting of Stakeholder). The contribution of partnership program is given in the form of a loan to afford working capital, a special loan to afford business activity of the intended partner, the development cost of affording education, training, marketing, promotion and the other things concerning with the improvement of productivity of the intended partner. Other than that, the scope of the contribution of environmental construction program provided by State-Owned Enterprises are in the forms of disaster victim assistance, educational and or training assistance, health development assistance, infrastructure and or public facility assistance, religious facility assistance, natural conservation assistance; and the procedure or mechanism of the distribution of contribution, criteria for being State-Owned Enterprises partner and procedure of reporting are all organized in this regulation. This is also in Regulation of Minister of State-Owned Enterprises No. Per-05/MBU/2007 on Partnership Program of State-Owned Enterprises with Small Enterprise and Environmental Construction Program.
- b. Law No. 25 of 2007 on Investments Article 15 Section (b): every investor shall have obligations to implement corporate social responsibility. "Corporate social responsibility" means a responsibility mounted in every investment company to keep creating relationship which is in harmony, in balance and suitable to the local community's neighborhood, values, norms, and culture.
- c. Law No. 40 of 2007 on Limited Liability Company Article 1 Section (3). The definition of social and environmental responsibility is the company's commitment to take part in continuous economic development in order to enhance the

quality of life of the company itself, the local community, and the society in general. The following have been CSR obligations included in Article 74:

- (1) The company running its business activity in the sector and/or in relation to natural resources requires performing social and environmental responsibility.
- (2) Social and Environmental Responsibility as stipulated in Section (1) is a company's obligation budgeted and estimated as corporate cost whose implementation is conducted by considering propriety and appropriateness.
- (3) The company who does not perform the obligation stipulated in Section (1) will be imposed with sanction in accordance with stipulation of the legislation.
- (4) Further provision concerning Social and Environmental Responsibility is regulated by Government Regulation which is Government Regulation No. 47 of 2012 on Limited Liability Company's Social and Environmental Responsibility.

d. Law No. 4 of 2009 on Mineral and Coal Mining Article 108, stating:

- (1) The holder of Mining Business License (IUP) and Special Mining Business License (IUPK) requires arranging the program of societal development and empowerment.
- (2) The arrangement of program and plan, as mentioned in Section (1), is consulted with the Government, regional government, and community.

Article 109: Further provision concerning the implementation of development and empowerment of society intended in Article 108 is organized by government regulation. The detailed and technical outline of the implementation of development and empowerment of society is documented in Government Regulation No. 23 of 2010 on Implementation of Business Activity of Mineral and Coal Mining, namely from Article 106 to Article 109.

Article 106 states:

- (1) The holder of Mining Business License (IUP) and Special Mining Business License (IUPK) requires arranging the program of development and empowerment of society around the Area of Mining Business License (WIUP) and the Area of Special Mining Business License (WIUPK).
- (2) The program mentioned in Section (1) must be consulted with the Government, provincial government, municipal government, and local society.
- (3) The society mentioned in Section (2) can propose a program of development and empowerment of society to local head of county or mayor to be passed on to the holder of IUP or IUPK.
- (4) The development and empowerment of society, as stated in Section (1), are prioritized for the people around WIUP and WIUPK directly affected due to mining activities.
- (5) The people priority stated in Section (4) is the people who are close to mining operational activities by not concerning the administrative border of district or county area.
- (6) The program of development and empowerment of society stated in Section (1) is funded from the allocation of the cost of program of development and empowerment in the budgeting and the cost of IUP or IUPK holder every year.
- (7) The cost allocation of program of development and empowerment stated in Section (6) is managed by the holder of IUP or IUPK.

Article 107 states: "The holder of IUP and IUPK every year requires informing the plan and cost of the implementation of program of development and empowerment of society as a part of annual working plan and cost budgeting to the Minister, governor, or county head/mayor in accordance with the entitlement to achieve an approval".

Article 108 states: "Every holder of IUP in the period of production activity and IUPK in the period of production activity require informing the report of the realization of program development and empowerment of society every six months to the Minister, governor, county head/mayor in accordance with their entitlement".

Article 109 states: "Further provision concerning the development and empowerment of society is regulated by Ministerial Regulation".

Based on the statements above, State-Owned Enterprises Law carry out CSR financing with "after profit" concept. This constitutes the allocation of profit of 2%, whereas in Limited Liability Company Law does apply "before profit" concept because in the beginning it is supposed to be budgeted and estimated as company cost which implementation is conducted by considering

propriety and appropriateness. However, Law of Mineral and Coal Mining indirectly implements “after profit” concept. So, it is obvious that although the program of development and empowerment has been organized and budgeted, the implementation and report of such budgeting is performed after license period of production activity.

Actually, there are two negative impacts that threaten after-profit way of thinking, which are:

- a. In the argumentation implementing CSR as “after profit”, a company might avoid performing CSR until it enters the profit period. In actual fact, a company’s negative impacts might even have started since it is not in operation yet (for instance, in construction period). CSR should be performed by a company since in the early period it comes in contact with the kindred parties.
- b. A company could also avoid performing CSR if in the previous year it experienced loss. Logically, a company should practice its business responsibly despite the fact that whether it experiences profit or loss. (Anto Sibarani: 2014)

2. Regression in Law No. 4 of 2009 on Mineral and Coal Mining

Mining management system recently applied in Indonesia is Law No. 4 of 2009 on Mineral and Coal Mining to which many parts of society criticize. The process from its drafting to its enactment that consumed quite a long time does not make this law is accepted by every part of people as a product of law that satisfies every part of society. There are so many interests that must be accommodated in this law such as government interest, mining business doers and local people interest.

According to annual survey of independent consultancy Pricewaterhouse Coopers (PwC) towards Indonesia’s sector of mining, PwC’s Technical Advisor of mining sector, Sacha Winzenried, states: “Law No. 4 of 2009 is a regression if compared to system of Working Contract / Kontrak Karya (KK) which gives more long-period legal protection for large-scale investment. (Alexander Yopi and Happy Amanda: 2009).

According to Busyra Azheri, the principle of CSR has actually been accommodated in Law No. 4 of 2009; however, it remains implicit and or succinct except for article concerning development and empowerment of society around mining area. Also, the application of CSR in the sector of mining has dual system characteristic. To state-owned enterprises, its implementation has been mandatory in the sense of legal obligation because it has been regulated likewise. As for private-owned enterprises, the implementation of CSR is voluntary even though has been regulated in Law No. 25 of 2007 on Investments, Law No. 40 of 2007 on Limited Liability Company and Law No. 4 of 2009 on Mineral and Coal Mining, with reactive motive in the form of charity. (<http://prasetya.ub.ac.id>: 2010). In fact, state-owned enterprises in the sector of mining in the form of Limited Liability Company also comply with the provisions of Law No. 40 of 2007 on Limited Liability Company. This would mean that if state-owned enterprises in the sector of mining fulfill the Law No. 40 of 2007, they have already fulfilled the Law No. 4 of 2009. The adjustment of CSR as a part of the legal scope of companies, particularly in the sector of mining, partially degrades namely in the practice of obligation of CSR implementation. As what we already know that Law No. 40 of 2007 on Limited Liability Company more firstly came up than Law No. 4 of 2009 on Mineral and Coal Mining.

Law No. 40 of 2007 Article 74 Section (2) states: “Social and Environmental Responsibility is a corporate obligation that is budgeted and estimated as corporate cost whose implementation is conducted by considering propriety and appropriateness”. This article contains the understanding that the company itself performs CSR in accordance with the principle of propriety and appropriateness. The fact that the implementation of CSR is charged to each company can prevent the existence of corruption and at the same time ease the interaction between companies and society, while the Government’s role is just as a monitor whether such companies has performed the CSR. For instance, if they do not perform CSR, the alleged companies will be sanctioned in accordance with sectoral law; if disregarding environmental responsibility, the alleged companies will be sanctioned in accordance with environmental law, and if disregarding social responsibility, they will be sanctioned in accordance with some proper law. (See Supreme Court Verdict No. 53/PUU-VI/2008).

This is in line with Reflexive Law Theory. As put forth by Eric Orts, describes reflexive law as a regulatory system that recognizes the limited ability of the law in a complex society to direct social change in an effective manner. Instead of trying to suppress the complexity and diversity in society through extensive regulation, reflexive law aims to guide behavior and promote self-regulation. The law is “reflexive” in that it encourages corporations to constantly re-examine their practices and reform those practices based on the most current information. (David Hess: 1999) This reflexive law theory focuses on social process in the way of “regulated autonomy”, namely by letting private actors, such as corporations, to independently manage themselves. On other side, reflexive law intervenes in social process by creating reference procedure for corporate behaviour.

Meanwhile, Government Regulation No. 23 of 2010 Article 106 on Implementation of Business Activity of Mineral and Coal Mining that is in line with Article 109 Law No. 4 of 2009 on Mineral and Coal Mining states: “The holder of IUP and IUPK requires arranging program of development and empowerment of society around Area of Mining Business License (WIUP) and Area of Special Mining Business License (WIUPK). Such program must be consulted with the Government, provincial government, municipal government, and local society. Society can propose a program of activity of development and empowerment of society to local county head or mayor to be passed on to the holder of IUP or IUPK. The holder of IUP and IUPK every year requires informing the plan and cost of the implementation of program of development and empowerment of society as a part of working plan and annual budgeting cost to the Minister, governor, or county head/mayor in accordance with the entitlement to get an approval”.

Based on the explanation above, companies no longer organize themselves unrestrictedly. Gunther Teubner states that there has been a legal evolution resulting in three types of law, namely formal, substantive, and reflexive. Formal law is a type of a form of government authorization regulating through rules of legislation. This type troubles government in intervening private issues. In the meantime, substantive law is a form of state intervention on purpose and result aimed. Although it is more permissive than formal law, the focused point of substantive law emphasizes on the result aimed by regulation. Substantive law has two obstacles to be applied in a complex society, namely cognitive limitation and normative legitimacy. Gunther Teubner calls this by crisis of the interventionist state. This crisis is the consequence of the incapability of substantive law to fulfill demands of various societal problems that keep changing. If this is forced to follow changes in society, there will be too many legal products that will ruin people understanding. (Mukti Fajar ND: 2010). In responding to crisis of state intervention, reflexive law emerges. Similar to substantive law, reflexive law interferes with social process, "but it avoids taking full responsibility for substantive result". Reflexive law takes the moderation between formal law and substantive law by creating regulated autonomy. On one side, reflexive law of corporate personality is free to determine their own result. On the other side, reflexive law interferes with social process by settling the procedure that leads corporations. (David Hess: 1999).

Basically, reflexive law is a procedural law and therefore it can be considered as self-regulation. Instead of controlling the outcome that has been determined before, reflexive law tries to influence decision making and communicating processes by using procedures conditioned. However, final decision remains to be in private sectors. The purpose is to push reflexive processes alone or to be independent within corporations towards impacts of their actions towards society. Regarding CSR, this has the sense of social responsibility oriented to the process connected to the concept of corporate social response. Social response refers to capacity of a corporation to respond social pressures. To examine CSR, reflexive law theory is a legal theory attempting to push corporations to re-evaluate practices that they have conducted by giving latest information. In controlling corporate behaviour, reflexive law theory desires the existence of social reporting. Social reporting is a form of concise report regarding social impacts of corporate ethical behavior towards public interest or stakeholders. (Mukti Fajar ND: 2010).

Then again, in Law No. 40 of 2007, Article 74 Section (2) states: "Social and Environmental Responsibility is a company's obligation budgeted and estimated as a corporate cost whose implementation is conducted by considering propriety and appropriateness". This means that CSR follows the concept of "before profit" because of the obligation of budgeting CSR as a corporate cost.

Meanwhile, in Law No. 4 of 2009, Article 108 Section (1) states: "The holder of Mining Business License (IUP) and Special Mining Business License (IUPK) require arranging program of development and empowerment of society". However, report of the realization of program development and empowerment of society is obliged to the holder of IUP production operation and IUPK production operation. As for the definition of IUP production operation: business license given after the implementation of IUP exploration in order to conduct the stage of production operation activity. (See Article 1 Number (9) Law No. 4 of 2009 on Mineral and Coal Mining). The definition of IUPK production operation is business license given after the implementation of IUPK exploration in order to conduct the stage of production operation activity in the area of special mining business license. (See Article 1 Number (13) Law No. 4 of 2009 on Mineral and Coal Mining). It can be concluded that the realization of CSR funding is done after IUP production operation and IUPK production operation. So, what are IUP exploration and IUPK exploration? As we know, the meaning of IUP exploration is the business license given to conduct the stage of the activity of general investigation, exploration and propriety study (See Article 1 Number (8) Law No. 4 of 2009 on Mineral and Coal Mining); the meaning of IUPK exploration is the business license given to conduct the stage of the activity of general investigation, exploration and propriety study in the area of special mining business license. (See Article 1 Number (12) Law No. 4 of 2009 on Mineral and Coal Mining). Do, in the license period of IUP exploration and IUPK exploration, corporations not require actualizing CSR funding? This would mean that the concept of CSR follows the concept of "after profit".

Such thing, written in Government Regulation No. 23 of 2010 on Implementation of Business Activity of Mineral and Coal Mining, in Article 108, is stipulated: "Every holder of IUP production operation and IUPK production operation require informing report of realization of program of development and empowerment of society every six months to the Minister, governor, county head or mayor in accordance with their authority". This means that the implementation CSR obligation by mining companies is conducted after the realization of IUP and IUPK production operation.

Actually, as an entity, mining companies in the form of Limited Company should comply with Law No. 40 of 2007 on Limited Company; however, in regard of mining activity, comply with Law No. 4 of 2009 on Mineral and Coal Mining.

2. Management System of Mineral and Coal Mining Has Pluralistic Characteristic

Mining management system in Indonesia also has a pluralistic characteristic. This is because of varied mining contract or license recently applied. There are applied mining contracts or licenses based on Law No. 11 of 1967 on Main Stipulations of Mining, and there are licenses applied based on Law No. 4 of 2009 on Mineral and Coal Mining. (Salim HS: 2012).

In the system of mining business in Law No. 4 of 2009, there are three forms of license. Licenses given to applicants are the following: license of mining business (IUP), license of public mining (IPR), license of special mining business (IUPK); however, this Law acknowledges the existence of formerly applied contract or license. As what is clarified in Article 169 Law No. 4 of 2009 on Mineral and Coal Mining:

- a. Working Contract (KK) and working agreement of business of coal mining (PKP2B) that have been existed before the enactment of this law is still applied until the end of time period of the contract/agreement.

- b. Terms included in article of working contract and working agreement of business of coal mining, as mentioned in (a), are adjusted as late as possible one year since this law is enacted except for state income.

After the validity of this Law No. 4 of 2009, the Government published Presidential Decision No. 3 of 2012 on Evaluation Team for Adjustment of Working Contract and Working Agreement of Business of Coal Mining. This team has a focus on doing mining contract renegotiation of the holder of working contract and working agreement of business of coal mining. The matters negotiated are as follows: the extent of working area, contract extension becoming IUP, state income both tax and royalty, divestment obligation, the obligation of domestic maintenance and refinement and the obligation of use of domestic mining product and service.

Based on the information from Director General of Mineral and Coal Ministry of Energy and Mineral Resources (ESDM), today there has been more than 50% of the companies who are holders of Working Contract (KK) and Working Agreement of Business of Coal Mining (PKP2B) agrees to the renegotiation. From 37 companies who are holders of KK, 12 have approved, while there are 51 companies out of 74 holders of PKP2B that have approved. (Yurika Indah Prasetyanti: 2014).

One of the companies ratifying signing the points of mining contract renegotiation is PT Newmont Nusa Tenggara (PT NNT). In this matter, PT NNT signed Working Contract Generation IV on December 2, 1986. 56 percent of its shares are owned by Nusa Tenggara Partnership BV controlled by Newmont Mining Corporation and Nusa Tenggara Mining Corporation of Japan. The other shareholder is PT Pukuafu Indah of 17.8 percent, PT Multi Daerah Bersaing of 24 percent, and PT Indonesia Masbaga Investama of 2.2 percent. Basically, in Working Contract designed between Indonesia's Government and PT NNT has accommodated the development of society.

Concerning development of local business activity, provision in Article 27 on working contract states: "Companies must, as long as the matter is appropriate and economically practicable, by remembering characters of goods and services concerned, improve, support, motivate and help the people of the state of Indonesia who want to establish a company and business that will provide goods and services for local companies and society, and in general improve, support, motivate and help the development and activities of local business in the area of mining (...)"

Nevertheless, dispute of program of development of society once happened between society of mining circle especially society of Ropang Village, District of Ropang County of Sumbawa Province of Nusa Tenggara Barat and PT NNT regarding the non-realization of suggested proposal of 10 billion rupiahs. The money would have been used for infrastructure construction, farming and workforce training. As a consequence, the people did a protest by burning the base camp of PT NNT in Elang Dodo, District of Ropang, County of Sumbawa. From the research conducted by Salim HS and Idrus Abdullah, the PT.NNT's base camp attack was because the non-fulfillment of substances of working contract by PT NNT. The substances of the working contract cover: (1) the people of Ropang Village may participate as workforce in the implementation of eksplorasi and exploitation of PT NNT, (2) the fulfillment of the proposal to the value of 10 billion rupiahs. (Salim Hs dan Idrus Abdullah: 2012).

Regarding agreement of contract renegotiation signed on Wednesday, September 3, 2014 was only in the form of memorandum of understanding (MoU) of contract amendment. Later on, the MoU proceeded to the signing of special mining business license (IUPK) as the replacement of working contract. Discussion of contract amendment took place for six months. In general, there was no change on the terms of working contract except for royalty and fixed levy. The subject of the MoU was the rise in royalty of gold, silver, and copper previously from 1.1 and 3.5 percent to 3.75, 3.25 and 4 percent respectively in accordance with Government Regulation No. 9 of 2012 on Non-tax State Income. PT NNT was also imposed with fixed levy of 2 US dollars per hectare, and also the following: the obligation of constructing the manufacturing and smelter factory, the obligation of paying 25 million US dollars as bail money, reduction of size of land from 87.000 to 66.422 ha, share divestment of 51 percent, and reduction of domestic component. In accordance with Minister of Finance Regulation, PT NNT will be imposed with export duties on concentrate export of 7.5 percent. This export duty will go down to 5 percent if the improvement of smelter construction exceeds 7.5 percent and to 0 percent if the improvement of smelter is over 30 percent. (hukumonline: 2014). In this matter, there was ever a tough negotiation between Indonesia's Government and PT NNT on the issue of restriction of raw mineral export that made PT NNT sue Indonesia's Government to The International Center for the Settlement of Investment Disputes (ICSID) on July 1 2014; however at last PT NNT canceled the claim.

Conclusion

Implementing CSR, as to mining company, is an obligation, but there are too many pluralistic rules of legislation regulating about corporate social responsibility and mining management system in Indonesia. The adjustment of CSR as a part of the legal scope of companies, particularly in the sector of mining, partially degrades namely in the practice of obligation of CSR implementation. As what we already know that Law No. 40 of 2007 on Limited Liability Company more firstly came up than Law No. 4 of 2009 on Mineral and Coal Mining. *As an entity, mining company formed as Limited Liability Company should submit to Law No 40 of 2007, however in the activity of mining does submit to Law No 4 of 2009.* Based on the statements mining company should apply "before profit" concept because in the beginning it is supposed to be budgeted and estimated as company cost which implementation is conducted by considering propriety and appropriateness.

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